

(2010) 12 P&H CK 0052

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 15642 of 2010

Anterpreet Kaur

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Citation : (2011) 162 PLR 318

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ranjit Singh, J.—The Petitioner, a daughter of Ex-serviceman, has filed this writ petition seeking quashing of the advertisement dated 01.05.2010 to the extent it denies reservation of seats to children of those Armed Forces personnel who are disabled and boarded out of service with the disability which is aggravated due to military service. Prayer is for issuing a writ of mandamus to consider her claim for admission in the reserved category in medical and other colleges.

2. The father of the Petitioner was boarded out of Army service due to Low Backache PIVD-L5S1 V-A7 with 20% disability for life and the same was held aggravated by military service by the Board constituted at that time.

3. The Petitioner has filed an application for being considered in the reserved category of daughter of ex serviceman in medical/dental colleges as a nominee under the Ministry of Defence quota. The grievance of the Petitioner is that her name has not been taken into consideration in the said quota because of the priority fixed by the Respondent/Union of India.

4. The policy regulating the consideration of the candidate in the reserved defence seats in medical/dental college has been annexed as Annexure P-1. The perusal of Annexure P-1 would show that the applications are invited on a prescribed form for admission to Medical colleges and dental colleges, which are subject to allotment by Ministry of Health from the sons/daughters/widows of

Armed Forces personnel. There are approximately 25 to 29 seats in Medical college and one seat in Dental college reserved for allotment in this special column.

S. No.

Category

Priority

(a)

Killed

1

(b)

Disabled

2

(c)

Died

3

(d)

Disabled

4

(e)

Gallantry

5

5. Thus, those killed in action would be given first priority and disabled in action and boarded out from service with disability attributable to military service have been given second priority. Those who died while in service with death attributable to military service are given third priority. Fourth and fifth priority is given to those who are disabled in service and boarded out with disability attributable to Military service and Gallantry Award/Distinguished Service Award winners respectively.

6. The Petitioner would submit that she is also a daughter of soldier, who is disabled in service and is boarded out with disability but has not been assigned any priority for consideration on the ground that her father was boarded out of service with disability which was held aggravated due to military service as priority is assigned only to those who are boarded out with disability which is held attributable to military service. As per the counsel, subclassification of the

candidates on the ground of disability being attributed or aggravated would be unfair and bad on that count and hence has challenged this action through present writ petition for directing the Respondents to consider her claim against priority No. 4 at par with those who are wards of those boarded out with disability attributed to military service.

7. Notice was issued but no written statement was filed despite repeated adjournments. Ultimately, the Court had to issue directions for personal appearance of the Respondents and even had put them to notice for initiating contempt proceedings. It then revealed that there was some communication gap and as such there was delay in filing response to the writ petition. Written statement has now been filed and has been taken on record through separate order.

8. As per the Respondents, the case of making provision for reservation of seats cannot be considered in the parameters of grant of disability pension. The Respondents would contend that the Petitioner has tried to place his case similar to those persons boarded out with disability due to attribution on the lines of grant of disability pension. Detailed reference is made to policy decision and a copy of noting containing consideration and priority is also annexed with the reply as Annexure R-1.

9. Perusal of Annexure R-1 would show that the issue relates to distribution of seats reserved in the MBBS/BDS courses for wards of service personnel killed or disabled in action, or those who died or are disabled while in service. Reference is made to the meeting held under Chairmanship of then Minister for Health and Family Planning when scheme was extended to the children of serving and retired ex-servicemen. This was because it was felt that all the reserved seats for allocation by Ministry of Defence could not be completely utilized. It is thus seen that these seats are special seats released by Ministry of Health and are being allocated as per the special policy framed by Ministry of Defence by adopting a procedure which is fair and is based on merit. Special consideration was also given to wives of service personnel killed/wounded in war by including them in the eligibility category for admission to MBBS and BDS course. The selection of a candidate for admission to Medical/Dental Colleges is based on merit. While preparing the merit list, 80% weightage is given to the results of the qualifying examination and 20% to the Matriculation or equivalent examination. In case, a candidate who passed B. Sc examination with 1st division, then 80% weightage is given to the result of the qualifying examination, 10% to the Matriculation examination and the balance 10% to the B. Sc. Examination qualified in 1st division.

10. After making reference to the then existing policy, it is stated that the merit list used to be prepared in terms of the category, which are also given in this Note. The seats issued to be allocated to various categories.

11. The wards of service personnel killed/disabled in Action, died/disabled in

service and of serving retired personnel are divided into eight categories (as per Application Form, copy placed as Encl.2A, Flag "B") for preparation of Merit list for admission to MBBS/BDS Courses. These categories are given below:

S. No.

Category

Priority

(a)

Killed

1

(b)

Disabled

2

(c)

Died

3

(d)

Disabled

4

(e)

Gallantry

5

It is noted that the five years viz. from 1985-89, the sub allocation of seats to various categories was as under:

Year

Category

A1

A2

A3

A4

B1

B2

C

D

1984-85 A1 to A4=20(1)

8(1)

8(1)

4(1)

1985-86 A1 to A4=20(1)

8(1)

8(1)

3(1)

1986-87 A1 to A4=20(1)

8(1)

8(1)

4(1)

1987-88 2(1) 1 (16) 3

6(1)

9(1)

3

1988-89 2 2 (2) 24 2(2)

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-

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12. It is disclosed in the note that on scrutiny of the figures given above that during 1988-89 children belonging to categories A1 to A4 viz where fathers were killed/disabled in Action or died/disabled in service, were only admitted in Medical/Dental Colleges, which is in accordance with the policy of the Govt. on the subject.

13. In view of number of casualties as a result of "Operation MEGHDOOT" and "Operation PAWAN", it was felt that wards of service personnel killed/disabled in action and of those who died/disabled in service should also deserve consideration. Only when children of these categories are accommodated that the remaining seats were to be distributed among the children of serving and retired officers and Jawans in the ratio of 40:60. The proposal, "accordingly, was

made for re-categorizing the existing categories with a view to facilitate differentiation between wards of killed/disabled in action and those who died and disabled in service.

The category-wise priority, accordingly, were to be as follows:

Sr. No

Category

Details

(i)

A1-2

Killed in Action

(ii)

A3-A4

Disabled in Action-Disability 50% and above.

(iii)

B-1

Died while in service-death accepted as attributable to

(iv)

B-2

Disabled in service-Disability 50% and above. Disability

14. Categories B1 and C were recommended to be amalgamated and so too categorise B2 and D for retired and serving officers, respectively. Categories C and D as proposed were to comprise of following:

Sr. No

Category

Details

(i)

Category "C

Children of retired and serving JC Os/O Rs.

(i)

Category "D"

Children of retired and serving officers.

15. Ultimately, the categories were re-classified from A1 to A4, B1 to B2, C and D to priority 1 to 5 as already noted above. It is because of this consideration that Annexure P-1 policy has finally been issued.

16. The question requiring consideration is whether the Respondents are justified in giving priority to wards of those soldiers, who are disabled in service and are boarded out of service with disability attributed to military service only. In other words whether there is any valid or fair justification to assign no priority to the children of those soldiers who were disabled out of service being boarded out with disability but due to aggravation of military service. As per the counsel for the Petitioner, this will amount to microscopic classification of all one class of category, which is regarding the wards of disabled soldiers and would lead to unfair and inequitable result and, thus, bad on that count. The Respondents, however, would justify the same on the ground that the person, who is boarded out of service because of disability, which is attributable to military service would stand at a higher pedestal and his case would not be comparable with those who are disabled out on account of disease or disability being aggravated due to military service.

17. Whether it would be fair to further sub-classify those who are boarded out of service with disability attributable or aggravation to assign priority would be a question to be considered.

18. To me this does not appear to be a case of any sub classification of any classification of one class. It is a question of giving priority to children of class of soldiers on the basis of intelligible differentia. Overall class for which reservation made is wards of ex-serviceman. Thereafter, the priorities have been chalked out for considering the wards of those, who are killed in action or those who were disabled in action and boarded out because of attributable cause and then to those who died while in service and death is attributable to military service. These are special seats allocated by Ministry of Health apparently in recognition of sacrifice made by soldier for Nation. If some priority is assigned on the basis of the nature of and extent of sacrifice then it cannot be termed unfair or inequitable. It is only a question of giving priority. If there can be a justification for giving priority to those who are killed in action compared to those who are boarded out because of attributable cause then certainly case for assigning priority to those who are boarded out with disability due to aggravation cause can be assigned different priority.

19. There is no challenge made to assign the priorities as such. It is not a case pleaded that there cannot be any priority fixed. It appears that a conscious decision has been taken by the Respondents to give priority to those, where the death or disablement or boarding out is for a cause which is attributable to military service. There is a conscious decision taken to not give any priority to those cases where soldier is boarded out of service due to causes which are considered due to aggravation. The case of person who is boarded out because of attributable cause, would be a class in itself compared to those who are boarded

out due to aggravation. The boarding out due to aggravation of disease or injury obviously would be distinguishable from those who would suffer such disease or injury due to military service. A person, who is already suffering but his suffering is aggravated could certainly be placed differently than those cases person who does not suffer from anything but happens to suffer because of conditions of military service.

20. To me this distinction and differentiation appears reasonable, just and there is no arbitrariness or unfairness involved in this case. The priorities have been given because of justifiable reason. Certainly a soldier who is killed in action or leaves behind family would be entitled to higher priority than those who are still left though with some disease or injury to look after their families. In the earlier case, the family is left to fend for itself and would require some help and consideration by the Government. Even otherwise in such like matters, the issues should be left to be decided in the discretion of the Respondents in consultation with the Armed Forces authorities who would be the best judge in said case. The Court or a person may have a different view but it is a view of the organization which should prevail in such like matters as they are better suited to see the entire operation of the scheme in the correct perspective while determining the priorities. Reference made by the counsel for the Petitioner to *E.V. Chinnaiah Vs. State of Andhra Pradesh and Others*, , cannot strictly apply for consideration in the present case. In this case, it was not a question of priority but a question of sub-classification. Here classification continues to be the same but priorities have been given which are not put to any challenge. It is only that the Petitioner is wanting a particular priority to be given to him whereas in the case of *E.v Chinnaiah (supra)*, the question of sub-classification was under challenge. The Petitioner has not come forward to challenge sub-classification for assigning priorities. There is, thus, no merit in the writ petition the same is, accordingly, dismissed.