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**(2008) 09 DEL CK 0023**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 5987 of 2008**

Sandeep Sheoran

APPELLANT

Vs

Vice Chancellor Delhi University and Others

RESPONDENT

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**Date of Decision :** 12-09-2008

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2008) 155 DLT 332

**Hon'ble Judges :** Vipin Sanghi, J

**Bench :** Single Bench

**Advocate :** S.M. Dalal, for the Appellant; Anurag Mathur and Atulesh Kumar, for the Respondent

**Final Decision :** Allowed

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## Judgement

Vipin Sanghi, J.—The petitioner applied for seeking admission to the Bachelor of Engineering (B.E.) Course in Delhi College of Engineering, which is affiliated to the University of Delhi. The petitioner qualified in the Joint Entrance Examination 2008 conducted by the Delhi University. He had made his application as a ward of a defence personnel disabled in action. This category enjoyed reservation to the extent of 5% of the total seats. Within the said reserved category, four different priorities were stated, which are as follows:

Priority I - Widows/ward of Defense Personnel killed in action.

Priority II- Wards of serving personnel and ex-servicemen disabled in action.

Priority III- Widows/wards of Defense Personnel who died in peace time with death attributable to Military Service.

Priority IV- Wards of Defence Personnel disabled in peace time with disability attributable to Military Service.

2. The submission of the petitioner is that the father of the petitioner was an army personnel who had been invalidated out of service on account of disability.

His father was also in receipt of disability pension. He was issued a disability certificate dated 02.06.1986, by the Assistant CGO, Record Officer for the Commanding Officer, from Artillery Records, Nasik Raod Camp. The said certificate certified that the father of the petitioner "Ex-Gnr. Name Mahtab Singh was invalidated out of service w.e.f. 31 Mar 84 on account of BRONCHIAL ASTMA". It further stated that "His disability has been accepted as attributable to/ aggravated by military service at 20% w.e.f. 31.03.1984 to 22.01.1986."

3. The respondents did not accept the aforesaid disability certificate on the ground that the certificate did not state that the disability was attributable to military service as it also contained the statement that the disability was aggravated by military service. It appears that the respondent obtained an opinion with regard to the disability certificate of the petitioner's father on 21.07.2008. In respect of the said certificate it was opined that:

The certificate having "aggravated to military service" statement has been interpreted by Lt. Col. M.B. Patel from Kendriya Sainik Board as invalid in accordance to the Bulletin of Information for CEE-2008.

The certificate in question has both the words "attributed to/aggravated". Accordingly Lt. Col. M.B. Patel suggested to get the certificate be verified for "attributable to military service". The candidate was appraised of the finding of Lt. Col. M.B. Patel then the candidate requested the chairman BE admission committee-2008 for giving additional time for getting the certificate verified (copy of the letter enclosed).

4. The petitioner was required to obtain a fresh certificate which clearly stated that the disability was attributable to military service. He returned and stated his inability to do so. On this ground the petitioner was declined admission as a reserved category candidate. Consequently, he has preferred this petition under Article 226 of the Constitution of India.

5. In response to the writ petition the respondent, University of Delhi has filed its counter affidavit. The respondent has primarily reiterated the same stand as is to be found in the note dated 21.07.2008 of the Chairman B.E. Admission 2008.

6. Learned Counsel for the petitioner submits that the grant of reservation to the wards of military personal is a beneficial provision and has to be construed in a realistic and generous manner. The same cannot be given a narrow and strict meaning with a view to oust eligible candidates. The petitioner submits that his case is covered by Priority IV above extracted and should have been granted admission to the B.E Course in Delhi College of Engineering.

7. On the other hand, learned Counsel for the respondent submits that the respondent had acted bonafide by roping in Lt. Col. M.B. Patel from Kendriya Sainik Board, Delhi to opine whether the case of the petitioner should be treated as covered under Priority IV, as aforesaid. He submits that the disability certificate produced by the petitioner was not clear, and it was left to doubt

whether the petitioner's father's disability was attributable to his military service or whether it was merely aggravated by military service. Mr. Mathur has, at the time of argument, raised another aspect. He submits that the certificate produced by the petitioner is not from one of the specified authorities contained in Clause 3.6(c) of the prospectus.

8. Having considered the rival contentions, I am inclined to allow this petition. So far as the objection with regard to the disability certificate not having been issued by the competent officer, is concerned, that does not appear to be the reason for the rejection of the disability certificate of the petitioners father and the consequential denial of admission to the petitioner. No such reason is to be found in Annexure P-3 dated 21.07.2008 issued by the Chairman B.E. Admission Committee. This is not even a ground taken in the counter affidavit. Apart from that, in my view, the disability certificate has been issued by a competent authority. The same has been issued on behalf of the Commanding Officer by the Record Officer. As per Clause 3.6(c) the certificate could be issued either by the Secretary, Kendriya Sainik Board, Delhi or the Secretary, Rajya/Zila Sainik Board or the Officer-in-Charge , Record Office. The certificate in question has been issued by the Record Officer and is signed on behalf of Commanding Officer. Therefore, in my view, it satisfies the said requirement.

9. The certificate in question states that the disability has been accepted as attributable to/aggravated by military service. The disability in respect of petitioner's father was Bronchial Asthma. Merely because the certificate uses the expression "attributable to/aggravated by military service", it cannot be presumed that the certificate pertains only to aggravation of the disability during military service. A case of aggravation of disability by military service would be a case, where the person at the time of his entry into military service is known to be suffering with a particular disability, which gets aggravated on account of military service. It is not the respondents' case that the disability of the petitioner's father was existing when he had joined the military service. It is well-known that military service is often rendered in arduous climatic and other conditions, and Bronchial Asthma is a disease, which adverse or extreme climatic and other conditions can give rise to. This disease can also develop at a later stage in life and one need not be born with it. It cannot, therefore, be said with certainty that the Bronchial Asthma suffered by the petitioner's father was suffered by him even when he entered military service and that it was not attributable to military service. It cannot be said with certainty that the petitioner's father merely suffered aggravation of his pre existing Asthma during military service. It is well-known that entry into military service is preceded by a rigorous medical examination to screen out such candidates who may be suffering from disabilities. Therefore, it seems unlikely that the petitioner's father would have been suffering from Bronchial Asthma when he joined military service. Another possible interpretation of the said disability certificate canvassed by learned Counsel for the petitioner is that the disease Bronchial Asthma suffered by the petitioners father was attributable to "and" aggravated

by military service. In practice "/" is some times used for `or" and at times for "and". In my view this submission of the petitioner has some merit. In any event, if there is a doubt about this fact, the benefit of this doubt has to go to the petitioner, and not against him. The respondents have no valid basis to conclude that the disability of the petitioner"s father was merely aggravated by military service. They cannot choose to ignore that part of the certificate which renders the petitioner eligible for reservation and cling on to that part that may disentitle him from grant of reservation. I am also of the view that the grant of reservation to the wards of military personal is a beneficial provision and it has to be construed liberally so as to extend the benefit to all those who are found deserving. The purpose of creation of priorities within this reserved class also appears to be to take within the ambit of reservation, in accordance with priority, more and more wards of military personal within the limited reserved seats.

10. For the aforesaid reasons, I allow this petition and direct the respondent to grant admission to the petitioner according to merit by treating him as falling within priority IV of the 5% reservation provided to children/wards of defence personnel disabled in action.

Petition stands disposed of.

Dasti.