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

% *Date of judgment : 30.10.2017*

+ W.P.(C) 6076/2017 & C.M. No.25244/2017

ABHINAV SINHMAR (MINOR) Petitioner

Through Mr.J.S.Mann, Advocate.

versus

THE CHAIRMAN, JOINT ADMISSION COMMITTEE & ORS

..... Respondents

Through Mrs.Avnish Ahlawat and Ms.Palak Rohmetra, Advocate for R-1/DTU.

Ms.Isha Khanna, Advocate for R-4.

Mr.Arun Bhardwaj, CGSC for R-2, R-3 and R-5.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (oral)

1 By this petition, the petitioner is seeking a prayer of issuance of an admission slip confirming his admission in the B.Tech (Computer Engineering) Course in the Netaji Subhash Institute of Technology, Delhi; he claims priority in GN CW Category in Priority IV of the defence category.

2 The averments in the petition disclose that the father of the petitioner

had been discharged from Indian Army after having served there for 5 years 11 months and 11 days; he was discharged on 31.12.1993. This was due to a medical disability attributable to military service and a document (Annexure P-2) to this effect has been annexed along with the petition. The corrigendum dated 12.02.2016 (Annexure P-7) confirmed the fact that the father of the petitioner (Sukhbir Singh) had a disability entitling him to a pension for life.

3 Record discloses that the petitioner had qualified the JEE (Main) 2017; he obtained CRL rank of 208646. He applied in the defence category (CW) under priority IV for the B.Tech admission at the respondent University online. The name of the petitioner was included in priority IV; he was called for counseling on 07.7.2017 as also on 12.7.2017. Admission fee had been deposited by the petitioner on 06.7.2017. His name was included for admission in the priority IV. He was later on informed that his admission had been cancelled as he did not qualify in priority IV as his father had not been boarded out from service. Submission being that the letter of the Competent Authority i.e. the Rajya Sainik Board dated 29.6.2017 and the letter of nodal agency Kendriya Sainik Board dated 30.6.2017 had been ignored. The admission of the petitioner had been cancelled; he not having

been considered under priority IV but had been informed that he had qualified for priority VI which disentitled the petitioner for admission. The petitioner had no other option but to file the present writ petition. Submission is that this act on the part of the respondent is illegal. The father of the petitioner having been discharged/boarded out from service only on a medical ground which he had suffered a disability (15% to 19%) the case of the petitioner had to be considered for admission under priority IV; a person discharged from service is nothing but a boarding out from the service. The documents of the petitioner i.e. the letter of Rajya Sainik Board and Kendriya Sainik Board evidencing this factum could not have been tinkered with by the respondent enabling him to cancel his admission which was not within their domain to do so. Relief of admission to the aforementioned B.Tech course has accordingly been prayed for.

4 Couter affidavit has been filed by respondent no.1. The stand of the aforementioned respondent is that the petitioner is not entitled to be priotized under priority IV; he can only be considered under priority VI. The father of the petitioner having been discharged from service did not amount to a boarding out from the service and as such the petitioner cannot take the benefit of priority IV. A panel of defence experts had been set up as per the

practice followed by the JAC. This panel amongst others included a member of the Rajya Sainik Board, Government of NCT of Delhi and also an officer from Ministry of Defence. This verification was done at the Indira Gandhi Delhi Technical University on 28.6.2017. The documents of the petitioner were produced and verified. The petitioner at that point of time admittedly did not have the certificate of Rajya Sainik Board (dated 29.6.2017) and that of the Kendriya Sainik Board (dated 30.6.2017). These documents which were produced later on were again reviewed by the Defence Panel on 19.7.2017. This expert panel had reviewed the documents of the petitioner including the document dated 29.6.2017 issued by Rajya Sainik Board as also the document dated 30.6.2017 issued by the Kendriya Sainik Board. The documents having been examined by the expert panel, they were of the view that the petitioner's case does not call for a review and he could not be considered for priority IV; he could only be considered under priority VI.

5 The other respondents i.e. respondent nos.2 to 5 have chosen not to file a separate counter affidavit. Respondent nos.4 and 5 i.e. Rajya Sainik Board and Kendriya Sainik Board are represented through their counsel. They admit that the document of the Rajya Sainik Board dated 29.6.2017 and that of the Kendriya Sainik Board dated 30.6.2017 are documents

evidencing that fact that the petitioner has to be considered for priority IV. Additional submission of the said counsel is that these documents are conclusive documents qua the status of the petitioner and cannot be interfered; they cannot be re-examined by respondents No.1 and 2. This Court notes the stand of respondent nos.4 and 5.

6 Arguments have been heard. Record has been perused.

7 The record shows that the petitioner had applied for admission to the B.Tech course (Computer Engineering) in the NSIT under the CW category in priority IV. He had been issued an allotment letter dated 06.7.2017. He had deposited his fees on 06.7.2017. He had been called for counseling on 07.7.2017. This was in priority IV. The counter affidavit of the respondent admits the fact that the petitioner had been granted provisional admission to this professional B.Tech course subject to the verification of the documents produced by the petitioner. At the initial stage the petitioner had produced certain documents; these documents reflected the status of the father of the petitioner; he was in the category of Laxicity Medial Lateral Collateral Ligament (RT) Knee; his unit was 6 JAT Regiment; he was of the rank of SEP; he was in service for 5 years and 6 months on the date when it was reported that because of this disability he had to be released from service.

The medical record of the father of the petitioner further reflected that this disability was attributable to his service i.e. a physical exertion of the service military (page 55 of the paper book). This was the opinion of the Medical Board (page 65 of the paper book). The medical disability opined the father of the petitioner to be suffering from a 15% to 19% disability (page 80 of the paper book). The further record (medical board proceedings) reflected that the date of the enrolment of the father of the petitioner in the army was 20.01.1988; he was discharged from the service on medical ground on 31.12.1993. Respondents have heavily relied upon the use of the word “discharged” (page 127 of the paper book). Submission is that this does not qualify as a “boarding out” from service; the father of the petitioner has attained the status of an ex-service man, the petitioner was rightly considered for priority VI and not priority IV.

8 Per contra, the documents of the petitioner (heavily relied upon by him) is a document dated 13.11.2013 which was an information given to his father from the record of the JAT Regiment informing him about his disability; his disability having been assessed between 15% to 19%; this document reported that he was invalided from service. At that stage, he was not granted a disability pension but later on (not in dispute) because the rules

of the respondents had changed, the father of the petitioner had been granted a disability pension. The certificate of the Rajya Sainik Board dated 29.6.2017 (Annexure P-9/ page 144 of the paper book) is a relevant document; it reads as under:

“5.That the said disabled soldier has been granted disability pension and his disability is attributable to Military service and his case comes under PRIORITY FOUR as discharge from service on medical grounds/invalided out of service, boarded out from service on medical grounds and has been granted disability pension, all comes under PRIORITY IV.”

Para 5 of Annexure P-9 clearly states that the father of the petitioner had suffered a disability which was attributable to military service and his case comes under priority IV as he has been discharged from service on medical ground/invalided out of service, boarded out from service on medical ground. He had also been granted a disability pension.

9 Para 3 of the certificate issued by Kendriya Sainik Board (Annexure P-11/page 149 of the paper book) another relevant document reads as under:

“Master Abhinav Sinhmar is son of No.3182006H Ex.Sep Sukhbir Singh is eligible for educational concession for admission to Medical/Professional/Non-Professional Courses against the Armed Forces

quota in State/UTs under Priority/Category IV.”

10 It was certified by the Kendriya Sainik Board that the petitioner being the son of Sukhbir Singh was eligible for educational concession for admission to the medical/professional/non-professional courses against the Armed Forces quota in State/UTs under Priority/Category IV.

11 The fact that these documents were earlier not available to the respondents but had been considered by the Review Committee in their review order on 19.7.2017 is not in dispute. It is not the case of the respondent that the petitioner even at the initial stage had no document to categorize himself in priority IV. He had the medical record of his father but as per the petitioner since the respondents had sought better details the document dated 29.6.2017 (issued by Rajya Sainik Board) and the document dated 30.6.2017 (issued by Kendriya Sainik Board) had been handed over to the respondent which had led them to call for a Review Committee meeting held on 19.7.2017. Minutes of the meeting of the Review Committee have been annexed along with the counter affidavit of the respondent. These minutes are Annexure R-3. The case of 5 candidates including the petitioner (Serial no.2) was reviewed. 12 members attended the meeting. Learned counsel for respondent nos.1 and 2 vehemently argued that a defence expert

from the Rajya Sainik Board (Serial No.10) and a defence expert from Defence Head Quarter, AG Branch (Serial No.11) reflected the participation of both the Rajya Sainik Board and the Kendriya Sainik Board. It was a joint decision taken by all the 12 experts who were of the opinion that the petitioner was not entitled to be categorized under the priority IV but he should be considered under priority VI.

12 These minutes are however hopelessly silent as to the reason and how this decision was arrived at; which document was examined and which was left out is not known. The document dated 29.6.2017 issued by Rajya Sainik Board and the document dated 30.6.2017 issued by Kendriya Sainik Board tell a different story; these documents are not in dispute. Both these documents state that the petitioner is entitled for admission to the aforementioned course because of the disability which was suffered by his father and was attributable to his military service and his case should be considered in priority IV.

13 Relevant would it be to extract the aforementioned priorities; priority IV reads as under:

“Priority IV- Widows/wards of Defence Personnel/Para Military Personnel disabled in service and boarded out from service with disability

attributed to military service.”

Priority VI reads as under:

“Priority VI- Wards of Defence Ex-servicemen.”

Priority IV gives a priority to wards of defence personnel who are disabled in service and boarded out from service with disability attributed to military service. The fact that the father of the petitioner namely Sukhbir Singh had been discharged/boarded out from service with a disability attributed to the military service is clear; it cannot be disputed. It is thus a clear case where because of the disability of the father of the petitioner that he was discharged from the service. The submission of the learned counsels for respondent nos.1 and 2 that a “discharge” would not qualify within the meaning of “boarding out” from service as appearing in priority IV is a misconceived submission. An army defence personnel having been discharged from service with disability which he has suffered during the course of military service has necessarily to be read as a “boarding out” from service for the said reason. A query has been put to the learned counsels for respondent nos.1 and 2 as to whether a personal who is suffering from a disability of 15% to 19 % (as in the case of the father of the petitioner) does not qualify for that reason in priority IV; for which they have no answer. It

is not the percentage of the disability which is relevant for the wards of the defence personnels to avail a particular category. This query has neither been negative nor the same has been extended. Priority VI is another category in which the petitioner can also be considered but if he fits in priority IV which entitles him to better prospects the question of his being considered in priority VI would not arise. The case of the petitioner squarely falls in priority IV.

14 Reliance by the learned counsel for petitioner on the judgment of the Division Bench of this court in LPA 521/2017 University of Delhi and Anr. Vs. Zoya Gill and Ors. with particular reference to the following interalia observations which reads as under:

“20.....Any other interpretation can result in chaos for the policy itself, because one University may choose to retain reservation for wards of only one priority, whereas another may choose to extend it to five. Some may avoid reservations to gallantry awardees’ wards altogether. Each such exclusion may be justified on grounds of exercise of power; yet allowing individual variations would mean that the all India character of the benefit, enjoyed by the defense services, with uniform benefits to its personnel and their dependents would be destroyed. It can also result in distorted results, as in the present case, where the petitioners’ fathers were grievously wounded, or injured, but not boarded out. Even if the boarding out condition were left undisturbed, the petitioners would still have been considered under

Priority VI or VII. However, the University's exclusion of those categories has sounded a death knell and put paid to their candidatures altogether. The rationale for excluding these categories is absent altogether. Now, if the boarding out condition were to be introduced, as the University urges, and at the same time, the listed four priorities (excluding two) are to be upheld, the result would be that wards of those who suffered combat injuries and barely survived, or those who were seriously affected or disabled on account of reasons attributable to military service (but who are retained, on grounds of compassion) would have no reservation or priority, because they are wards of serving personnel for whom the University would permit no advantage in the CW category. Therefore, the mere assertion of the right to categorize, without any good reasons to exclude one or the other category strikes at the integrity of the entire scheme. Sukhanshu Singh, in this court's opinion, cannot be faulted in holding that the University possesses the power to accept or refuse the 5% quota; however, the autonomy to further deal with or restrict the categories, for the purpose of enjoying benefit, or imposing (or relieving) conditions, cannot, per se be upheld, unless a strong reason for departure is made, after due consultation with the concerned Union Defense Ministry authorities or the Board. In this case, there is no reason given for restricting the categories to only four.

has force. These observations were made in the context of the submission made by counsel for Delhi University that they were considering only priorities I to V and priorities VI and VII had been excluded by them. This argument of the Delhi University was rejected.

15 The admission of the petitioner be considered by the respondents in terms of priority IV of the CW category.

16 Submission of the petitioner, at this stage, is that since the petitioner has not been able to attend the classes because of intervening writ petition his attendance may be considered in a sympathetic manner. The respondents shall consider this aspect sympathetically.

17 Petition is allowed in the above terms.

INDERMEET KAUR, J

OCTOBER 30, 2017

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