Union of India (Uoi) and ors. Vs. Mrigank and ors.

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Court : Delhi

Decided On : Aug-25-1999

Reported in : 1999VAD(Delhi)865; 81(1999)DLT613

Judge : Usha Mehra and; Madan B. Lokur, JJ.

Acts : Constitution of India - Article 226

Appeal No. : LPA Nos. 240, 241 and 242 of 1999 and CW No. 3742 of 1999

Appellant : Union of India (Uoi) and ors.

Respondent : Mrigank and ors.

Advocate for Def. : M.L. Kasturi and ; Manish Mohan, Advs.

Advocate for Pet/Ap. : Jyoti Singh, Adv

Disposition : Appeal partly allowed. Petition dismissed

Judgement :

Madan B. Lokur, J.

1. Admit LPA Nos. 240/99, 241/99 and 242/99. Rule DB in CW No. 3742/99.

2. By this decision, we are disposing of a batch of three appeals under Clause X of the Letters Patent and one writ petition under Article 226 of the Constitution. Since

there was some urgency in these matters, they were taken up for final disposal at the admission stage itself, with the consent of learned Counsel for the parties.

3. For the sake of convenience, the respondents in the appeals and the writ petitioners are hereinafter referred to as the petitioners.

4. The petitioners are young men who had hoped to get inducted to the 101st Course of the National defense Academy at Khadakwasla (hereinafter referred to as the NDA). They were denied admission even though they had qualified. On enquiries made by them, they were given to understand that the denial of admission was because a large number of candidates who had qualified for the 100th Course (but could not get admission) were inducted to the 101st Course with the result that the number of vacancies available for the 101st Course got reduced, to the detriment of the petitioners,

5. It was on this basis that the petitioners approached this Court under Article 226 of the Constitution. Their writ petitions were allowed by a learned Single Judge and the Union of India preferred Letters Patent Appeals. Civil Writ Petition No. 3742/99 was filed after the decision of the learned Single Judge and so was tagged Along with the Letters Patent Appeals.

6. The Union Public Service Commission (for short the UPSC) issued an advertisement in the daily newspapers of 18th October, 1997 for conducting an examination for admission to the 101st Course of the NDA. It was mentioned in the advertisement that the examination would be conducted on 19th April, 1998 for the course commencing from January, 1999. The approximate number of vacancies to be filled up on the basis of the result of the examination was stated to be 365. The break up of this was 214 for the Army, 43 for the Navy, 73 for the Air Force and 35 for the Executive Branch of the Naval Academy.

7. According to the appellants the written examinations were held on 19th April, 1998 as scheduled and about 1.10 lakhs candidates appeared. However, only 4,700 candidates qualified the examination.

8. Thereafter, the Services Selection Board held interviews of the successful candidates sometime in September/October, 1998. Out of the candidates so interviewed, 398 were declared successful and were asked to undergo a medical examination before the declaration of the select list. It appears that 60 of these candidates were declared medically unfit. Consequently, 338 candidates were declared successful and were entitled to admission in the 101st Course of the NDA against the advertised vacancies of approximately 365.

9. In the Weekly Employment News of 26th December, 1998 to 1st January, 1999, the UPSC brought out an advertisement declaring the result for 337 vacancies 'as intimated by the Government' as against the originally advertised 365 vacancies. The break up of these 337 vacancies was 214 for the Army, 30 for the Navy, 73 for the Air Force and 20 for the Executive Branch of the Naval Academy. (The significance of this is that till 26th December, 1998 the candidates were given to understand that there were 337 vacancies in the 101st Course).

10. Under the circumstances, the petitioners were expecting to receive their joining instructions but unfortunately they did not receive such instructions. According to them, they made enquiries and were told that only 232 candidates were being inducted to the 101st Course of the NDA. They were also told that about 140 candidates from the 100th Course were being accommodated in the 101st Course and that is why there were not enough vacancies to accommodate the petitioners.

11. Believing these representations to be correct, the petitioners filed writ petitions which were heard by a learned Single Judge of this Court. In the writ petitions, it was prayed, inter alia, that the induction of 140 candidates of the 100th Course against the vacancies existing in the 101st Course be declared illegal and induction to the 101st Course be made strictly in accordance with merit as indicated in the advertisement published by the UPSC, thereby enabling the petitioners to obtain admission.

12. The learned Single Judge decided the writ petitions and in his judgment and order dated 26th May, 1999 held that the reduction in the number of vacancies for the 101st Course to only 232 was occasioned by the absorption of 141 candidates from the 100th Course. The learned Single Judge directed that such of the

candidates of the 101st Course, who had been denied admission because of the induction of 141 candidates, be granted admission and adjusted in the 102nd Course since the 101st Course had already commenced from January, 1999 and the 102nd Course was to commence only in June, 1999.

13. Feeling aggrieved by the decision of the learned Single Judge, the Union of India preferred Letters Patent Appeals. Independently, a writ petition was filed on the same subject by an 'unsuccessful' candidate and that was tagged Along with the LPAs.

14. Learned Counsel made their submissions on 20th July, 2nd August, and 4th August, 1999 when judgment was reserved. At that time, we were not inclined to delve into the files maintained by the Union of India, but after arguments concluded, we did feel the necessity of looking at the files. Some files were produced before us on 13th August, 1999. We have perused these files for whatever they are worth.

15. Giving the background of the problem which led to the unprecedented admission of an additional 141 candidates to the 101st Course, learned Counsel for the appellants submitted that the policy that was being followed by the appellants right from the 1st Course onwards up to the 98th Course which commenced in July, 1997 was that three merit lists were maintained: firstly, a combined merit list which included the names of all the candidates in order of merit; secondly, the Air Force merit list which consisted of all the candidates who had given Air Force as their first preference and were otherwise found eligible after the Pilot Aptitude Battery Test (PABT) and medical fitness; and thirdly, the Naval Academy merit list which consisted of candidates who had opted for the Naval Academy as their first preference and were otherwise found medically fit.

16. Learned Counsel submitted that at the time of granting admission, such of the candidates who had given their first preference for the Air Force or the Naval Academy but were not able to get admission in their course of first preference, were considered for their second preference on the basis of their rank in the combined merit list. The appellants claim that this policy was slightly lopsided and weighed against those candidates who had given the Army as their first

preference. Accordingly the appellants, in their wisdom, decided to abolish the practice consistently being followed for 98 courses in the last 49 years.

17. A new policy was, thereforee, introduced by the appellants for admission to the 99th Course commencing in January, 1998. As per the new policy, the appellants decided to maintain five merit lists, that is, one each for the Army, Navy, Air Force and Naval Academy and one combined merit list. After accommodating the candidates who had given their first preference for a particular branch of the Armed Forces, and if some vacancies still remained, then the candidates who had given their second preference would be granted admission depending upon their rank in the combined merit list.

18. According to the appellants, the new policy did not create any problems for the grant of admission to the 99th Course. The reason for this was that the number of candidates to whom joining instructions were given, were less than the number of available vacancies. In other words, the number of candidates who qualified were less than the vacancies.

19. The problem which arose for the 100th Course (a problem which could have been anticipated with minimal foresight) was that the number of candidates who had qualified were in excess of the number of vacancies. It appears that 702 candidates qualified for 337 vacancies in the 100th Course. According to the appellants, because of the new policy 'A large number of candidates who were high in the combined merit list were left out since they were either medically unfit for their first choice or law in merit for their first choice and could not be inducted or failed PABT. The candidates, though high in merit were not considered for their second choice.' (LPA No. 241 of 1999). According to the appellants, this caused injustice to some of the candidates and consequently, at a meeting chaired by the Hon'ble defense Minister it was decided that, as a one time measure, ad hoc vacancies be created and all the candidates from the beginning up to the rank of the candidate last inducted (that is, rank No. 599) who had been left out due to the revised policy be inducted and the new policy be done away with and the old policy restored.

20. As a result of this decision, 141 candidates were inducted against ad hoc vacancies. In other words, the very first time that the revised policy was tested, it ran into rough weather resulting in its reversal and reversion to the old policy which, according to the appellants, had wrongly been followed for the last 49 years.

21. Learned Counsel for the appellants also contended that the optimum capacity of the NDA is 1931 cadets. Consequently, the number of candidates who are given admission to a particular course depends on the number of cadets who pass out. Of course, there are certain variations on account of admission to foreign candidates but necessary adjustments in this regard are made without affecting Indian candidates. She submitted that at the present moment, the number of cadets in the NDA is 1960 and if the petitioners and other similarly placed are granted admission to the 102nd Course, it will strain the facilities at the NDA not only in terms of accommodation but also in various other aspects such as availability of instructors etc. She also submitted that if any benefit is given to the petitioners, candidates who are denied admission to the 102nd Course would, for similar reasons, approach the Courts for admission and this would set off a never ending chain reaction. She submitted that in fact some writ petitions had been filed in this Court by candidates of the 102nd Course who were not able to secure admission.

22. It was submitted by learned Counsel for the appellants that the induction of 141 candidates of the 100th Course into the 101st Course was a one time measure and their induction did not in any way affect the candidates of the 101st Course inasmuch as the number of vacancies for the 100th Course was in fact 232 and this number was not reduced.

23. With regard to the wide variation between the advertised number of 365 vacancies and the final figure of 232 available vacancies, learned Counsel for the appellants submitted that the advertisement only gave an approximate number of vacancies and the same could be reduced. She submitted that even though the gap was large, there were no mala fides on the part of the appellants. According to her, the number of cadets passing out in December, 1998 (from the 95th Course)

was 232 and, thereforee, only 232 candidates could be accommodated. No satisfactory Explanationn was forthcoming as to why 365 vacancies were advertised if a lesser number of cadets were expected to pass out. What was trotted out as an Explanationn was that since the selection process begins about 15-16 months in advance, it is not possible to make an accurate assessment of the number of vacancies.

24. On the other hand, learned Counsel for the petitioners submitted that the number of vacancies for the 101st Course were in fact reduced substantially, if not by a figure of 141. This reduction was only to accommodate those persons from the 100th Course who were not able to get admission. Reliance was placed by learned Counsel for the petitioners on a letter dated 21st November, 1998 sent by the Additional Directorate General of Recruiting, Adjutant General's Branch, Army Headquarters wherein one of the 141 favoured candidates was informed that 'You being a candidate qualified for 100 NDA Course, are now being considered for 101 NDA Course provided the vacancies in that course are not fully subscribed...'

25. The impression given by this letter dated 21st November, 1998 was that admission was being offered in the event the 101st Course is not fully subscribed meaning thereby that if the course is fully subscribed, the offer does not stand. It was contended by learned Counsel for the petitioners that there is nothing on record to show that the course was not fully subscribed or that 141 vacancies existed.

26. In this context, reference was also made to the counter affidavit filed by the Deputy Director, Recruiting 'A', for Adjutant General's Branch, Army Headquarters in CWP No. 271/99. In reply to paragraph 2(g) of the writ petition, it was stated that '..... 141 leftover candidates from 100 NDA Course were earlier sent for training against ad hoc additional capacity created at NDA as directed by Hon'ble Raksha Mantri and were adjusted against the vacancies of 101 NDA Course.' In other words, the stand of the appellants was that the adjustments of 141 candidates was made against either unsubscribed vacancies or that vacancies otherwise existed in the 101st Course.

27. Learned Counsel for the petitioners also drew our attention to a letter dated 9th February, 1999 sent on behalf of the Adjutant General to an Advocate who had made a representation dated 8th January, 1999. The said representation is not on record but in reply thereto it is stated in paragraph 2(a) that 'As intimated by the Director General of Military Training only 232 cadets were scheduled to pass out from NDA for IMA thereby limiting the induction into 101 NDA Course in view of the administrative set up existing at NDA'. The contention was that since only cadets of the Army passed out from the NDA for IMA, the figure of 232, thereforee, represented only Army cadets and not the entire batch of cadets belonging to the Army, Navy and Air Force. It was submitted that if the Navy and Air Force cadets were added to the 232 Army cadets, the total figure of cadets passing out would exceed 300.

28. Having heard learned Counsel at length, we are of the view that the learned Counsel for the appellants may be right in contending that because of a change of policy some injustice was caused to the 141 candidates left out of the 100th Course. However, we do not give any finding in this regard because none of these 141 candidates is a party to these proceedings. Moreover, learned Counsel for the petitioners graciously stated that they have nothing against these 141 candidates and it is not their desire to dislodge any of them.

29. We are, however quite taken a back by the decision of the appellants to upset a policy which has been tried and tested for the last 49 years and for as many as 98 Courses. Since the contention of the appellants is that a 'lopsided' policy was being followed by them over the last 49 years, it necessarily follows that according to the appellants, at least some officers of the Army, Navy and Air Force in position today were inducted because of a lopsided policy and consequently they probably do not deserve a place in the armed forces. We find this to be quite a fantastic submission. On the other hand, if there was nothing wrong in the manner of selecting candidates for the NDA during the last 49 years, there was no reason to formulate a new policy. What makes the situation worse for the appellants is the fact that the moment the new policy was tested, it proved to be a flop with the result that the appellants had to revert to the old policy. This clearly shows that the respondents acted in a very myopic and casual manner. Surely, the petitioners are

entitled to expect the appellants to act in a more mature manner, especially when they are dealing with young men who are aspiring to become officers of the armed forces in a few years' time. The ham-handed manner in which the appellants have acted may have an extremely demoralising effect on the would-be officers of the armed forces. However, we leave it at that.

30. We are also a little surprised by the fact that, as per the files shown to us, despite the instructions of the Hon'ble defense Minister to 'take legal opinion, preferably of the Attorney General or the Solicitor General', the Ministry of defense did not deem it fit to do so.

31. However, since the policy of the appellants is not under challenge, we are not inclined to decide the question whether the earlier policy was defective and should have been changed or whether the new policy was better. It is entirely within the domain of the appellants to decide which policy they wish to follow. We are not called upon to express any opinion on this matter, but we do feel that whatever policy is followed, it should be equitable and made known to the candidates.

32. The question whether the induction of 141 candidates of the 100th Course was instrumental in reducing the number of vacancies for the 101st Course is quite vexed. We had called upon the appellants to place the relevant records before us. Unfortunately, the records shown to us did not advert to this aspect of the case. In the normal course, we would have drawn an adverse inference against the appellants, but the material already available on record makes that exercise unnecessary.

33. The appellants have stated before us that there were in fact only 232 vacancies; however, the various communications and the circumstances of the case seem to indicate a different story.

34. In the letter dated 21st November, 1998, the appellants clearly informed the 141 candidates that they were being considered for the 101st Course 'provided the vacancies in that course are not fully subscribed.' In other words, these 141 candidates were to be inducted against the 232 vacancies, provided these vacancies were not fully subscribed. It is the admitted position that 141 candidates

were in fact inducted. It is also the admitted position that they were not inducted against the 232 vacancies. It must follow, thereforee, that either additional vacancies were created (as contended by learned Counsel for the appellants) or that more than 232 vacancies existed and the 141 candidates were inducted against the vacancies over and above the admitted figure of 232.

35. In the weekly Employment News of 26th December, 1998, it was indicated by the UPSC that there were 337 vacancies in the 101st Course. This course was to start barely ten days later. If the number of vacancies was less than 232, the appellants would have ensured that such a misleading advertisement is not brought out in the Employment News. Moreover, since the course was to start quite soon, it is unthinkable that the appellants were unaware whether the actual number of vacancies was 232 or 337, or the actual number of cadets of the 95th Course who had passed out in December, 1998.

36. In this context, it may be noted that the appellants have stated in paragraph 2(g) of the counter affidavit filed in Civil Writ Petition No. 271 of 1999, that the 141 candidates were adjusted against the vacancies of the 101st Course. If the affidavit is true, then it is quite clear that the 141 candidates were inducted against the vacancies of the 101st Course to the detriment of the petitioners and others similarly placed. If that is not the position, then the affidavit is clearly false.

37. We are pained to observe that on the basis of the counter affidavit filed by the appellants and various letters available on the record, it is quite clear that the number of vacancies for the 101st Course was more than 232 and that possibly there were 337 vacancies as stated by the UPSC as late as on 26th December, 1998. It is a matter of deep regret that the appellants have tried to mislead not only the petitioners but also this Court, and in the process affected the career prospects of at least some of the petitioners. We are also deeply anguished by the fact that despite our asking, the appellants have not produced the files which show that the induction of 141 candidates did not affect the overall Induction of candidates to the 101st Course.

38. We reject the submission made by learned Counsel for the petitioners that 232 cadets were passing out only from the Army stream of the NDA, as is sought to be

conveyed by the letter dated 9th February, 1999 sent on behalf of the Adjutant General. The statement made in this letter appears to be (not surprisingly) incorrect inasmuch as at no point of time have the appellants conceded that more than 214 vacancies exist for the Army stream in the NDA. Even in the Employment News of 26th December, 1998, the number of vacancies for the Army is given as 214 and not 232. The contents of the letter dated 9th February, 1999 are clearly erroneous.

39. A contention was raised by the petitioners that they had a legitimate expectation of being inducted into the NDA. The law on this subject is quite clear. The appellants can reduce the number of vacancies, (see for example UPSC v. Gaurav Dwivedi and Ors. (1999) 5 SLT 75). Since that is permissible, a successful candidate cannot always claim to have a legitimate expectation that he will be given admission even though the number of vacancies have been reduced. Even otherwise, on the facts of these cases and for reasons given hereafter, the petitioners cannot assert an indefeasible right to induction in the 101st Course.

40. On the question of relief to be granted to the petitioners, we find that our hands are tied. While we have concluded that the induction of 141 candidates from the 100th Course has reduced the number of vacancies for the 101st Course, we are unable to pass any order directing the appellants to induct the petitioners and others similarly placed to the 101st Course or the 102nd Course. The reason for this is that, first of all, there is no challenge to the induction of the 141 candidates: as such they cannot be adversely affected; and secondly, if the petitioners are induced into the 102nd Course, as directed by the learned Single Judge, it will mean that some candidates of the 102nd Course will have to be left out. They will then have to be inducted in the 103rd Course. This will start some sort of a chain reaction where candidates of the 101st Course are adjusted in the 102nd Course and candidates of the 102nd Course are adjusted in the 103rd Course and so on. This will create complications in the matter of seniority and also logistical problems such as availability of living rooms for the cadets, instructional facilities and other infrastructural problems.

41. More importantly, we feel that we are bound by the decision of the Supreme Court in the case of Prem Prakash and Ors. v. Union of India and Ors. : (1985)IILLJ341SC wherein the Supreme Court has stated, inter alia, as follows :

'It is ironical that the rectification of injustice done to some two persons should result in injustice to two others..... Justice to one group at the expense of injustice to another is perpetuation of injustice in some form or the other.'

42. It is tragic that the appellants not only failed to take the opinion of the learned Attorney General or the learned Solicitor General but they also did not deem it fit to pay any heed to what the Supreme Court has said.

43. While our sympathies are with the petitioners and others similarly placed, we are unable to grant any relief to them: unfortunately, sympathies cannot supplant the law.

44. We do, however, feel that the petitioners were wronged and were unnecessarily compelled to approach this Court. They have spent almost six months time in this litigation; though they tasted success before the learned Single Judge, they were unable to enjoy the fruits of their success. Their cause was just, they were right in that they had been unfairly dealt with. Notwithstanding all this, they are not entitled (in law) to the relief prayed for by them. We do feel, thereforee, that (at the least) the petitioners are entitled to costs even though the appeals are being partly allowed and the writ petition is being dismissed.

45. Accordingly, we direct the Union of India to pay Rs. 10,000/- by way of costs to each of the petitioners who are before us. The costs be paid within a period of two weeks from today.