

(FULL BENCH)

Before : M. R. Agnihotri, R. S. Mongia & B. S. Nehra, JJ.

CHETNA SHARMA (MISS) AND OTHERS,—Petitioners.

versus

UNION TERRITORY, CHANDIGARH AND ANOTHER,
—Respondents.

Civil Writ Petition No. 11995 of 1991.

5th September, 1991.

Constitution of India, 1950—Art. 226—Panjab University Act, 1947—Ss. 27, 30 & 31—Reservation of seats for sports persons—Panjab Engineering College, Chandigarh affiliated to Panjab University can prescribe its own criteria for admission—Weightage—More than one candidate excelling in sports—Admission should be based on academic superiority—Adoption of uniform pattern of gradation of sports persons applied.

Held, that so far as the grading for sportsmen/sportswomen by categorising their achievements is concerned, the respondents are directed to strictly comply with the directions already issued by this Court in the case of Rajesh Kaushik v. Panjab Engineering College, Chandigarh and others 1990(5) S.L.R. 658 and to make admissions to the seats against the quota reserved for sportsmen/sportswomen accordingly. Since the Single Bench decision in Rajesh Kaushik's case has already been upheld by the Hon'ble Supreme Court, the direction issued therein for the adoption of uniform pattern of gradation becomes binding on the Chandigarh Administration as well as the Punjab Engineering College, Chandigarh, run by them.

(Paras 9 & 12)

Held, that so far as the applicability of the rules and regulations of the Panjab University as contained in the Panjab University Calendar is concerned, detailed regulations have been framed in Sections 27 & 31 of the Panjab University Act, 1947 laying down conditions for affiliation etc., but no provision has rightly been made with regard to the reservation of seats for sportsmen/sportswomen or for grant of weightage to them at the time of admission in the affiliated Colleges. Therefore, the contention that simply because the Punjab Engineering College, Chandigarh, is affiliated to the Panjab University, it cannot prescribe its own criteria for admission of the students and cannot act in accordance with the rules and regulations of the Education and Technical Departments of the Chandigarh Administration, is wholly without any basis. By no stretch of imagination, a University can assume the power conferred by the State to direct the affiliated Colleges that so many seats shall be reserved for the sportsmen/sportswomen and if that was not done, the affiliation could be withdrawn and the institution disaffiliated for the non-compliance of the directions.

(Paras 13 & 14)

Held, that in the matter of admission to the technical colleges, the proper approach to determine which of the candidates in one particular category should be given a preference in the selection must necessarily depend only on their academic merit as held by the Madras High Court in *P. Sabitha v. The Director of Medical Education and others* C.W.P. No. 9406 of 1983 decided on 6th April, 1984 and upheld by the Supreme Court in *Khalid Hussain (Minor) v. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras, etc.*, 1987(4) S.L.R. 598. Therefore, the attack against the criteria adopted by the Punjab Engineering College, Chandigarh, that admissions shall be made by giving weightage in addition to the academic performance of the candidates, deserves to be repelled, as the same is wholly fair and just.

(Paras 15 & 16)

Khalid Hussain (minor) v. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras, etc. 1987(4) S.L.R. 598.

(Followed).

Ed. Note:—S.L.P. No. 15553/91 of 1991 against this judgment was dismissed by Supreme Court on 7th January, 1992 by passing the following order.

“Heard learned counsel for the parties. We are agreed with the view taken by the full bench of Punjab and Haryana High Court and find no good ground to interfere with the order of the High Court. The Special leave petition is dismissed accordingly.”

Civil Writ Petition under Articles 226/227 of the Constitution of India praying that the complete records of the case be called for:—

- (i) a writ in the nature of Certiorari quashing the criteria adopted by Respondent No. 2 for the purpose of making admissions and evaluation of the inter-se ranking of students in the seats reserved for Sportsmen/sportswomen, be issued;
- (ii) a writ in the nature of mandamus directing the respondents to make admissions to the seats reserved for sportsmen/women in accordance with the criteria laid down by the Punjab Government and in compliance with the judgement of this Hon'ble Court reported as 1990(5) S.L.R. page 658, be issued;
- (iii) the respondent Punjab Engineering College be directed to fill in the seats in various branches after giving 5 per cent reservation to the sportsmen in every branch and the arbitrary criteria for allocation of seats to various branches be quashed;

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- (iv) *in the peculiar circumstances of this case this Hon'ble Court may be pleased to issue any other appropriate writ, order or directions that it deems fit;*
- (v) *issuance of advance notices to the respondents under the High Court Rules and orders may kindly be dispensed with;*
- (vi) *filing of certified copies of Annexures may kindly be dispensed with;*
- (vii) *costs of the petition may kindly be awarded to the petitioners.*

P. S. Patwalia, Advocate with G. S. Gill and H. S. Sethi, Advocates, for the Petitioners.

Ashok Aggarwal, Sr. Advocate with G. S. Sandhwalia and Manish Jain, Advocates, for the Respondents.

JUDGMENT

M. R. Agnihotri, J.

(1) This writ petition (C.W.P. No. 1195 of 1991) along with three other C.W.P. Nos. 12052, 10758 and 12072 of 1991, was admitted by the Motion Bench direct to the Full Bench to reconcile the conflict, if any, between a Single Bench decision overruled later by the Division Bench of this Court on the one hand, and the subsequent Singh Bench decision taking ostensibly somewhat different view, without noticing the aforesaid Division Bench judgment but upheld by the Hon'ble Supreme Court, on the other. However, on closer scrutiny, we have come to the conclusion that the law laid down by the Division Bench of this Court still holds the field, and the Single Bench judgment as upheld by the Hon'ble Supreme Court, does not come into conflict with the Division Bench judgment at all, as it had decided the matter in hand on a very limited and wholly different question. Since common questions of law and fact are involved in these petitions, they are being disposed of by one and the same judgment. However, in order to appreciate the issues involved, facts have been taken from C.W.P. No. 11995 of 1991.

(2) Union Territory, Chandigarh Administration, respondent No. 1, runs an Engineering College in the Union Territory, namely, the Punjab Engineering College, Chandigarh. It is, in fact, a

successor Institution of the Punjab College of Engineering and Technology, Lahore (formerly known as Madlagan Engineering College) of the pre-partitioned Punjab, which remained in Pakistan as a result of partition of the country in 1947. The College is affiliated to the Panjab University, Chandigarh. According to the Prospectus of the College for the Session 1991-92, the total number of seats for the Bachelor of Engineering Course are 310, five per cent of which, that is, 16 seats, are allocated for sportsmen/sportswomen. These 16 seats have further been distributed categorywise as under :—

Sr. No.	Category	Aero	Civil	Elect.	Electronics	Met.	Prod.	Total
7	Sportsmen/ Women	1	3	1	3	3	5	16

Though admission to the Bachelor of Engineering Course is made by the College on the basis of Common Entrance Test conducted by the Panjab University, Chandigarh, yet the Chandigarh Administration and the Punjab Engineering College, Chandigarh, have issued separate guidelines for admission against the five per cent seats reserved for sportsmen/sportswomen based on the achievement of the candidates in the field of sports. In order to achieve this object and to eliminate the element of arbitrariness and discrimination in the matter of assessing the respective merits of the candidates, grading for sportsmen on the basis of their performance at the International, National, State, University or District level, various positions achieved by the sportsmen have been categorised. The guidelines, as provided in the prospectus of the College, read as under :—

**“GUIDELINES FOR ADMISSION IN THE RESERVED
CATEGORY OF 5 PER CENT SEATS BASED ON
ACHIEVEMENT IN SPORTS.**

Five per cent of the total number of seats in each course are reserved under this category. No weightage on the basis of sports shall be given to candidates not applying for admission in this category.

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3. Students seeking admission under this category will be considered for admission out of this reserve quota on the basis of achievement only in the games and disciplines which have been included in the prospectus and only if these achievements relate to their activity in any of the three years preceding the year of admission.

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7. In the case of individual Sports disciplines, position in individual events will be considered for gradation and not the position of the team as a whole.
8. The *inter se* merit of students shall be determined by adding weightage upto 10 per cent of their CET Score following the formula given in Paragraph 16, and not on the basis of their merit in Sports only.
9. Candidates competing for admission under the Reserved Category shall earn the following weightages (on the basis of achievements in Sports in the games/disciplines included in Annexure II) in the following manner for determining their *inter se* merit in the category :

"Category I.P. (International Player)	:	10%
Category A Certificate Holder	:	6%
Category B Certificate Holder (Placing 1, 2 & 3)	:	4%
Category B Certificate Holder (Placing 4—12)	:	3%
Category C Certificate Holder	:	2%

Note.—Students seeking admission in the open category shall not be awarded this weightage.

10. For admission under this reserved category, cases of Sports persons with achievements in games/disciplines not included in Prospectus but excelling at National/International level shall be considered by the Committee constituted under Rule 5 which shall make its recommendation to the Home Secretary for approval of the Adviser to the Administrator.

GRADING FOR SPORTSMEN**CATEGORY I.P. (INTERNATIONAL PLAYER OR SPORTSPERSON)**

1. A person getting any of the first three positions in the Olympic games/World games/Commonwealth games/World Cup Tournaments/Asian games.
2. A person representing India in the abovesaid games/tournaments.
3. A person representing India in official test matches abroad and within the country.

CATEGORY 'A'

1. A person getting any of the first three positions in the National Championship/Inter-State/Inter-Zonal Tournament/Pre-Asian games.
2. A person included in the All-India Combined Universities Teams for seniors abroad and within the country.
3. A person getting any of the first three positions in the All-India Inter-University Tournaments.
4. A person included in the National teams for juniors in International tournaments and within the country.
5. A person included in the All-India Combined University teams for Juniors abroad and within the country.
6. A person getting any of the first three positions in the All India Inter-University Zonal meets and National Zonal meets.
7. A person getting any of the first three positions in the National Championship for juniors.
8. A person included in the National teams for schools in the International tournaments within the country and abroad.
9. A person getting any of the first three positions in the National Championships for schools.

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CATEGORY 'B'

1. A person included in the Panjab University team in the All India Inter-University tournaments.
2. A person included in the State/Union Territory teams in the Senior National Championship.
3. A person included in the University teams other than the Panjab University, Chandigarh, in the Inter-University tournaments.
4. A person getting any of the first three positions in the Panjab University/Inter-College tournaments.
5. A person getting any of the first three positions in the Inter-District/Union Territory Championships for Seniors.
6. A person getting any of the first three positions in the University Inter-Collegiate tournaments other than the Panjab University.
7. A person included in the State/Union Territory Junior teams in the National Championships.
8. A person included in the State Schools/Union Territory School teams in the National Games.
9. A person included in CBSE (Kendriya Vidyalaya Sangathan) in the National School Games.
10. A person getting any of the first three positions in the State Junior/Union Territory Championship.
11. A person getting any of the first three positions in the State School/Union Territory games.
12. A person getting any of the first three positions in the CBSE (Kendriya Vidyalaya Sangathan) Championship.

CATEGORY 'C'

1. A person getting any of the first three positions in the residential Universities.
2. A person getting any of the first three positions in the University 'B' division tournament.
3. A person getting any of the first three positions in the CBSE (Kendriya Vidyalaya Sangathan) Regional Tournaments."

(3) Before admissions could be made in the Punjab Engineering College in accordance with the aforesaid criteria, the petitioners have approached this Court challenging the same on a variety of grounds, that is, being arbitrary, discriminatory, running contrary to the criteria laid down by the Punjab Government for its Institutions in the State, as also being different from the one prescribed by the Union Territory, Chandigarh for other Institutions in the Union Territory, and running counter to the criteria upheld by the Hon'ble Supreme Court as well as this Court in an earlier case.

(4) In reply, separate written statements have been filed by the Chandigarh Administration-respondent No. 1, as well as the Principal of the Punjab Engineering College, Chandigarh, respondent No. 2. Both the respondents have pleaded that the method of gradation has been laid down by the Chandigarh Administration on the basis of the various judgments of the Hon'ble Supreme Court and the Punjab and Haryana High Court. It has further been stated that the Punjab Engineering College is governed by the Chandigarh Administration and the decision regarding reservation of seats for sportsmen/sportswomen and the norms and methods by which the same are to be filled, is a matter of administrative nature which is controlled and regulated by the decision of the Home Secretary, Chandigarh Administration. No doubt, the Punjab Engineering College is affiliated to the Panjab University, but it is only the academic matters regarding which the College is bound by the rules and regulations of the Panjab University. To be precise, the stand of the respondents as taken in para 7 of the written statement filed by the Principal of the Punjab Engineering College-respondent No. 2, is as under :—

“The criteria adopted by the respondent College is just, legal and in consonance with the law laid down by the Hon'ble Supreme Court of India in *Khalid Hussain's case* [1987(4) S.L.R. 598 S.C.] where it was mentioned that where candidates are more or less equal, the best method is to go by the marks obtained at the qualifying examination. In such a case, the selection would depend on their academic merit which would be pressed into service as a tilting factor in their favour. The criteria adopted by the respondent college divides sportsmen into different categories, that is, A, B and C patterns on the basis of achievement in sports in their respective games and disciplines. Then every category gets specific weightage of marks which is added

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to the total number of marks obtained by the candidate in Combined Entrance Test. An International Player will, therefore, get 10 per cent weightage while a National Player (Senior) would get 6 per cent weightage. Therefore, this pattern is very much fair and reasonable and promotes the very object and cause for which it has been prescribed."

(5) Mr. P. S. Patwalia, learned counsel for the petitioners has assailed the criteria adopted by the respondents by raising the following contentions :—

- (1) That the rules and regulations of the Panjab University as incorporated in the Panjab University Calendar are binding on all the affiliated Colleges; therefore, the criteria prescribed for admission in the University Calendar should have been adopted by the Punjab Engineering College, Chandigarh, also, as this College is also affiliated to the Panjab University. The criteria adopted by the affiliated Colleges should have been uniform and as the Punjab Engineering College, Chandigarh, has made a departure in adopting a uniform criteria, the impugned decision is arbitrary and discriminatory.
- (2) That since the Punjab and Haryana High Court has held in a Single Bench decision reported as *Rajesh Kaushik v. Punjab Engineering College, Chandigarh, and others* (1), that the Punjab Engineering College should adopt the same criteria in order to keep uniformity, contrary decision of the respondents runs counter to the directions issued by this Court, especially when the judgment in *Rajesh Kaushik's case* (supra) has been upheld by the Hon'ble Supreme Court.
- (3) That the Division Bench judgment of this Court in *Ranbir Singh v. Thapar Institute of Engineering and Technology Patiala, and another* (2), upholding the policy of giving weightage to the candidates of their sports graduation certificates, has wrongly overruled the Single

(1) 1990 (5) S.L.R. 658.

(2) A.I.R. 1988 P&H 51.

Bench decision of this Court in *Miss Maninder Kaur and others v. State of Punjab and others* (3), hence, the criteria accepted in the Single Bench judgment in *Miss Maninder Kaur's case* (supra) deserves to be upheld and followed by the respondents.

- (4) That the categorisation of sportsman/sportswomen for the purpose of admission made by the Punjab Engineering College, Chandigarh, is arbitrary and the directions issued by this Court in *Rajesh Kaushik's case* (supra) should be adopted and admissions made accordingly.
- (5) That the game and discipline of shooting should have been included for the purpose of sports gradation and admission against the seats falling in the reserved category of sportsmen/sportswomen.
- (6) That the allocation of seats in the sports category should be in the various branches of Engineering, that is, 5 per cent of seats in each branch, and the contrary decision confining the same to certain branches of Engineering only was arbitrary and deserves to be struck down.

(6) Instead of dealing with the contentions raised by the learned counsel for the petitioners in *seriatim*, contentions numbers 4, 5 and 6 are dealt with in the first instance. So far as the grievance against the non-inclusion of the game/discipline of 'Shooting' for the purposes of admission against the reserved category of Sportsmen/ Sportswomen is concerned, we do not consider it a matter for decision by the Full Bench in the first instance and for that reason, direct that C.W.P. No. 10758 of 1991 (*Nischal Gupta v. U.T. Chandigarh and others*) be placed before the learned Single Judge for decision on September 11, 1991, high up in the list.

(7) Regarding the allocation of seats in the sports category in various branches in Engineering, the intention of the Chandigarh Administration as well as the Punjab Engineering College, Chandigarh, obviously appears to be to provide 5 per cent seats in each branch of Engineering. There is neither any decision nor can we gather any intention to the effect that this reservation has to be confined only to a certain specified branches, nor has any serious

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dispute been raised in the written statement of the respondents with regard to this proposition. Consequently, the allocation of seats in the Sports category in the various branches in Engineering shall be 5 per cent of the seats in each branch. The fraction of ".5" or above would be rounded off. In case any of the seats in the Sports category in any of the branches remains vacant, it shall be thrown open to the candidates belonging to general category.

(8) As regards grading of sportsmen and sportswomen by categorising their achievements in the field of sports, it may be mentioned that this matter was earlier brought before this Court in Civil Writ Petition No. 1002 of 1989 by petitioner Rajesh Kaushik, who claimed admission to the four-year Engineering course against the seats reserved for outstanding sportsmen in the Punjab Engineering College, Chandigarh. In the Single Bench decision of this Court reported as *Rajesh Kaushik v. Punjab Engineering College, Chandigarh, and others*, 1990 (5) S.L.R. 658, this Court found that no criteria for sports gradation had been prescribed by the Punjab Engineering College, Chandigarh, whereas other colleges affiliated to the Panjab University had adopted the criteria laid down by the Sports Department of the Punjab Government. For the sake of uniformity and to avoid any perverse results flowing from the arbitrary gradation, if adopted, this Court directed the Punjab Engineering College, Chandigarh, to adopt the same gradation for sportsmen/sportswomen as had been adopted by other affiliated colleges. Therefore, it was held by this Court as under :—

“The question for adjudication by the Court is not as to which is the authority competent to prescribe the criteria for gradation in sports, that is, the Punjab Government, the Haryana Government or the Panjab University, but the main question is whether the criteria adopted by the respondent Punjab Engineering College, Chandigarh, is according to the principles of natural justice and fair play and seeks to promote the real object for which the seats in the Engineering College are reserved for outstanding sportsmen, or it is arbitrary, irrational or perverse. So far as the grade “outstanding” is concerned, it is granted to a sportsman ‘for getting any of the first three positions in the Olympic Games/World Games/Commonwealth Games/World Cup Tournament/Asian Games’. This criteria is unexceptionable. Same is the position with regard

to grant of Grade A, which is granted to a sportsman 'for getting any of the first three positions in the National Championship / Inter-Zonal Tournaments / Pre-Asian Games'. But so far as grading for representing the Panjab University teams in the All India Inter-University tournaments, or for representing the State/ Union Territory teams in the Senior National Championships, or for representing the University teams other than the Panjab University, Chandigarh, in the Inter-University Tournaments, as 'Grade B' is concerned, the decision of the respondent-College is certainly irrational and arbitrary. In order to be fair, just and rational, the criteria has to be such which promotes and furthers the very object and cause for which the same has been prescribed. It must take into account the changed circumstances in the field of sports also and must adhere to the categorisation or grading which has become obsolete with efflux of time. In this regard, the petitioner is right in placing firm reliance on the instructions issued by the Chief Secretary to the Government, Haryana,—*vide* his circular No. 12/44/8B-2 GSI, dated 7th February, 1989, regarding reservation for sportsmen in Technical/Medical Institutions and Government service. According to this circular, para 3 of the earlier circular dated 18th October, 1972, had been revised in view of the changed circumstances, as under :—

- 2.3. Government have decided that in order to distinguish between good and average type sportsmen more grades should be created in A, B, C and D level certificates and in order to do so, following may be substituted for the grades determined for sportsmen in para 3 of the letter referred to above :—

(A) 'A' Grade :

'A-I'—The sportsmen who have represented the country in International, Olympic, Asian Games, Commonwealth Games and other International and recognised Cricket Test Matches, may be included in this category.

'A-II'—Only those sportsmen who participated in games and sports recognised by National/International

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Olympic Associations or friendly Test Matches, in which teams from at least four or five countries have taken part, may be issued certificates of Grade A-II."

(9) Against this judgment in *Rajesh Kaushik's* case, no appeal was filed in the Hon'ble Supreme Court. However, when the judgment in that case was implemented by the U.T. Administration, Chandigarh, and the Principal, Punjab Engineering College, Chandigarh, by order dated 25th July, 1990, one Aman Jot Singh felt aggrieved and filed a writ petition in the High Court (C.W.P. No. 11296 of 1990—*Aman Jot Singh v. Union Territory, Chandigarh*). That writ petition was dismissed *in limine* by the Motion Bench consisting of G. C. Mital and G. S. Chahal, JJ. on 14th November, 1990. Against this dismissal of the writ petition, Aman Jot Singh filed S.L.P. No. 15156 of 1990 which too was dismissed by the Hon'ble Supreme Court *in limine*. Thus the Single Bench decision of this Court in *Rajesh Kaushik's* case (*supra*) stands approved by the Hon'ble Supreme Court. This being the ultimate position, the matter has assumed finality and the directions issued by this Court in *Rajesh Kaushik's* case are binding on the respondents. Therefore, so far as the grading for sportsmen/sportswomen by categorising their achievements is concerned, the respondents are directed to strictly comply with the directions already issued by this Court in the case of *Rajesh Kaushik* (*supra*) and to make admissions to the seats against the quota reserved for sportsmen/sportswomen accordingly.

(10) This brings us to the first three contentions of the learned counsel for the petitioner which though inter-dependent, yet are being dealt with *seriatim*. For appreciating the first contention, it would be relevant to note that about a decade back, there was no reservation of seats for sportsmen/sportswomen in the Punjab Engineering College, Chandigarh. The Chandigarh Administration, by its decision dated 19th May, 1982, had decided to grant some weightage on the percentage of marks obtained by the candidates in the qualifying examination. A couple of years later, on 25th January, 1984, it was decided by the Chandigarh Administration that the weightage of 1 per cent, 2 per cent, 3 per cent and 5 per cent marks for activities like N.C.C., N.S.S., etc. shall be discontinued and 1 per cent seats for sportsmen and 1 per cent for handicapped persons be reserved as per the policy of the Government of India. This practice continued for about five years, till one *Rajesh Kaushik*

approached this Court by filing C.W.P. No. 10022 of 1989, as admission to the four-year Civil Engineering Course against the seat reserved for outstanding sportsmen was refused to him on the ground that the petitioner was not recipient of Grade A-I and instead Grade B-II was awarded to him in the sport of Cricket. Rajesh Kaushik contended that since in the sport of cricket there was no first, second or third position and there were only the winners and runners-up, the grading adopted by the Punjab Engineering College was arbitrary and on the basis of his performance, he deserved the grant of Grade A-I Sports Certificate. For that claim, Rajesh Kaushik placed reliance on the instructions of the Panjab University as no separate grading criteria or pattern had been laid down by the Punjab Engineering College, Chandigarh. The respondents in Rajesh Kaushik's case sought to justify their action by pleading that since the College was under the administrative control of the Union Territory, Chandigarh, the instructions issued by any other State or authority for that matter were not applicable to the College. The matter was disposed of in Single Bench and in the judgment reported as 1990 (5) S.L.R. 658, it was held that the question for adjudication by the Court was not as to which was the competent authority to prescribe the criteria for gradation in sports but as to whether the criteria adopted was according to the principles of natural justice and fair play and sought to promote the real object for which the seats in the Engineering College were reserved for outstanding sportsmen. Upholding the principle of gradation adopted by the Punjab Engineering College, which dealt with the grant of "outstanding" and 'A' Grade, the Court found that grading for representing the Panjab University teams in the All India Inter-University tournaments as Grade 'B' was irrational and arbitrary. Consequently, the Punjab Engineering College, Chandigarh, was directed for the sake of uniformity to revise their criteria for grading sportsmen and adopt the same sports gradation which stood adopted in the other institutions like Guru Nanak Engineering College, Ludhiana.

(11) It was in the context, that is, for the purpose of gradation of sportsmen participating in the Olympic Games/World Games/Commonwealth Games/World Cup Tournament/Asian Games, and National Championship/Inter-Zonal Tournament/Pre-Asian Games, as also Inter-Iniversity tournaments, etc. that a uniform and common gradation pattern was desired and directed to be adopted by the Punjab Engineering College, Chandigarh. So far as the decision of the Chandigarh Administration to reserve seats for the

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sportsmen or instead to grant weightage of some percentage of marks over and above the performance of the candidates in the Combined Entrance Test was concerned, there was neither any challenge made in the petition nor was any decision given or opinion expressed in *Rajesh Kaushik's case* (supra).

(12) Since the Single Bench decision in *Rajesh Kaushik's case* (supra) has already been upheld by the Hon'ble Supreme Court, as noticed earlier, the direction issued therein for the adoption of uniform pattern of gradation becomes binding on the Chandigarh Administration as well as the Punjab Engineering College, Chandigarh, run by them. But, the contention of the learned counsel for the petitioners that this Court in *Rajesh Kaushik's case* had also directed the Punjab Engineering College and the Chandigarh Administration to reserve a certain number of seats for sportsmen and to discontinue with the criteria for awarding weightage on the performance in the Combined Entrance Test, is wholly misconceived. At the cost of repetition, it may be mentioned that the judgment in *Rajesh Kaushik's case* dealt with only the sport of cricket and that too regarding arbitrariness in the gradation in the category of Grade B-II Certificate instead of Grade A-I and it did not lay down even remotely that the criteria adopted by the Chandigarh Administration or the Punjab Engineering College, Chandigarh, regarding the grant of weightage to the candidates who sought admission being sportsmen/sportswomen was in any way illegal or arbitrary. There was neither any occasion nor any necessity of expressing any opinion over this matter.

(13) In fact, so far as the applicability of the rules and regulations of the Panjab University as contained in the Panjab University Calendar is concerned, the contention of the learned counsel is without any basis. Section 27 of the Panjab University Act, 1947, provides that a College applying for affiliation to the University shall satisfy certain conditions laid down by the Syndicate of the University. These conditions are regarding the necessity of having a regularly constituted governing body, qualified staff, adequate building and other facilities of boarding and lodging of the students, library, proper educational facilities, etc. Provision has also been made under Section 30 of that Act for disaffiliation of the College on certain conditions. Under Section 31, power has been given to the Senate for making regulations which deal with the appointment of staff and for prescribing the courses of studies to be followed and the conditions to be prescribed for the candidates for the

University examinations, degrees, diplomas, etc. In pursuance of the aforesaid provisions contained in Sections 27 and 31, detailed regulations have been framed laying down conditions for affiliation etc., but no provision has rightly been made with regard to the reservation of seats for sportsmen/sportswomen or for grant of weightage to them at the time of admission in the affiliated colleges.

(14) Therefore, the contention that simply because the Punjab Engineering College, Chandigarh, is affiliated to the Panjab University, it cannot prescribe its own criteria for admission of the students and cannot act in accordance with the rules and regulations of the Education and Technical Departments of the Chandigarh Administration, is wholly without any basis. No doubt, a University, in exercise of its powers conferred by the statute under which it is constituted, can deal with the matters regarding curriculum, courses of studies, text books, courses of examination, duration, semesters, etc., but by no stretch of imagination it can assume the power to direct the affiliated Colleges that so many seats shall be reserved for the sportsmen/sportswomen and if that was not done, the affiliation could be withdrawn and the institution disaffiliated for the non-compliance of the directions. In fact, the power of the State Government and the Colleges run by them imparting technical education, so far as the prescription of the criteria for admission is concerned, has already been upheld by the five Judges Bench of Hon'ble Supreme Court more than a quarter century ago in the case of *R. Chitrlekha v. State of Mysore* (4). Delivering the majority judgment, Subba Rao, J. held that —

“The State Government has power to prescribe a machinery and also the criteria for admission of qualified students to Medical and Engineering Colleges run by the Government and with the consent of the management of the Government aided colleges, to the said colleges also”

Reliance has also been placed by the learned counsel for the petitioners on the Single Bench decision of this Court in C.W.P. No. 4119 of 1989, dated 30th May, 1989 (*Dr. Ashutosh Kaushal v. State of Punjab and others*) (5), which has been upheld by the Hon'ble Supreme Court by dismissing S.L.P. against the same. On the basis of that judgment, an argument has been advanced that it

(4) A.I.R. 1964 S.C. 1823.

(5) 1990 (1) S.L.R. 543.

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was as back as 1962 that reservation of seats for outstanding sportsmen in technical/medical institutions had been provided and Dr. Ashutosh Kaushal, who was an outstanding sportsman in the field of Cricket, was granted admission by this Court only on the basis of his excellence in the field of sports, without taking into consideration his academic merit. A close scrutiny of that judgment would show that Dr. Ashutosh Kaushal was an outstanding sportsman as well as a candidate of a very high academic merit, securing first division in every professional examination as well as first division in his M.B.B.S. What compelled him to approach this Court was the decision of the State of Punjab regarding discontinuance of the benefit in favour of outstanding sportsmen at the post-graduate stage under the mistaken impression that the instructions of the State Government dated 11th January, 1962, issued by the Chief Secretary to Government, Punjab, were regarding the grant of benefit only upto the stage of M.B.B.S. and not thereafter. This Court held that there was no warrant for such a narrow interpretation as the instructions had been issued by the State Government to ensure the benefit to sportsmen at all levels. Therefore, this judgment does not lend any support to the contention of the learned counsel for the petitioner.

(15) Dealing with the next contention of the learned counsel for the petitioner that in the matter of admission to the technical colleges, emphasis should be on excellence in sport and not on academic merit, it may be mentioned that the proposition now stands settled by the Hon'ble Supreme Court in the case *Khalid Hussain (Minor) v. Commissioner and Secretary to Government of Tamil Nadu, Health Department, Madras, etc.*, (6). Their Lordships answering the question, as to "whether the proper criterion to adopt for selection of candidates belonging to the category 'eminent sportsmen', for admission to the M.B.B.S. course, is pre-eminence in sports, and not academic excellence", approved the Division Bench judgment of Madras High Court in *P. Sabitha v. The Director of Medical Education and others*, C.W.P. No. 9406 of 1983, decided on 6th April, 1984, which had taken the view that the proper approach to determine which of the candidates in one particular category should be given a preference in the selection must, therefore, necessarily depend only on their academic merit. Their Lordships appreciating the difficulty in the way of the College authorities in the

matter of granting admissions upheld the academic superiority as against the excellence in sport, in the following terms :—

“The real difficulty arises when there is more than one candidate who have excelled in their respective fields of sports e.g. cricket, football, hockey etc. and the number of seats reserved are less than the candidates found eligible. All of them being more or less equal, the best method is to go by marks obtained at the qualifying examination. In such a case, the selection must necessarily depend upon their academic merits. Even in *P. Sabitha's case* the Court realised the difficulty to lay down any guidelines for adjudging comparative eminence between sportsmen falling within the same class and it was said that when candidates are shown to have attained equal proficiency in sports, then their academic superiority can be pressed into service as a tilting factor in their favour.”

In the absence of any guidelines for purposes of selection, the adjudging of comparative merits among the eligible candidates falling under the category ‘eminent sportsmen’ would necessarily introduce, as the learned Chief Justice observed, ‘an element of subjectivity which would introduce arbitrariness’ in the selection of candidates because it would be left to the discretion of the Executive in making the choice. In the absence of any guidelines, there is nothing for the Selection Committee to fall back upon except the marks obtained by the candidates at the qualifying examination. The argument of the learned counsel obviously based on the observations in *P. Sabitha's case* that the proper test to adopt in the matter of selection of candidates for admission to the M.B.B.S. course belonging to the category ‘eminent sportsmen’ was pre-eminence in sports and not academic excellence, cannot be accepted. That test cannot obviously be applied in interpreting the present rule.”

Following the law laid down by their Lordships of the Supreme Court, the attack against the criteria adopted by the Punjab Engineering College, Chandigarh, that admission shall be made by giving weightage in addition to the academic performance of the candidates, deserves to be repelled as the same is wholly fair and just.

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(16) Now we come to the last contention of the learned counsel, that the judgment of the Division Bench of this Court (consisting of R. N. Mittal, J. and M. M. Punchhi, J.—now adorning the Hon'ble Supreme Court), in *Ranbir Singh v. Thapar Institute of Engineering and Technology, Patiala, and another*, A.I.R. 1988 Punjab and Haryana 51, does not lay down the correct law and has wrongly overruled the Single Bench judgment of this Court in *Miss Maninder Kaur and others v. State of Punjab and others*, A.I.R. 1985 Punjab and Haryana 46. It may be noticed that the view taken by their Lordships of the Division Bench in *Ranbir Singh's case* (supra) is wholly consistent with the view taken by *Khalid Hussain's case* (supra) (: 1987 (4) S.L.R. 598), and emphasis on excellence in academic field was preferred by their Lordships to the excellence in the sport field, as would be evident from the concluding para of the judgment reproduced hereunder :—

“In order to pass an examination in such Colleges, the candidate should have good academic career, otherwise it may not be possible for him to pass the same. No useful purpose would be served if students who are unable to get through the examinations, are admitted. If the Clause is examined from this point of view, it cannot be termed to be irrational and arbitrary.”

In fact, their Lordships of the Division Bench of this Court in *Ranbir Singh's case* (supra) took the same view which was later taken by the Hon'ble Supreme Court in *Khalid Hussain's case* (supra). Hence, the view taken by the Division Bench in *Ranbir Singh's case* (supra), is upheld.

(17) Consequently, for the reasons recorded above, the attack against the criteria adopted by the respondents is repelled. In fact, it was keeping these reasons in view and considering the matter as of real urgency, that we disposed of these petitions by announcing the following order on the 5th September, 1991, itself :—

“For the reasons to be recorded later, we dispose of C.W.P. Nos. 11995, 10758, 12052 and 12072 of 1991, by issuing the following directions :—

- (1) So far as the challenge made to the criteria laid down by the respondents—Union Territory, Chandigarh

Administration, and the Punjab Engineering College, Chandigarh, in their Prospectus, regarding the weight-age granted to the candidates applying for admission to the Bachelor of Engineering Course under the reserved category earmarked for sportsmen/sports-women, is concerned, the same is repelled and we uphold the criteria fixed by the respondents in their Prospectus published by the Punjab Engineering College for the Session 1991-92;

- (2) So far as the grading for Sportsmen/Sportswomen by categorising their achievements is concerned, the respondents are directed to strictly comply with the direction already issued by this Court in the case of *Rajesh Kaushik v. Punjab Engineering College, Chandigarh, and others*, C.W.P. No. 10022 of 1989, decided on 30th May, 1990 (: 1990 S.L.R. (5) 658), and to make admissions to the seats against the quota reserved for Sportsmen/Sportswomen accordingly; and
- (3) So far as the grievance against the non-inclusion of the games/discipline of 'Shooting' for the purposes of a admission against the reserve category of Sportsmen/Sportswomen is concerned, we do not consider it a matter for decision by the Full Bench in the first instance and for that reason, direct that C.W.P. No. 10758 of 1991 (*Nischal Gupta v. U.T. Chandigarh and others*) be placed before the learned Single Judge for decision on September 11, 1991, high-up; and
- (4) The allocation of seats in the Sports category in the various branches in Engineering shall be 5 per cent of the seats in each branch. The fraction of '5' or above would be rounded off. In case any of the seats in the sports category in any of the branches remains vacant it shall be thrown open to the candidates belonging to general category.

There shall be no order as to costs."