

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 10261 of 2016 (O&M)

Date of decision : 28.5.2016

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Shahbaaz Singh

.....Petitioner

vs.

Union of India and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

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

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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?*

P.B. Bajanthri, J.

The petitioner in the present petition has prayed as follows:-

“Issue a Writ in the nature of Mandamus, directing the respondents to permit the petitioner and to provide him an opportunity to appear in the selection process for joining the Indian Army as a commissioned officer in the category of wards/son of a person declared a war-injured officer/battle casualty, as was entitled to the

petitioner by way of directions of this Hon'ble Court in Civil Writ Petition No. 7983 of 2015 titled "*Shahbaaz Singh & Ors. vs. Union of India & Ors.*" vide order dated 30.07.2015 (**Annexure P-2**), since the respondents have refused the petitioner one chance of selection on the pretext of now having been rendered over-age due to the efflux of time during the pendency of the *ibid* writ petition."

2) The petitioner's father was a Commissioned Officer in the Indian Army. When he was posted at Siachen Glacier, he suffered from the disease namely, Pulmonary Eosinophilia, due to which he was invalidated out of the Army. He had a grievance that the aforesaid disease was attributable to military service. Consequently, he was entitled to war injury pension. The same was rejected stating that disease suffered by the father of petitioner was not due to climatic conditions. Aggrieved by the said decision, petitioner approached Armed Forces Tribunal. Claim of the petitioner was accepted on 13.11.2009. He had another grievance that he is entitled to benefit which is given to such officers, that there is a reservation for their wards in the Officers Training Academy, Chennai. In this regard, his grievance was rejected while quoting that disease suffered by father of the petitioner was not due to climatic conditions, despite the fact that Armed Forces Tribunal decision. In other words, petitioner's father was denied battle casualty certificate.

(3) In this background, the petitioner and others filed CWP No. 7983 of 2015, vide which they had questioned the communication dated 12.5.2014, in which there was a denial of issuance of certificate to the petitioners father. CWP No. 7983 of 2015 was disposed of on 30.7.2015, in which the respondents are directed to grant reservation to petitioners No. 1 and 2 for the selection process to the Officers Training Academy, Chennai.

4) In the meanwhile, respondents have notified for the post of NCC Men for about 50 vacancies and NCC Women 4 vacancies. It was notified in the year 2015, while stipulating last date of receipt of application in Rtg Dte for wards of battle casualties was 12.2.2015 vide Annexure P-1. Extract of the notification is reproduced herein:-

“ **INDIAN ARMY**
www.joinindianarmy.nic.in
NCC SPECIAL ENTRY SCHEME
38TH COURSE – OCT 2015 SHORT
SERVICE COMMISSION (NT) FOR
MEN & WOMEN (INCLUDING
WARDS OF BATTLE CASUALTIES OF
ARMY PERSONNEL)

Applications are invited from married/unmarried **MALE** and unmarried **FEMALE** candidates and also from Wards of Battle Casualties of Army Personnel for grant of Short Service Commission in the Indian Army under NCC Special Entry Scheme 38th Course – Oct 2015.

Vacancies

(a) **NCC Men 50** (45 for Gen Category and 05 for Wards of Battle Casualties of Army Personnel only)

(b) **NCC Women 04** (10% vacancies of Women are reserved for Wards of Battle Casualty of Army Personnel only)

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XXX

XXX

4. **Educational Qualification and Other Criteria**

XXX

XXX

XXX

(b) **For Ward of Battle Casualties of Army Personnel Only.** (i) **Educational Qualification.** (Degree of a recognized University or equivalent with aggregate of minimum 50% marks taking into account marks of all the years (ii) NCC 'C' certificate not required (iii) Applicants under category of **Wards of Battle Casualties to send their applications direct to Dte Gen of Recruiting/Rtg-A, NCC Entry, AG's Branch, IHQ of MoD (Army) West Block-III, R.K. Puram, New Delhi-110066.** (iv) Eligibility for wards of battle casualties and also document to be attached alongwith the

application form are as under

(aa) A letter to the effect that the parent has been killed/wounded/reported missing in action issued by MP Dte/Respective Regimental Records and a copy of Part II Order notifying injuries and **being classified as battle casualties** in case of serving/medically boarded out pers.

(ab) The vacancies under wards of battle casualties are available to wards (sons and daughters including legally adopted) of battle casualties specified as (aa) Killed in action (bb) Died of wound or injuries (Other than self-inflicted) (cc) Wounded or injured (Other than self-inflicted). (dd) Missing.

(c) Relation Certificate issued by Records / MP Dte.

(d) Last Date of Receipt of Application in Rtg Dte for Wards of battle casualties is **12 Feb 2015**.

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16. Applications received after due date will neither be opened nor be entertained.”

5) Pursuant to the above advertisement, the petitioner could not claim under category for 'Ward of Battle Casualties of Army Personnel' for the reasons that the official respondents did not issue battle casualty certificate to petitioner's father. Certificate was issued on 28.9.2015 vide Annexure P-3. The same was communicated to the petitioner vide communication dated 30.9.2015. In the meanwhile respondents confirmed with reference to the decision in CWP No. 7983 of 2015. The petitioner was informed as follows :-

“5. In this connection, it would be pertinent to mention that the petitioner had applied for NCC Spl. Entry Scheme - 38th and 39th Course. Out of these two courses, all selection process of NCC Spl -38th Course has been completed incl merit list. NCC Spl -39th Course will commence in the first week of Apr 2016 and SSBs for this course shall tentatively be held wef Dec 2015.

and paragraphs 2 and 3 of intimation :-

“2. In order to be eligible for consideration in NCC Special Entry – 39 Course, you are requested to submit the required Part II Orders, and obtain Battle Casualty Certificate from AG/MP-5 and forward to Rtg Dte by 10 Sep 2015 so as to enable this Dte to include your name for conduct of SSB interview for NCC Special Entry – 39 Course.

3. In this connection also refer our letter No.

58605/Rtg-A/NCC-39 dated 27 Aug 2015.”

6) On 18.2.2016, the petitioner requested the respondents that his name is to be considered for the 38th Course (2015) and 39th Course (2016) and he has been denied to participate in the process of selection for the 38th Course despite the directions of this Court in CWP No. 7983 of 2015. Therefore, he has sought for Writ of Mandamus to the respondents to permit him to participate in the process of selection for one more time for the future course ignoring the hurdle of age factor, since he was not permitted to participate in the 38th Course due to completion of selection process.

7) Learned counsel for the petitioner submitted that due to lapse on the part of the respondents, there was a delay in issuance of Battle Casualty Certificate to his father. Consequently, he has been denied to participate in the process of selection for the 38th Course, which was notified in the year 2015 vide Annexure P-1 and he has been allowed to participate in the 39th Course only. Thus, he is entitled to participate in the process of selection in one more Course, since his claim under 38th Course has not been considered despite the directions of this Court and considered only for the 39th Course.

8) Heard learned counsel for the petitioner.

9) The petitioner's father obtained favourable orders from the Armed Forces Tribunal on 13.11.2009. Thereafter, he kept quiet in respect of obtaining Battle Casualty Certificate till 2015. As and when NCC Special Entry Scheme 38th Course – Oct 2015 Short Service Commission (NT) for Men and Women (including Wards of

Battle Casualties of Army Personnel) was notified, he opened his eyes for obtaining Battle Casualty Certificate, in the guise of petitioner being son of injured Army man to claim Wards of Battle Casualties of Army Personnel reservation. No doubt, the respondents refused to grant certificate by quoting the reason assigned that the disease Pulmonary Eosinophilia was not due to climatic conditions. This Court directed the respondents to grant reservation to the petitioners No. 1 and 2 in CWP No. 7983 of 2015 for the selection process to the Officers Training Academy, Chennai. It is to be noted that direction is to consider name of the petitioner for the selection vide advertisement Annexure P-1 – NCC Special Entry Scheme 38th Course – Oct 2015 Short Service Commission (NT) for Men and Women (including Wards of Battle Casualties of Army Personnel). By the time certificate of battle casualty was issued on 28.9.2015, the process of 38th Course was completed. In this regard petitioner has been informed on 3.9.2015 prior to issuance of certificate of battle casualty and before completion of 39th Course and it was further clarified that petitioners candidature would be considered for NCC Special 39th Course vide paragraph 5 of Annexure P-5. The petitioner did not approach this Court seeking clarification, that the direction issued on 30.7.2015 is for the 38th Course or in the alternative sought for quashing rejection of the petitioner's candidature for NCC Special 38th Course, in view of the completion of process including merit list vide Annexure P-5 dated 3.9.2015. That apart petitioner having participated in the 39th Course knowing fully that he was permitted to participate only in the

NCC Special Entry - 39th Course, in which he failed to select. Thereafter he has presented this petition contending that he is entitled for participation in both 38th and 39th Courses. Since he was not allowed to participate in 38th Course due to completion of selection process including merit list, he is seeking direction to the respondents to permit him for one more selection process, for which he is ineligible due to cut off age factor. The petitioner's grievance could have been entertained had he been approached this Court before participating in 39th Course and questioning 3.9.2015 communication (Annexure P-5) in which respondents restricted petitioner's candidature to 39th Course. Petitioner has taken a chance in the 39th Course in which he could not succeed. Then he has filed this petition seeking for direction. The petitioner has not made out a legal right to seek one more chance to participate in the process of selection like NCC Special Entry Scheme - Short Service Commission (NT) for Men (including Wards of Battle Casualties of Army Personnel). In the absence of establishing legal right under statute, this Court cannot give direction for issuance of mandamus to the respondents, as held by Supreme Court in the case of **Mani Subrat Jain Etc vs State Of Haryana and Others 1977 AIR 276.** Extract of paragraph 9 is reproduced herein:-

“9. The High Court rightly dismissed the petitions. It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially

enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something (See Halsbury's Laws of England 4th Ed. Vol. I, paragraph 122; **State of Haryana v. Subash Chander Marwaha & Ors.**, [1974] 1 SCR 165, **Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed & Ors.**, [1976] 3 SCR 58 and Ferris Extraordinary Legal Remedies paragraph 198.”

10) In view of the facts and circumstances read with above legal position, petition stands dismissed.

May 28, 2016
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(P.B. Bajanthri)
Judge