



\$~22 (2022 Cause List)

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

Date of Decision: 27.01.2022

+ W.P.(C) 13517/2021 & CM APPL. 42619/2021

UTKARSH RAI S/O SH. UTTAM KUMAR RAI Petitioner

Through: Mr. Rabin Majumder,
Mr. Kritendra Tiwari, and
Ms. Akansha Srivastava,
Advocates.

versus

DELHI TECHNOLOGICAL
UNIVERSITY AND ORS

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD with
Mrs. Tania Ahlawat,
Mr. Nitesh Kr. Singh,
Ms. Palak Rohmetra, Advocates
for R-1/DTU .
Mr. Prakash Kumar, CGSC for
R-2/DOI (9810164350).

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

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The proceedings in the matter have been conducted through video conferencing.

1. The petitioner was a candidate for admission to the respondent No.1- Delhi Technological University [“the University”] for the B.Tech course in the 2021-22 session. The petitioner applied in the



Children and Wards of Defence Personnel category [“the CW category”]. His grievance is that he was denied admission because he was considered in Priority-VI in the CW category, instead of Priority-IV, to which he claimed entitlement. According to the petitioner, he would have been admitted to the University, if he had been considered in Priority-IV.

Facts

2. The University invited applications for the course in question by way of an Admission Brochure, which has been placed on record. It provides for a reservation of 5% of total seats for the CW category, and lays down various priorities within the CW category, in which candidates would be considered.

3. Priorities-IV and VI, with which we are concerned in this petition, read as follows: -

*“**Priority IV** - Wards of disabled in service and boarded/invalid out with disability attributable to military service. Required Certificate (Proof in Original):*

- a. Discharge Certificate with remarks – medical boarded out, disability attributable to military service.*
- b. PPO*
- c. Education Concession Certificate/ I-Card issued by Zila/Rajya/Kendriya Sainik Board.*

***Priority VI** - Wards of Ex-Servicemen Required Certificate (Proof in Original):*

- a. Discharge Certificate/ Service Particulars*
- b. Original ex-servicemen Identity Card*
- c. PPO*
- d. Education Concession Certificate/ESM/Widow I-Card issued by Zila/Rajya/Kendriya Sainik Board.”*

4. After enumerating the various priorities under the CW category,



and the list of documents required to be submitted, the Admission Brochure contains the following notes: -

“NOTE:

A statement to the effect that 'the death/disability is attributed to military service' is required to be included in the certificate for Priority III & IV.

THE FINAL PRIORITY WILL BE SUBJECT TO SCRUTINY BY PANEL OF DEFENCE EXPERTS AT THE TIME OF DOCUMENT VERIFICATION.”

5. The petitioner applied in the CW category and claimed placement in Category IV. He relied upon his father's service in the Indian Air Force. It is undisputed that the petitioner's father entered service in the Air Force on 18.11.1996, and was discharged from service on 30.11.2016. He was subjected to a Release Medical Board [“RMB”] at the time of discharge, and is in receipt of disability pension on the ground of a disability attributable to military service.

6. The petitioner's case was considered by the University in the CW category, but not in Priority-IV. According to the University, the concerned committee approved the placement of the petitioner only in Priority-VI. The petitioner was unable to secure admission on this basis. His representations to the University to reconsider this decision have not been acceded to, leading to the present writ petition.

Submissions

7. Mr. Rabin Majumder and Mr. Kritendra Tiwari, learned counsel for the petitioner, submit that the petitioner falls within Priority-IV, as his father was boarded out of service with disability attributable to military service. They rely upon a Disability Medical Certificate and proceedings of the RMB, which demonstrate that the petitioner's



father was found to have suffered three injuries – (a) *Fracture Patella (RT)(OPTD)(Old)* on 24.05.2000, which was held to be attributable to military service; (b) *Fracture Neck of 2nd 3rd and 4th Metatarsal(RT)(OPTD)(Old)* on 12.08.2007, which was held to be “not connected with service” i.e., neither attributable nor aggravated by service; and (c) *Degenerative Disk Disease L4-L5, L5-S1(Old)* in April, 2015, which was held to be aggravated due to military service. On this basis, the petitioner’s father was assessed to qualify for 40% disability pension lifelong.

8. Learned counsel also refer me to two further documents filed with the writ petition in support of the petitioner’s claim. The first of those documents is an undertaking filed by him in connection with an application for admission to Guru Gobind Singh Indraprastha University [“GGSIPU”]. The petitioner’s assertion in this document that he is entitled to Priority-IV has been counter-signed by the Secretary, Kendriya Sainik Board [“KSB”], New Delhi. The second document annexed with the writ petition is an Educational Concession Certificate dated 12.10.2021, issued by the Air Headquarters-Directorate of Air Veterans [“AHQ-DAV”], which also indicates the eligibility of the petitioner in Priority-IV.

9. Pursuant to an order dated 03.12.2021, wherein a *prima facie* conclusion against the petitioner was recorded on the basis of these documents, learned counsel have also placed on record the Discharge Book of the petitioner’s father. It is submitted that the Discharge Book supports the petitioner’s claims for inclusion in Priority-IV inasmuch as it shows that the petitioner’s father suffered a disability attributable



to military service. Learned counsel point out that the conditions in Priority-IV include boarding or invaliding out of the person herein with disability attributable to military service, which has been fulfilled in the present case.

10. Learned counsel for the petitioner also rely upon three judgments in support of their contentions: the judgments of the Supreme Court in *Union of India & Anr. vs C.S. Sidhu*¹ and *K.J.S Buttar v. Union of India*², and a judgment of a co-ordinate bench of this Court in *Abhinav Sinhmar (Minor) Vs. The Chairman, Joint Admission Committee & Ors*³.

11. Ms. Avnish Ahlawat, learned counsel for the University, in contrast, submits that the decision to place the petitioner in Priority-VI rather than Priority-IV was taken by a committee of defence experts, as referred to in the Admission Brochure itself. She has placed on record two affidavits on behalf of the University. In the affidavit dated 01.12.2021, the University has stated that the documents of all CW category candidates were verified on 25.10.2021 and 26.10.2021 by a committee which included two officers of the rank of Lieutenant Colonel, one being the Joint Director [Administration and Coordination] of the KSB, and the second being a representative of the Integrated Headquarters of the Ministry of Defence [Army]. In several cases, including that of the petitioner, the priority was changed to a lower category and in some cases the candidates were held not to be not entitled to CW category reservation at all. Ms. Ahlawat submits

¹ (2010) 4 SCC 563.

² (2011) 11 SCC 429.

³ W.P.(C) 6076/2017 dated 30.10.2017.



that the matter has thus been looked at by an expert body, with which the writ court ought not to interfere.

12. An additional affidavit dated 24.12.2021 has also been placed on record, in which it is stated that the matter has been reviewed by the Joint Director [Admission and Coordination] of the KSB, who has addressed a communication dated 09.12.2021 recording that the Discharge Book of the petitioner's father shows that he was discharged after completion of the conditions of his enrolment and was not invalidated/ medical boarded out. According to the said opinion, the petitioner, therefore, has been correctly placed in Priority-VI rather than Priority-IV. The affidavit also states that wards of armed forces personnel who are medically unfit for further service, and are invalidated out from service after an invalid medical board, are placed in Priority-IV. The position has been taken by the University that, in terms of the Discharge Book of the petitioner's father, he was not boarded out as a result of his injuries.

13. On the basis of these documents, Ms. Ahlawat submits that the expert committee has drawn a distinction between cases in which defence personnel were discharged from service as a result of disability or injury attributable to service, and cases in which they completed the term of service but were found eligible for disability pension on ground of some injury or disability incurred during the period of service. She submits that such a distinction is neither arbitrary nor unreasonable, warranting the interference of this Court under Article 226 of the Constitution.

14. Ms. Ahlawat also distinguished the judgments cited on behalf of



the petitioner on the ground that in the aforesaid judgments, the defence personnel concerned were found to have been released on medical grounds. Ms. Ahlawat also contended that the two judgments of the Supreme Court cited by learned counsel for the petitioner concern eligibility for grant of disability pension, and not a computation of priority for admission to an educational institution, as in the present case.

Analysis

15. Having heard learned counsel for the parties, I am of the view that the petitioner has not made out a case for the interference of the writ court under Article 226 of the Constitution. The Admission Brochure enumerates the various priorities in the CW Category, and clearly stipulates that the final priority would be subject to scrutiny by a panel of defence experts at the time of document verification. The scrutiny was conducted in terms of these provisions and a conclusion has been reached against the petitioner. Such an expert opinion is amenable to interference of the writ court only if it is shown to be perverse or manifestly arbitrary. For the reasons discussed below, I am not persuaded that the decision in the present case can be so characterised.

16. Based upon the expert opinion received, the University has made a distinction between cases where the defence personnel has been boarded out as a result of a disability attributable to service, and a case such as that of petitioner's father, where the person concerned completed the period of service, but was nonetheless granted disability pension upon the recommendations of RMB. The said distinction does



not appear to me either arbitrary or unreasonable, and is also not inconsistent with the definition of Priority-IV, as contained in the Admission Brochure itself. The definition of Priority-IV includes wards of personnel who have been disabled in service and *“boarded/invalid out with disability attributable to military service”*. To this extent, the definition may include a person such as the petitioner’s father, who underwent a medical board at the time of discharge and was found to have suffered such a disability. However, the Admissions Brochure also stipulates the requirement of a discharge certificate with the remarks *“medically boarded out, disability attributable to medical service”*. This requirement is capable of the interpretation placed on it by the expert committee, to the effect that the discharge should be incurred by reason of the medical condition of the guardian of the candidate. Such an interpretation of the Admissions Brochure is not perverse or unreasonable.

17. Turning now to the documents placed on record, those pertaining to GGSIPU and AHQ-DAV, upon which reliance has been placed in the writ petition itself, are not documents contemplated in the Admissions Brochure, and do not take the petitioner’s case much further.

18. As far as the report of the medical board is concerned, the petitioner has relied upon the same to demonstrate that his father was subjected to a Medical Board at the time of discharge and that the Medical Board found that he had suffered injuries attributable to service. The aforesaid facts are not disputed. However, it is also undisputed that the three injuries mentioned in the report of the



Medical Board occurred in the years 2000, August, 2007 and April, 2015, whereas the petitioner's father was discharged from service only upon completion of 20 years' service in November, 2016. It is not evident from the report of the RMB that the discharge was on account of the injuries sustained by him in the course of service.

19. The Discharge Book of the petitioner's father supports this conclusion. He was enrolled in the Air Force as an Airman on 18.11.1996, and completed a total service of 20 years and 13 days. He was discharged on 30.11.2016. In Column 6 of the Discharge Book, the words "*released*", "*retired*" and "*dismissed*" have been struck out and the word "*discharged*" has been retained. In Column 7 of the Discharge Book, the reasons for discharge have been noted as follows:

"On RE expiry⁴ on fulfilling the condition of his enrolment with Release Medical Board disability attributable to service."

The petitioner's father has been assessed to be fit for civil and government jobs.

20. The Discharge Book of the petitioner's father, to the extent that it clearly records that the reason for the discharge is on the expiry of his Regular Engagement on fulfilling the conditions of his enrolment, is consistent with the reasoning of the University. It is clear that the petitioner's father, in fact, served for the period of 20 years, long after his first injury was recorded, and for a reasonably long time even after the third injury was recorded.

⁴ It is submitted by learned counsel for the petitioner that the term "RE expiry" in Column 7 of the Discharge Book refers to expiry of "Regular Engagement".



21. The three judgments cited on behalf of the petitioner also do not persuade me to a contrary conclusion. In *K.J.S. Buttar*⁵, the Supreme Court noted that the petitioner therein had been invalided out due to serious injuries of a permanent nature sustained during the course of service. The Supreme Court, relying upon its earlier precedents, held that the petitioner was entitled to disability pension, as claimed and negated the contention of the Union of India, distinguishing between those who have retired or invalided from 01.01.1996, and those who were invalided after. It is in this context that the Court observed in paragraph 18 of the judgment, relying upon the Defence Services Regulation/ Pension Regulation for the Army 1961, that “*where any officer is found suffering from disability attributable to or aggravated by Military Service, he/she shall be deemed to have been “invalided out of service”*”. Learned counsel for the petitioner emphasised this observation to contend that in the case of the petitioner’s father also, he was found to be suffering from disability attributable to or aggravated by military service and must, therefore, be deemed to have been invalided out of service. I am unable to accept this contention. The observations of the Supreme Court are in the context of the aforementioned Regulations, which have also been extracted in the judgment of the Court. It is not possible to read the observations to affect the entitlement of the petitioner to reservation in an educational institution in a particular priority. The question of prioritisation to be accorded to wards of different classes of defence personnel *inter se* is not analogous to eligibility for disability pension.

⁵ Supra (note 2) (paragraphs 3 and 7).



22. The judgment of the Supreme Court in *C.S. Sidhu*⁶ also deals with the question of disability pension. In paragraph 8 of the said judgment, the Court has noted the difficulties faced by Army personnel who are denied disability pension, as in the case of the respondent therein, who had met with an accident in a high-altitude field area during the discharge of his duties. The facts and the controversy in the present case, are entirely different, and the petitioner's reliance upon the said judgment is misplaced.

23. The judgment of a co-ordinate bench of this Court in *Abhinav Sinhmar*⁷ deals with a dispute similar to the present case, but is distinguishable on facts. In that case, the petitioner's claim for entitlement to Priority-IV in the CW category for admission to the respondent- institution was accepted. The Court noted that the Rajya Sainik Board ["RSB"] and KSB had initially supported the case of the petitioner therein for admission under Priority-IV. However, a review was undertaken, wherein the petitioner therein was downgraded from Priority-IV to Priority-VI. The Court found no reason to have been attributed for the said decision by the Review Committee. It therefore relied upon the earlier certificates issued by the RSB and KSB which expressly placed the candidate in Priority-IV. A clear finding is also recorded⁸ that the father of the petitioner therein had been released from service due to his disability. In the present case, neither of these factors is applicable. The judgment, therefore, cannot conclude the matter in the petitioner's favour.

⁶ Supra (note 1).

⁷ Supra (note 3).

⁸ Supra (note 3) (paragraphs 7 and 13).

**Conclusion**

24. For the reasons aforesaid, the impugned decision of the respondents to consider the petitioner in Priority-VI of the CW category rather than Priority-IV is not vulnerable to interference of this Court under Article 226 of the Constitution.

25. The writ petition, alongwith the pending application, is therefore, dismissed, but with no order as to costs.

PRATEEK JALAN, J

JANUARY 27, 2022

“Bp”

