

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED DATE : 25.01.2021

PRONOUNCED DATE : 05.05.2021

CORAM

THE HONOURABLE THIRU JUSTICE B.PUGALENDHI

W.P.No.17386 of 2020
and
W.M.P.No.21550 of 2020

J.Navin Kumar

... Petitioner

Vs.

1. The Additional Director of Medical Education/Secretary, Selection Committee, Director of Medical Education, Admission to MBBS/BDS Courses 2020-21) Chennai - 600 010.
2. The Director, Directorate of Ex-Servicemen's Welfare and Rajya Sainik Board, No.22, Rajamuthaiah Salai, Choolai, Chennai - 600 003.
3. The National Medical Commission, Rep by its Secretary, Pocket 14, Sector - 8, Dwaraka Phase - 1, New Delhi - 110 077.
4. The Kendriya Sainik Board, Ministry of Defence, West Block - IV, Wing VII, R.K.Puram, New Delhi - 110 066.
R.4 suo motu impleaded vide order dated 01.12.2020) in WP 17386/2020.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the first respondent to rectify the Rank List dated 21.11.2020 under the special category of Children of Ex-Servicemen MBBS 2020-2021 and change the category of priority of the petitioner (Application No.610645) from Priority - VI to Priority - IV and select the petitioner for the admission to the first year MBBS course 2020-2021.

For Petitioner : Mr.S.Doraisamy

For Respondents : Mr.Abdul Saleem, SC
(for R.1)
Mr.Srinivasa Murthi, (for R.2)
Mr.V.P.Raman, (for R.3)

ORDER

The petitioner is a son of a Military Officer and he appeared for NEET examination on 13.09.2020 and secured 303 out of 720 marks. The petitioner applied for admission to MBBS course on 05.11.2020 under special reservation category of Ex-servicemen. The petitioner obtained an eligibility certificate from the Department of Ex-Servicemen's Welfare, Salem, under Priority-IV category and also enclosed the same along with his application.

2.The counseling for the children of ex-servicemen was conducted on 21.11.2020 by the first respondent and the first respondent considered the petitioner under the category of Priority-VI instead of Priority-IV though the petitioner has enclosed Priority Certificate issued by the Competent Authority that he is eligible under Priority-IV category. By treating this petitioner under Priority-VI, the petitioner was not allotted a seat for the medical course and therefore the petitioner filed this Writ Petition for a writ of mandamus directing the first respondent to rectify the rank list dated 21.11.2020 under the special category of children of ex-servicemen MBBS 2020-21 and change the category of priority of the petitioner from Priority-VI to Priority-IV and select the petitioner for the admission to MBBS Course 2020-21.

3.Mr.Doraisamy, learned counsel for the petitioner submits that the petitioner's father Mr.M.Jaikumar has joined the Indian Army on 23.04.1994 as Infantry Soldier and served for a period of 15 years till 31.08.2009. He was discharged from service on 31.08.2009 at his own request with service pension vide Pension Payment order dated 26.08.2009 and he was discharged on 'aggravated by military service' and the degree of disablement was considered as 20%.

4.The learned counsel for the petitioner has also relied on the disability certificate issued in favour of the father of the petitioner M.Jaikumar, which reads as follows;

"2.The competent authority, after examining the case in the light of relevant rules and administrative/medical provisions has decided that the disability "GENERALISED SEIZURE" from which the above named individual was found suffering at the time of Release Medical Board should be regarded as aggravated by military service with the degree of disablement at

20% with effect from 01 Sep 2009 for life.

3.The individual was discharged from service at his own request with effect from 31 Aug 2009 under Army Rule 13-3-III(iv) before fulfilling the terms of engagement. He is therefore, entitled to disability element @ 20% with effect from 01 Sep 2009 for life in accordance with Government of India letter No.16(5)/2008/D(Pen/Policy) dated 29 Sep 2009."

5.This Court sum-motu impleaded the Kendriya Sainik Board, Ministry of Defence, West Block - IV, Wing VII, R.K.Puram, New Delhi - 110 066 as a respondent to this Writ Petition by order dated 01.12.2021. Mr.K.Srinivasa Murthi, learned Central Government Standing Counsel appearing for the second respondent has also taken notice for the fourth respondent and filed counter affidavit by enclosing standard operative procedure dated 01.07.2020 on the eligibility criteria for priority and would submit that the petitioner father who joined in Army on 23.04.1994 discharged from service on 31.08.2009 after completion of 15 years at his own request and not on the medical reason and therefore as per the Standard Operative Procedure for interse priority issued by Kendriya Sainik Board, the petitioner is eligible only under the Priority-VI and not under the Priority-IV.

6.The Kendriya Sainik Board, the Apex Board of Government of India responsible for implementing Government Policies for welfare Ex-servicemen, disabled has issued a Standard Operative Procedure for interse priority for reservation/preference to the wards of Armed Forces for admission to Medical/Professional and non professional courses to distribute the allotted quota among eligible candidates in the best possible way. As per the said Standard Operative Procedure, for the Priority-IV the eligibility has been stated as follows;

"Eligible

(i)All Armed Forces Personnel who were found medically unfit for further service due to disability occurred in service conditions (as mentioned in category 'B' and 'C' of para 4.1 of Ministry of Defence, Government of India letter No.1(2) 97/I/D (Pen - C) dated 31 Jan 2001 (Appx 'C') and subsequent amendments) and are invalid out from service as per Army Rule 13 3 III (iii) after having invalid medical Board and are in receipt of Disability Element as per Para 7 (Appx 'C) are eligible for Priority-IV.

(ii)All Armed Forces Personnel who were found medically unfit for certain duties due to disability occurred in service conditions (as mentioned in category 'B' and 'C' of para 4.1 of Ministry of Defence, Government of India letter No.1(2)97/I/D (Pen-C) dated 31 Jan 2001 (Appx 'C') and subsequent amendments) and are retained in service after being

downgraded as (LMC) due to disability by the competent medical authorities and subsequently invalided out of service under Army Rule:

(aa) 13 3 III (iii) (a) (i) - no sheltered appointment is available in the unit (LMC Cases only),

(ab) 13 3 III (v) - only on LMC ground which is attributable to or aggravated by military service.

(ac) Are in respect of Disability Pension consisting of Service Element and Disability Element are eligible for Priority - IV.

(iii) All Armed Forces Recruits who were invalid out from service as per Army Rule 13 3 IV after having Invalid Medical Board and are granted Medical/Disability Pension and ESM status as per DESW, Ministry of Defence letter 12/I/2005/D(Res) dated 01 Feb 2006 (Appx 'D') are eligible for Priority-IV.

Document to be checked:-

(a) Service Book issued by Records to check

(i) Service particulars of Armed Forces Personnel

(ii) Length of servicemen

(iii) Clauses of Army Rule under which he/she is invalided out from service.

(iv) Details of family

(b) Invalidment Medical Board proceedings documents for checking reason for invalidment and attributability of disability.

(c) PPO initial and subsequent PPO to check whether individual is getting disability pension consisting of service element and disability element. (Service element will be granted only if his/her disability is attributable/aggravated to military service).

(d) ESM I-card issued by RSBs/ZSBs to check ESM status.

(e) ECHS Card, Aadhar Card, 10th Class Certificate (of children) and Dependent card.

Not Eligible

As per letter DESW, MoD letter No.6(1)/2017/D (Res.II) dated 21 May 2018 (Appx 'A') who should be not entitled to avail the benefits under Priority - IV (i.e., the Wards of disabled in service and boarded out from the service with disability Attributable to Military Service) are mentioned below:-

(i) All Armed Forces Personnel who were retired/discharged from service on fulfilling the conditions of his enrolment or having reached the stage at which discharge may be enforced as per Army Rule 13 3 III (i) and entitled to disability element as per Para 8 (Appx 'C') are not eligible for Priority-IV.

(ii) All Armed Forces Personnel who were retired/discharged from service on completion of period of army service only, there being no vacancy in the Reserve as per Army Rule 13 3 III (ii) are not eligible for Priority-IV.

(iii) All Armed Forces Personnel who were retired/discharged from service at his own request before fulfilling the conditions of his enrolment as per Army Rule 133 III (iv) are not eligible for Priority-IV.

(iv) All Armed Forces Personnel who were retired/discharged from service in any circumstances having not attributable and not aggravated (NANA) shall not be eligible for Priority-IV.

7. Similarly for the Priority VI, the eligibility is stated as follows;

"11. Priority-VI Wards of Ex-Servicemen

As per Ministry of Defence, Govt of India File No. 36034/I/06-Estt (SCT) dated 04 Oct 2012 (Appx 'E') an ex-serviceman means a person-

(a) Who has served in any rank whether as a combatant or non combatant in the Regular Army, Navy and Air Force of the Indian Union, and

(b) Who either has been retired or relieved or discharged from such service whether at his own request or being relieved by the employer after earning his or her pension ; or

(c) Who has been relieved from such service on medical grounds attributable to military service or circumstances beyond his control and awarded medical or other disability pension; or

(d) Who has been released from such service as a result of reduction in establishment;

or

"Who has been released from such service after completing the specific period of engagement, otherwise than at his own request, or by way of dismissal, or discharge on account of misconduct or inefficiency and has been given a gratuity; and includes personnel of the Territorial Army, namely, pension holders for continuous embodied service or broken spells of qualifying service".

or

"Personnel of the Army Postal Service who are part of Regular Army and retired from the Army Postal Service without reversion to their parent service with pension, or are released from the Army Postal service on medical grounds attributable to or aggravated by military service or circumstance beyond their control and awarded medical or other disability pension".

or

"Personnel, who were on deputation in Army Postal Service for more than six months prior to the 14th April, 1987".

or

"Ex-recruits boarded out or relieved on medical

ground and granted medical disability pension".

or

"Short Service Commissioned Officers released from service after completing initial terms of engagement otherwise than by way of dismissal or discharge on account of misconduct or inefficiency and have been given gratuity shall be eligible to the status of Ex-servicemen".

Authority: DOP&T office Memo No.36034/1/2006-Estt(Res) dated 04 Oct 2012 and published in the Gazette of India vide G.S.R 757(E) dated 10th Oct 2012.

Authority: Ministry of Defence, Department of Ex-servicemen Welfare D(Res I) OM dated 07 July 2014 ex-recruits have been granted ESM Status irrespective of the date of boarding out/release.

Authority: Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) Notification New Delhi dated 13 Feb 2020 G.S.R-116(E) published in the Gazette of India, Part II Section 3, Sub-Section (ii) vide G.S.R 1530 dated 15 Dec 1979 and subsequently amended.

Documents to be checked :-

The following documents are required for educational concession certificate under Priority-V:-

8.The petitioner has been discharged at his own request under Army Rule 13 3 IV before fulfilling the terms of engagement and therefore the petitioner cannot be treated under category of Priority IV.

9.Therefore on the above terms, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-CCC)

//True copy//

Sub Assistant Registrar

mrm

To

1. The Additional Director of Medical Education/Secretary,
Selection Committee,
Director of Medical Education,
(Admission to MBBS/BDS Courses 2020-21)
Chennai - 600 010.
2. The Director,
Directorate of Ex-Servicemen's Welfare and
Rajya Sainik Board,
No.22, Rajamuthaiah Salai,
Choolai, Chennai - 600 003.
3. The National Medical Commission,
Rep by its Secretary,
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Dwaraka Phase - 1,
New Delhi - 110 077.
4. The Kendriya Sainik Board,
Ministry of Defence, West Block - IV,
Wing VII, R.K.Puram, New Delhi - 110 066.

+1cc to Mr.K.Srinivasa Murthi, Advocate SR.No.27116

+1cc to Mr.S.Doraisamy, Advocate SR.No.27124

W.P.No.17386 of 2020

JP(CO)
GMY(12/07/2021)

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