

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**C.W.P. No.7983-2015 (O&M)
Date of Decision : 30.07.2015**

Shahbaaz Singh & others

..... Petitioners

Versus

Union of India & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Navdeep Singh, Advocate
for the petitioners.

Mr. Parminder Singh, Senior Panel Counsel
for respondents-UOI.

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

AJAY TEWARI, J. (Oral)

By this petition the petitioners No.1 & 2 are seeking direction to the respondents to grant them permission to appear in the selection process for joining their Indian Army as Commissioned Officers in the category of wards/sons of a person declared a war-injured officer/battle casualty and have also challenged the reply dated 12.05.2014 (Annexure P-7) which reiterates the earlier stand of the respondents denying that petitioner No.3 was battle disabled officer.

In this case the following order was passed on 28.04.2015 :-

“The father of the petitioners was a Commissioned Officer in the Indian Army. While being posted at Siachen Glacier he suffered from the disease namely Pulmonary Eosinophilia and was consequently invalidated out of the Army. His claim was that this disease was attributable to military service and he was therefore entitled to war injury pension. That claim having been rejected on the ground that disease suffered by the father of the petitioners was not due to climatic conditions, he filed an appeal before the Armed Forces Tribunal who by order dated 13.11.2009 (Annexure P-4) accepted his claim. Another benefit which is given to such officers is that there is a reservation for their wards in the Officers Training Academy, Chennai. When the petitioners applied for that reservation their case was rejected on the old ground that disease suffered by their father was not due to climatic conditions. By the present petition the petitioners seek the benefit of that reservation.

Learned counsel has prayed that the candidature of the petitioners is not being considered, therefore, there is an extreme urgency in the matter.

Notice of motion.

On the asking of the Court, Mr. Parminder Singh Kanwal, Sr. Panel Counsel, accepts notice on behalf of the respondents.

Learned counsel for the petitioners undertakes to supply two copies of the petition to the learned Senior Panel Counsel during the course of the day.

Adjourned to 18.05.2015.

It is made clear that the prayer of interim relief shall be considered on the next date and consequently the respondents are advised to be ready with their response.

A copy of this order be given to the learned counsel for the parties under the signatures of the Bench Secretary.”

In the written statement filed on behalf of respondents No.1 to 3 the only plea taken is that since the petitioner No.3 did not raise the claim regarding his children before the Armed Forces Tribunal he would be barred under Order 2 Rule 2. It is not disputed that the petitioners No.1 & 2 were not party before the Armed Forces Tribunal.

In the circumstances, the plea of constructive res-judicata is not available to the respondents since the claim which is being now pressed though relates to the disability of the petitioner No.3 yet it is an independent claim of the petitioners No.1 & 2 and it is not a claim under the original plaintiff as envisaged by Order 2 Rule 2. The question which remains is that once the respondents have had to accept that the petitioner No.3 suffered a disability and was entitled to war injury pension then whether his children could be denied the related benefit of reservation in the Officers Training Academy.

In my opinion, no reasons has been given in the written statement why this benefit is not available to the petitioners No.1 & 2. Even in the reply the only reason given is that ID PULMONARY ESMOPHILA was not attributed to the Army services as mentioned above. Now under the orders of the Armed Forces Tribunal the respondents have accepted that the disease of the petitioner No.3 was attributable to his service and given him war injury pension. They therefore cannot be heard now to say that the other benefit would not be available to his children.

The petition is allowed.

Respondents are directed to grant reservation to the petitioners No.1 & 2 for the selection process to the Officers Training Academy, Chennai.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

July 30, 2015

Pooja Sharma-I

**(AJAY TEWARI)
JUDGE**