

* **HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on : 10th September, 2010
% Judgment Pronounced on: 13th September, 2010

+ LPA 582/2009

SANJAY KUMAR Appellant
Through Mr.S.M.Dalal, Advocate

versus

UNION OF INDIA & ANR Respondent
Through Mr.R.Balasubramaniam, Advocate

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether reporters of the local papers be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

DIPAK MISRA, CJ

In this appeal preferred under Clause 10 of the Letters Patent, the challenge is to the order dated 18th September, 2009 passed by the learned Single Judge in WP(C) No. 10869/2009.

2. The brief resume of facts are that the appellant-petitioner (hereinafter referred to as 'the appellant') invoked the jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a writ of mandamus commanding the respondents to treat the disability certificate of his father, Ex. GMR Chiranjil Lal, as a valid certificate for the purpose of admission to the MBBS course for the academic session 2009-2010. As pleaded, the

father of the petitioner had applied to Kendriya Sainik Board, West Block IV, R.K. Puram, New Delhi for a reserved seat in Medical/Dental Colleges for the year 2009-2010 but eventually, the claim of the petitioner was rejected. It was contended before the learned Single Judge that the father of the petitioner comes under priority IV being disabled in service and boarded out with disability attributable to military service, but the authorities concerned did not illegally extend the benefit.

3. The learned Single Judge referred to the Scheme which contained Form A-4 and the Certificate issued by the Zila Sainik Kalyan Adhikari and came to hold that the father of the appellant did not meet the eligibility criteria inasmuch as he did not satisfy the criteria laid down in Form A-4 which was the Form to be filled.

4. We have heard Mr. S.M. Dalal, learned counsel for the appellant, and Mr. R. Balasubramanyam, learned counsel for the respondent.

5. The singular question that arises for consideration is whether the appellant was entitled to be included to the admission to MBBS course under the reserved quota meant for disabled persons in service. Mr. Dalal has invited our attention to the communication dated 3rd June, 1994 from the Additional Secretary, Department of Defence. In paragraph 2 of the said communication, it is mentioned as follows:

“2. Though education is a State subject and Universities are autonomous bodies standardization of preference for admission in

Defence quota is desirable to bring about uniformity in the States/UTs. For the purpose of standardization, the following prioritization is recommended:-

Priority-I: Widows/wards of Defence personnel killed in action.

Priority-II: Wards of serving personnel and ex-Servicemen disabled in action.

Priority-III: Widows/Wards of Defence personnel who died in peace time with death attributable to military service.

Priority-IV: Wards of ex-Servicemen disabled in peace time with disability attributable to military service.

Priority-V: Wards of ex-Servicemen and serving personnel who are in receipt of Gallantry Awards:-

- (1) Param Vir Chakra*
- (2) Ashok Chakra*
- (3) Sarvottam Yudh Seva Medal*
- (4) Maha Vir Chakra*
- (5) Kirti Chakra*
- (6) Uttam Yudh Seva Medal*
- (7) Vir Chakra*
- (8) Shaurya Chakra*
- (9) Yudh Seva Medal*
- (10) Sena, Nau Sena, Vayusena Medal*
- (11) Mention-in-Despatches*

Priority-VI: Wards of ex-Servicemen.

Priority-VII: Wards of serving personnel.”

6. Relying on the same, it is contended by Mr. Dalal that the Scheme only provided for defence personnel disabled in peace time with disability attributable to military service and the father of the appellant falls in the same category.

7. Mr. Balasubramanyam, learned counsel for the respondent, has invited our attention to the scheme which has been brought on record. It is urged by him that what is placed reliance upon by the learned counsel for the

appellant is an internal correspondence but the Scheme that came into existence is different. He has drawn our attention to the scheme which, under the general instructions in paragraph 1(t), reads as follows:

“(t) The Priority to which candidate belongs out of the ones listed below for filling the application form if the father/husband of the candidate is/was.

	PRIORITY	FORM TO BE FILLED
(i) Killed in action	1	A-1
(ii) Disabled in action And boarded out from service with disability attributable to mil service	2	A-2
(iii) Died while in service and death attributable to mil service	3	A-3
(iv) Disabled in service and boarded out with disability attributable to mil service	4	A-4
(v) Gallantry Award/other Award Winners	5	A-5

8. The Form A-4 is to be filled up by the sons/daughters of personnel disabled in service who have been boarded out with disability attributable to military service. The said Form clearly stipulates grant of pension relating to disability element. The Form that was issued in favour of the petitioner reads as follows:

Form A-4

(To be filled in by sons/daughters of personnel disabled in service and who has been boarded out with disability attributable to military service).

Priority 4

This is to certify that Mr. Sanjay Kumar is son of No. 14460040 P Rank GNR DMT Chiranjilal of Unit/Corps/Service Regiment of Artillery who was disabled in service on 24 July 1987 and boarded out from service on 31 Jan 1991 and the disability was Greater Tuberculosis (Lt) Humerus 20% which was accepted as attributable to Military Service by CDA(P) Allahabad. An attested photocopy of supporting documents relating to the disability attributable to Military Service along with the release order issued by concerned record office/CDA(P) Allahabad, Govt. of India letter/copy of latest PPO stating %age of disability granted and disability element awarded for life is attached.

Office Seal

Sd/-
Zila Sainik Kalyan Adhikari
Behror Distt. Alwar (Raj.)
Secretary RSB/ZSB)

Verified

Office Seal

Sd/-
Major
Senior Record officer
Artillery Records"

9. It is trite law that when Form A-4 has been a part of the Scheme, the same has to be followed absolutely religiously. The submission of Mr. Dalal is that there is decrease of disability and the pension is not granted on that score. Be that as it may, we find that the Scheme postulates that unless the disability pension is awarded to such a person as an element of disability and which is also for life, the son or daughter of such a person is not eligible for a reserved seat for medical admission. On a perusal of the documents, it is quite vivid that the father of the appellant did not satisfy the said criterion. Thus, he cannot claim to avail the benefit of reserved quota and, therefore, the denial of the same to him cannot be found fault with.

10. In view of our preceding analysis, we do not find any error in the order passed by the learned Single Judge and, accordingly, the appeal stands dismissed without any order as to costs.

CHIEF JUSTICE

MANMOHAN, J

SEPTEMBER 13, 2010
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