

RAJASTHAN HIGH COURT

Suman Kumari

Vs.

State of Rajasthan

Civil Writ Petn. No. 2820 of 2000

(B.J. Shethna, J.)

20.10.2000

ORDER

B.J. Shethna, J.

1. Petitioner - Suman Kumari is a daughter of Sri Mehtab Singh, who is Sub-Inspector in Central Reserve Police Force. She is from O.B.C. caste of Jat. She has passed her Senior Higher Secondary Examination and secured 80% marks from the Central Board of Secondary Education, New Delhi.

2. P.M.T./P.V.T. examination for admission in various Medical Colleges of the State for the year 2000 was held between 25-5-2000 to 27-5-2000. Last date for submitting the form was 18-3-2000. She has applied for the same by filling up the form. The photo stat copy of the same is produced by the respondent No. 3 along with his reply at Annex. R/1. Results were declared on 22-7-2000. Cut off marks for the candidates from O.B.C. category was 805. Mark sheet received by the petitioner shows that she has secured 733 marks. She was not considered as a successful candidate considering her case from O.B.C. category. However, the marks for the Para Military Force category was 667 marks. Mehtab Singh, father of the petitioner made an application on 5-8-2000 (Annex. 5) to the Controller, P.M.T./P.V.T. Examination Respondent No. 3 requesting him to consider the case of her daughter in the category of para military instead of O.B.C. and select her in P.M.T. 2000. The same was replied on 10-8-2000 by the respondent No. 3 (Annex. R/3). It is stated in it that his daughter Miss Suman Kumari applied in the category of OBC/GL/PM by indicating her preference, therefore, her case was considered in the category of her first preference of OBC, therefore, it is not possible to make any change in the category after declaration of the result.

3. By way of this petition, the petitioner has prayed that respondent be directed to grant admission to the petitioner in M.B.B.S. course in the Session 2000 as per her merit under the quota of para military forces.

4. On 11-8-2000, learned single Judge of this Court straightway admitted this matter and ordered to issue notice to the respondents, making it returnable on 22-8-2000. On 26-9-2000, learned single Judge ordered to keep one seat vacant because in spite of service of notices, no one appeared for the respondents. On 13-10-2000 the matter was kept on 17-10-2000 and on 17-10-2000 it was kept for today and Mr. Kuldeep Mathur appears for the petitioner and Sri Hemant Shrimali appears for the respondent No. 3. Though served no one appears for the other respondents.

"Mr. Mathur for the petitioner submitted that when she filled up her admission form of PMT/PVT, she was not told to mention about the categories on preferential basis. He submitted that she comes from O.B.C. caste of Jat and that she is a girl and her father is in para military force, therefore, while filling up the admission form against the category she had mentioned OBC/GL/PM at the top of the admission form, but that does not mean that she has given her preference in that manner. He submitted that it was the duty of the respondents to consider her case as per the marks obtained by her in the particular category. Instead of that, mechanically and without application of mind they considered the case of the petitioner in OBC category and not in the category of Para Military Forces. If the respondents had considered her case in the category of Para Military Forces for which the total qualifying marks were 667, then she had secured total marks of 733 which was much more than what was required for the quota of Para Military Forces. As against that learned counsel Shri Hemant Shrimali for the respondent No. 3 vehemently submitted that the petitioner was eligible in the category of Para Military Forces, but she herself gave her first preference of OBC in the admission form, therefore, her case was considered in the category of OBC for which the total marks required were 805, whereas, she had got only 733 marks, therefore, she was not declared successful candidate."

5. He submitted that later on her father moved an application on 5-8-2000 for changing

the preference from OBC to para military forces, which cannot be granted, therefore, she was rightly not considered. It was also submitted by Shri Hemant Shrimali that once she has given her first preference for OBC then later on she cannot change her preference. However, Mr. Mathur for the petitioner submitted that at the bottom of the admission form there is a foot-note, which reads as under :-

If a candidate belongs to any of the categories noted below, he/she should write Yes in the box against Categories to which he/she belongs:-

01.	General	GN -
02.	Scheduled Caste	SC -
03.	Scheduled Tribe	ST -
04.	Children of Defence Personnel	DP -
05.	Children of Para Military Forces	PM Yes
06.	Disabled (Physically Handicapped)	DA -
07.	Girls	GL Yes
08.	Other Backward Classes	OBC Yes

6. He submitted that from the footnote it is clear that first preference is given to the children of Para Military Forces and she had marked 'Yes' against that column as well as in the columns of Girls and OBC. He submitted that her first preference should have been considered as Para Military Forces. He also submitted that application at Annex. 5 dated 5-8-2000 was not submitted by her, but it was submitted by her father. He further submitted that two posts were reserved for Para Military Forces but out of two candidature of one candidate was rejected and there is already one vacant post lying for Para Military Forces. This fact stated on oath in affidavit in rejoinder has not at all been controverted.

7. Having carefully gone through the averments made in the petition, reply affidavit, rejoinder and the documents annexed along with the same, it is clear from the admission form that at the top of it categories were mentioned, but there is no specific instruction issued to the candidates to give their preferences. It may be that one candidate may be more than one reserved category. In the instant case the petitioner is a girl. Her father is in Para Military Forces from OBC community of Jat. Therefore,

she had to mention all three categories. Merely because she had mentioned OBC first that does not mean that she has given her first preference. It should have been appreciated by the respondents that she has mentioned all the three categories OBC/GL/PM by putting oblique (/).

8. Under the circumstances, it is clear that the respondents have committed grave error in considering her case in the category of OBC and not in the category of Para Military Forces particularly when there was no such provision of giving preference of the categories by the candidates. It was the duty of the respondents to consider the case of the candidate in all the categories and in any of the categories if he or she is found successful then his or her case should have been considered.

9. It is also desirable that in future they should make it clear and make it known to all the candidates belonging to reserve candidates that they are required to give preferences for the reserved categories and their first preference will be considered.

10. However, till it is made clear, there is no option for this Court but to allow this petition.

11. Considering the *prima facie* strong case in favor of the petitioner the learned single Judge of this Court directed the respondents to keep one post vacant and in pursuance of that one post is vacant. That apart, as averred in rejoinder that case of one candidate from Para Military Forces was considered and rejected, therefore, there is a clear vacant post and without any difficulty she can be given admission on the vacant seat for the reserved category of Para Military Forces because admittedly she has secured 733 marks, whereas, total required marks were 667 for the Para Military Forces.

12. In view of the above discussion, this petition is allowed and the respondents are directed to grant admission to the petitioner in M.B.B.S. Course in Sessions 2000 as per her merit under the quota of Para Military Forces, as early as possible and in any case not later than 6-11-2000. Copy of this order be given to Mr. Hemant Shrimali for the respondent No. 3 for taking immediate action in the matter.

Petition allowed.