

\$~33 (2021 Cause List)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- November 12, 2021

+ W.P.(C) 10411/2021

KETAN KUMAR & ANR. Petitioner
Through: Mr. Puneet Kumar Verma, Adv.
versus

UNION OF INDIA & ANR. Respondents
Through: Mr. Vikrant N. Goyal, Mr.
Neeraj Kumar and Mr. Vedansh
Anand, Advs. for R-1 and R-2.
Mr. T. Singhdev alongwith Mr.
Bhanu Gulati, Advs. for R-3

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

PRATEEK JALAN, J. (Oral)

The proceedings in the matter have been conducted through video conferencing.

CM APPL. 39997/2021 (for early hearing) in W.P.(C) 10411/2021

1. This is an application on behalf of the petitioners for early hearing of the writ petition.
2. For the reasons stated, the application is allowed, and the writ petition is taken up for hearing with the consent of learned counsel for the parties.

Signature Not Verified

Digitally Signed By: SHITU

NAGPAL

Signing Date: 15.11.2021

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1. The petitioner No. 1 is the son of an ex-serviceman, i.e. the petitioner No. 2 herein. He aspires to gain admission in a medical course and seeks issuance of a “CW certificate” by the respondent No.1-Union of India [“the Union”] and the respondent No. 2-Kendriya Sainik Board [“KSB”]. The CW certificate is issued to children and wards of Armed Forces personnel, for whom seats are reserved or priority admissions are available in various educational institutions.

2. The grievance of the petitioners is that the KSB has, by way of a communication dated 17.12.2020, declined to issue a CW certificate to the petitioner No. 1 as he is more than 25 years old. The impugned communication records that the petitioner No. 1 cannot be termed as a “dependent” of the petitioner No. 2 beyond the age of 25 years.

3. Mr. Puneet Kumar Verma, learned counsel for the petitioners, submits that the decision of the Union and the KSB to this extent is arbitrary and unreasonable as the petitioner No. 1 also belongs to the Other Backward Classes [“OBC”] category, for which the respondent No. 3-National Medical Commission [“NMC”] has prescribed the maximum age of 30 years for application to medical courses. (For general category candidates, in contrast, the maximum permitted age is 25 years.) In the face of such a stipulation by the NMC, Mr. Verma submits that it is wholly irrational for a person, who is admittedly the ward of an ex-serviceman, to be denied the benefit of CW category reservation only because he has crossed the age of 25 years.

4. Mr. Verma has drawn my attention to an extract of an

Information Bulletin issued by the University of Delhi (Annexure P-4 to the writ petition), which shows that 5% reservation is available for CW category candidates, subject to their having an educational concession certificate issued by the enumerated authorities, which include the KSB and the Ministry of Home Affairs, Government of India. The order of preference in which candidates would be considered is also enumerated in the aforesaid extract, in which the petitioner No. 1 falls within Category V- “Wards of serving ex-servicemen personnel including personnel of police forces who are in receipt of Gallantry Awards”. Mr. Verma submits that the KSB has issued a notification wherein applications were invited for admission to medical colleges for sons/daughters/widows of Armed Forces personnel. In the instructions which accompanied the said notification, Mr. Verma relies upon Clause 2(p), which states as follows:-

“Instructions given above are to be used as guidelines only, these are subject to change without notice as per Medical Council of India/Ministry of Health rulings issued from time to time.”

5. Mr. Vikrant N. Goyal, learned counsel for the Union and the KSB, submits that the Union has fixed the upper age limit of 25 years for issuance of educational concession certificates for children and wards of Armed Forces personnel as a policy decision, which does not warrant interference of the writ court. He submits that such a decision is consistent with the definition of “Dependent” contained in the notification dated 13.04.1993, which concerns the establishment of the Armed Forces Flag Day Fund.

6. Mr. T. Singhdev, learned counsel for the NMC, submits that

although the NMC has relaxed the age limit for admission as far as OBC category candidates are concerned, this does not imply a mandate upon the Government to extend the same age limit in respect of CW category reservations.

7. Having heard learned counsel for the parties, I am of the view that the decision taken by the respondents is a policy decision, which does not display any such arbitrariness or unreasonableness as to merit the intervention of the writ court. Reservation in respect of OBC category students and CW category students are separate categories of reservations. The age limit fixed by the NMC for OBC candidates is 30 years and that remains available to the petitioner No. 1. As recorded above, the NMC itself does not suggest that the same age limit must be applied to CW category candidates also.

8. The petitioner No. 1 effectively seeks a direction that the benefit available to him in the CW category must also be extended until the age of 30 years. These benefits are intended to benefit the families of ex-servicemen. The fixation of an upper age limit until which the benefit would be available is, in my view, not irrational. For the Government to take a decision that the benefit to servicemen's families would be maximised if candidates avail of the benefits at an earlier age is within the realm of a policy decision. The interference of the writ court with such policies is extremely limited, as reiterated by the Supreme Court in the recent decision in *Rachna and Others vs. Union of India and Another* (2021) 5 SCC 638 in the following terms:

43. It is the settled principle of law that policy decisions are open for judicial review by this Court for a very limited

purpose and this Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons and has been considered by this Court in Union of India v. M. Selvakumar (2017) 3 SCC 504. The relevant portion is as under:—

“47. There is one more reason due to which we are unable to subscribe to the view taken by the Madras High Court and Delhi High Court. The horizontal reservation and relaxation for Physically Handicapped Category candidates for Civil Services Examination, is a matter of Governmental policy and the Government after considering the relevant materials has extended relaxation and concessions to the Physically Handicapped candidates belonging to the Reserved Category as well as General Category. It is not in the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether better policy could be evolved. The Court can only interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of Article 14 of the Constitution.

(Emphasis supplied.)”

9. The fixation of a cut off age does sometimes occasion hardship upon a particular category of applicants or candidates. Although there is some randomness in the fixation of a cut off age, by its very nature, that is not sufficient to characterize it as an arbitrary or unreasonable decision. Reference may be made in this connection to the judgment of the Supreme Court in *Hirandra Kumar vs. High Court of Judicature at Allahabad and Another* (2019) SCC Online SC 254 (paragraph 23): 2019 (2) SCALE 752:

“23. The legal principles which govern the determination of a cut-off date are well settled. The power to fix a cut-off date or age limit is incidental to the regulatory control which an authority exercises over the selection process. A

certain degree of arbitrariness may appear on the face of any cut-off or age limit which is prescribed, since a candidate on the wrong side of the line may stand excluded as a consequence. That, however, is no reason to hold that the cut-off which is prescribed, is arbitrary. In order to declare that a cut-off is arbitrary and ultra vires, it must be of such a nature as to lead to the conclusion that it has been fixed without any rational basis whatsoever or is manifestly unreasonable so as to lead to a conclusion of a violation of Article 14 of the Constitution.”

10. For the reasons aforesaid, I am unable to accept the case made out by the petitioners. The writ petition is, therefore, dismissed, but without any order as to costs.

NOVEMBER 12, 2021
'vp'

PRATEEK JALAN, J.

