

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

% *Judgment Reserved on: March 10, 2015*
Judgment Delivered on : March 13, 2015

+ **W.P.(C) 6197/2013**

HAVILDAR KAILASH BABU DIXIT Petitioner
Represented by: Ms.Archana Ramesh, Advocate

versus

UOI & ORS Respondents
Represented by: Ms.Barkha Babbar, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Whether the petitioner's claim on behalf of his son Amit Kumar Dixit for a direction to be issued that his son should be given appointment in the Indian Army has been wrongly negated by the Armed Forces Tribunal vide impugned decision dated December 11, 2012 is the issue which arises for consideration in the writ petition.
2. It is not in dispute that the petitioner was desiring his son Amit Kumar Dixit to be given enrolment in the Indian Army under the 'Relationship' category.
3. There is a policy of the Indian Army whereunder only one ward of an enrolled person in the Indian Army, subject to fitness, is entitled to be given enrolment in the Indian Army under the Relationship category.
4. It is not in dispute that the petitioner has an elder son named Vinod Kumar who has been enrolled as a Sepoy in the Indian Army.
5. The issue is: Whether right of one ward of an Army Man to be given

preferential appointment in the Indian Army got exhausted viz-a-viz the petitioner, when his elder son Vinod Kumar was enrolled as a Sepoy. For if yes, the petitioner cannot claim any benefit for his second son : Amit Kumar Dixit.

6. Vide impugned decision dated December 11, 2012, the Armed Forces Tribunal has held that the record produced before it would evince that the probability would lie in the fact that Vinod Kumar was given enrolment as a Sepoy under the Relationship category.

7. It is obvious that there was a grey area with respect to documents which were produced before the Tribunal and that is the reason why the Tribunal has held that the balance of preponderance of probabilities lies against the petitioner.

8. It is trite that a finding of fact returned by a Tribunal would not be overturned by a writ Court by re-appreciating the evidence considered by the Tribunal. On findings of facts, unless it can be shown that a relevant document or evidence has been ignored or that an irrelevant document or evidence has been considered it would be impermissible for the Court to delve into the factual matrix.

9. Instant case is not of the plea that a wrong principle of law has been applied to the facts.

10. Impugned order would show that when the original application filed by the petitioner came up for hearing on March 15, 2012, the respondents were directed to produce the Relationship Certificate; the Sponsorship Certificate and the Verification Roll regarding Vinod Kumar being recruited in the unit Headquarter Quota as claimed by the respondents.

11. Impugned order would show that the respondents produced the Sponsorship Certificate and the Relationship Certificate on May 03, 2012,

for perusal of the Tribunal. The Verification Roll was not produced because it was not available. However, other documents relating to the same were produced.

12. Impugned order would reveal that learned counsel for the petitioner took an adjournment to study the impact of the documents which were produced. Learned counsel for the petitioner was given an opportunity on May 17, 2012 to file further documents, which petitioner did. On September 06, 2012, the respondents were directed to produce original application form of Vinod Kumar to ascertain whether he was recruited in the Unit HQ Quota or the General Quota. It was informed to the Tribunal that said record was not available being destroyed on account of it being required to be retained only for three years from the date of enrolment. However, the respondents relied upon the Relationship Certificate obtained by the petitioner without which Vinod Kumar could not have been recruited in the Unit HQ Quota. Reliance was also placed on a document in which Vinod Kumar's name appear at Serial No.10; evincing that Vinod Kumar's recruitment under the Unit HQ Quota.

13. With respect to the said document the Tribunal noted that counsel for the petitioner pointed out names of some persons whose family has no link with the military services. It was this which led to a lurking suspicion in the mind of the Tribunal, which the Tribunal has fairly noted in paragraph 9 of the impugned decision.

14. The Tribunal has thereafter noted that the petitioner informed that he had only one son named Vinod Kumar till the year 2010. He never informed during service that another son named Amit Kumar was born to him in the year 1991 and this is the reason why Part II Order regarding birth of the Amit Kumar had to be published on March 07, 2011.

15. With reference to the documents filed or produced, the analysis of the same is in paragraph Nos.11 to 16 of the impugned order by the Tribunal which reads as under:-

“11. Then the learned counsel for the respondents had also shown a letter available on the original record being dated 15.06.2003 by Major Battery Commander to Artillery Records conveying that No.14366245 L, Hay. Kailash Babu Dixit of 311 Regiment is requesting for Relationship Certificate of his son Vinod Kumar Dixit for recruitment against Unit HQ quota during the month of August,2003. The FS documents are not held with this and therefore, it was requested to issue Relationship certificate at the earliest. Learned Counsel submits that it is accordingly that on 10.07.2003, the Relationship Certificate was issued about Vinod Kumar being the son of the present petitioner, and thus it is clear that in 2003, the petitioner had applied for Relationship Certificate about his son Vinod Kumar for the purpose of getting him enrolled against Unit HQ quota, and since according to the established procedure, Relationship Certificate is issued only in favour of one dependent, and having been issued in favour of Vinod Kumar, it was not issued in favour of Amit Kumar, and in absence of Relationship Certificate, the benefit of Unit HQ quota cannot be extended, Amit Kumar was not sent the call up letter.

12. In our view when the document desired by this Court vide order dated 06.09.2012 are reported to have been destroyed, the matter is required to be decided on the basis of preponderance of probabilities, by taking into consideration the entire material available on record, and by way of weighing, as to on which side the balance of preponderance tilts, i.e. in favour of Vinod Kumar having been enrolled under Unit HQ Quota enrolment, or not, so as to decide as to whether the act of the respondents in not sending call up letter to the second son Amit Kumar is justified or not?

13. Considering from that standpoint, what we find is that Annexure R-8 is the document being the Part II order comprising of 24 persons showing that to have recruited under Unit HQ quota enrolment, coupled with the Relationship

Certificate Annexure-R-7, and to controvert, rather on the other hand, the stand of the petitioner is, that the mention of "UHQ NRC" in Annexure R-8 only denotes Unit Head Quarter Nasik Road Centre, and does not denote Unit Head Quarter quota, and that the categoric stand of the petitioner in this regard is, that except the person mentioned at item No.6, all other persons are from general category, as contradistinguished from Unit HQ quota enrolment. The other ground projected by the petitioner is, that in cases where enrolment is given under Unit HQ Quota enrolment, endorsement in that regard is made in the pay book or discharge book of the serving or ex-serviceman, to whose dependent enrolment is given, while in the case of the petitioner, no such endorsement is made in the discharge book, and the 3rd ground given is that in the letter dated 27.07.2011, it was not the ground projected, as a ground for non issuance of call up letter, that the elder son Vinod Kumar has already been extended the benefit of Unit HQ quota and therefore, the theory is after thought.

14. On the other hand on the side of the respondents, the circumstances projected are, that Annexure R-8 does show the recruitment to have been made under Unit HQ quota enrolment, and that all the 24 persons were recruited under Unit HQ quota enrolment. Secondly, the petitioner had obtained the Relationship Certificate for Vinod Kumar, and since such certificate is issued only with respect to one deponent, for whom enrolment is desired to be sought under Unit HQ quota enrolment, it is required to be concluded, that Vinod Kumar was enrolled under Unit HQ quota, and thirdly that as per the directions of the Court dated 04.10.2012, enquiry has already been got conducted, which has clearly reported that all the three persons chosen by the petitioner had been recruited under the Unit HQ quota enrolment.

15. We have considered this balancing and counter balancing circumstances, and in addition also find, the aforesaid letter dated 01.06.2003, showing that the petitioner had applied for issuance of Relationship Certificate of his son Vinod Kumar "for enrolment against Unit HQ quota during the month of August 2003". This is a million dollar circumstance substantially tilting the balance of preponderance against the

petitioner. Then we also notice, that the petitioner had come with sweeping stand about, all 24 persons mentioned in Annexure —R-8, to have been recruited in general quota, and not under Unit HQ Quota Enrolment, and had taken categorical stand that "UHQ NRC" only denotes "Unit Head Quarter Nasik Road Centre" where actual recruitment takes place, and does not denote "Unit Head Quarter Quota". While the enquiry got undertaken under the order dated 04.10.2012 revealed, that all the persons got enquired had been recruited under Unit HQ Quota Enrolment, which clearly negated the stand of the petitioner about "UHQ NRC" to be denoting only "Unit HQ Nasik Road Centre" and not Unit Head Quarter Quota.

16. Then so far as the contention about want of endorsement in the pay book or discharge book is concerned, letter at Annexure R-2, shows that this is specifically mentions this to be implemented w.e.f. 01.04.2008, obviously the other son Vinod Kumar had already been enrolled more than half a decade earlier, and it is not show that at that time any such recruitment existed. Therefore, this contention also cannot be taken as a balancing circumstance in favour of the petitioner."

16. In our opinion the Tribunal has considered all the relevant material which was placed before it and the conclusions of fact arrived at by the Tribunal is a possible conclusion which a trier of fact can arrive at. Merely because another conclusion is possible is no ground for us to substitute the conclusion arrived at by the Tribunal.

17. The writ petition is accordingly dismissed but without any order as to costs.

**(PRADEEP NANDRAJOG)
JUDGE**

**(PRATIBHA RANI)
JUDGE**

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