
(2009) 09 DEL CK 0374

In the Delhi High Court

Case No : Writ Petition (C.) No. 10869 of 2009

Sanjay Kumar

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Pension Regulations for Army, 1961 — Regulation 186(1)

Citation : (2009) 2 ILR Delhi 139 : (2009) ILR Delhi 386 Supp

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Advocate : S.M. Dalal, for the Appellant; R. Balasubramanian, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioner seeks a direction to the respondents to treat the disability certificate of his father Ex. Gnr Chrianji Lal as a valid certificate under priority IV for a seat for admission of the petitioner in the medical college for MBBS course for the year 2009-2010.

2. The father of the petitioner applied to Kendriya Sainik Board, West Block IV, R.K. Puram, New Delhi for a reserved seat in medical/dental colleges for the petitioner for the year 2009-2010. The general instructions for applying under the said scheme categorically contemplated that insufficient application forms and applications received after the specified date will not be considered and a wrong and misleading entry will also lead to rejection of the application.

3. For reserved seat in medical/dental colleges the different priority were prescribed. A candidate seeking a reserved seat also had to fill an appropriate form stated in respect of his priority. Para 1 (t) of the general instruction is as under:

(t) The priority to which candidate belongs out of the ones listed below the filing the application form if the father/husband of the candidate is/was.

Priority Form to be Filled

(i) Killed in action 1 A-1 (ii) Disabled in action and 2 A-2 boarded out from service with disability attributable to mil service (iii) Died while in service 3 A-3 and death attributable to mil service (iv) Disabled in service and 4 A-4 boarded out with disability attributable to mil service (v) Gallantry Award/other 5 A-5 Award Winners

4. The general instructions also contemplated that the applicants seeking different priorities will also have to fill respective forms A1 to A5 which were required to be attested both by the Secretary Rajya/Zila Sainik Board and concerned Record office of the individual soldier/airmen/sailor/JCO/Officer.

5. The petitioner asserted that his father Ex. Gnr Chiranji Lal was enrolled in Army on 27th March, 1979 and he met with an accident while on duty which resulted in fracture of Humerus (left). According to him a Court of Inquiry was held which inferred that the injury of his father was caused while he was on duty and, therefore, competent authority while exercising powers under Para 520(d) of Defence Services Regulations for Army recorded the decision that the injury "Gireater Tuberusity Lt Humerus" caused during the accident was attributable to military service and the father of the petitioner was placed in low medical category, CEE Permanent and a medical board assessed the disability as 20% for two years. The service career of the father of the petitioner was cut short and he had boarded out of service on 31st January, 1991 after rendering service only for 11 years and 9 months.

6. The petitioner also contended that M.A. (P) in the office of Principle Controller of Defence Accounts (Pension) Allahabad, however, reduced the degree of disability of the petitioner's father to less than 20%. The petitioner also pleaded that the action of PPCDA (P) was illegal in terms of the decision of the Supreme Court in Civil Appeal No. 164/1993 titled Ex. Sapper Mohinder Singh v. UOI and Ors. as consequent to the recommendation of the medical board father of the petitioner ought to have been brought before a resurvey medical board after expiry of two years by the respondents. The petitioner relied on pension payment order No. D/DO11199/1991 of his father stipulating disability service element admissible to him.

7. The petitioner also relied on Regulation 186(1) of Pension Regulation for Army, 1960, Part I contemplating that if an individual is invalidated out of service with a disability attributable to or aggravated by service but assessed even at below 20%, shall be entitled to disability service element only.

8. The plea of the petitioner is that after applying for a reserved seat his father met Lt. Col. Mahender B. Patel, the officer dealing with the applications claiming reservation in medical and dental colleges, who communicated to his father that the petitioner is not entitled for reserved seat on the ground that the father of the petitioner was not receiving disability pension for life as was required in the relevant form A-4 of the General Instruction. Consequently, a notice dated 31st

July, 2009 was sent by the petitioner through his Counsel and thereafter the present petition has been filed contending inter-alia that though the father of the petitioner is only getting service element and not the disability element, however, since he has been boarded out on account of disability which is attributable to the military service, he is entitled for a reserved seat under priority 4. The petitioner also contended that disability of his father was reduced to less than 20% in an arbitrary manner and PCDA (P) had no authority to sit over the assessment and opinion of a medical board.

9. Regarding Form A4 which was to be filed by a person claiming a reserved seat under priority 4, it was contended that the priority 4 as defined in the general instructions had no ambiguity and, therefore, anything stated in the form A4 was superfluous and consequently copy of latest PPO stating percentage of disability and disability element awarded for life, was not required under priority 4 to be eligible for a reserved seat. The form A4 which was filed by the petitioner along with his application for a reserved seat in the medical/dental college is as under:

Form A-4

To be filled in by sons/daughters of personnel disabled in service and who has been boarded out with disability attributable to military service.

Priority 4

This is to certify that Mr. Sanjay Kumar is son of No. 14460040 P Rank GNR DMT Chiranji Lal of Unit/Corps/Service Regiment of Artillery who was disabled in service on 24th July, 1987 and boarded out from service on 31 January 1991 and the disability was Greater Tuberculosis (Lt) Humerus 20% which was accepted as attributable to Military service by CDA (P) Allahabad. An attested photocopy of supporting documents relating to the disability attributable to Military Service along with the release order issued by concerned record office/CDA (P) Allahabad, Govt. of India letter/copy of latest PPO stating % age of disability granted and disability element awarded for life is attached.

Sd/- Office Seal Zila Sainik Kalyan Adhikari Behror Distt. Alwar (Raj.) Secretary RSB/ZSB Verified

Office Seal Sd/- Major Senior Record officer Artillery Records.

10. The petitioner contended that the scheme for reserving seat for the wards of Army personnel is a beneficial scheme and it has to be construed liberally as per the laws laid down by the Supreme Court. According to the petitioner form A4 does not in any manner lays down any condition nor modifies and can modify the conditions stipulated in the priority A4. According to the petitioner the respondent could not import something which is not part of general instructions and such an act is unlawful. The learned Counsel for the petitioner also relied on a DO No. 3547/AS(R)/94, stipulating that the prioritization recommended is for seven categories out of which priority IV is for wards of defence personnel disabled in peace time with disability attributable to military service.

11. The learned Counsel for the petitioner also relied on *Nasiruddin and Others Vs. Sita Ram Agarwal*, to contend that the Court jurisdiction to interpret a statute can be invoked when the same is ambiguous. It was contended that the Court should not enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. The Court cannot add or subtract words to a statute or read something into it which is not there nor can rewrite or recast legislation. The learned Counsel also relied on a decision of a Single Judge in W.P(C) No. 5987/2008 *Sandeep Sheoran v. Vice Chancellor, Delhi University and Ors.* decided on 12th September, 2008 in which it was held that in a certificate where it was stated that the disability was attributable to military service and it also contained the statement that disability was aggravated by military service, the candidate had obtained a fresh certificate in which it was clearly stated that the disability was attributable to military service. It was held that merely because the certificate used the expression "attributable to/aggravated by military service" it could not be presumed that the certificate pertained only to aggravation of the disability of the father of the petitioner which was existing when he had joined the military service and, therefore, the certificate of the father of the candidate was for disability attributable to the military service. Since the certificate had both parts, therefore, the Court had held that the part attributing disability to the military service could not be ignored and the candidate could not be declined the benefit of a reserved seat. The reliance was also placed on W.P(C) No. 8855/2009 decided on 11th May, 2009 where a candidate had sought issuance of disability certificate. A Division Bench had directed the respondents to issue disability certificate to such candidate on the basis of documents placed on record on account of urgency of petitioner's daughter's admission.

12. The reliance was also placed by the learned Counsel for the petitioner Mr. Dalal on *Madan Singh Shekhawat Vs. Union of India and Others*, holding that it is the duty of the Court to interpret a provision, especially a beneficial provision liberally so as to give it a wider meaning rather than a restrictive meaning which would negate the very object of the Rule.

13. The petition is contested by the respondents contending inter-alia that while considering eligible candidates, according to the eligibility criteria, a merit list is prepared for each priority separately on the basis of academic performance and the allocation of seats is done on priority basis and first the candidate in priority one are accommodated and if the seats are left then candidates from other priorities are considered.

14. Regarding priority 4 it was contended that when a candidate seek consideration under priority 4, he also has to submit form A4 in addition to the main application along with the necessary supporting documents. According to the respondents the form A4 clearly stipulates submission of the latest pension payment order stating percentage of disability granted and disability element awarded for life. It was asserted that since the father of the petitioner is not in

receipt of disability element of disability pension for life, the petitioner is not eligible for a reserved seat under priority 4. Emphasis was also laid on the fact that the father of the petitioner is not getting the disability element of disability pension and his disability was assessed at 20% by the medical board for two years which was also reduced by CDA (P) Allahabad to 19 1/2 %. According to the respondent, merely having service element of the disability pension by the father of the petitioner, does not entitle him to be placed in priority 4. The respondent also contended that since no pension payment order stating percentage of disability with the disability element awarded for life was produced, the application of the petitioner was also incomplete and, therefore, it was rejected. The learned Counsel for the respondent Col. R. Balasubramaniam Advocate also relied on G.P. Ceramics Pvt. Ltd. Vs. Commissioner, Trade Tax, U.P., to contend that where the rule prescribes a form for the application, in case of doubt or dispute, the form be taken into consideration for interpretation of the provisions of the Rule and the statutory enactment.

14. This is not disputed that the father of the petitioner was boarded out on account of disability attributable to the military service. Disability of the father of the petitioner was assessed at 20% by a medical board for two years. Disability was reduced to 19.5% by the office of the Principle Controller of Defence Accounts (Pension) Allahabad. The order of the Principle Controller of Defence Accounts was not challenged by the father of the petitioner and, therefore, on the basis of the allegations of the petitioner that reassessment of disability of his father was illegal, cannot be accepted nor on the basis of the precedents relied on by the petitioner, it can be held that placing the father of the petitioner in 19.5% disability without any disability element of the disability pension but only the service element, is illegal and void. Consequently, it has to be accepted that the father of the petitioner was only entitled for service element of the disability pension and not the disability element of the said pension. In order to infer whether the petitioner is entitled for a reserved seat in category 4 in the facts and circumstances, it is to be considered whether the requirement of the form A4 has to be considered with the priority described in general instructions.

15. The plea of the learned Counsel for the petitioner is that the eligibility of the priority 4 as given in the general instructions is sufficient and does not have any ambiguity and, therefore, the requirement stipulated in the form A4 is not to be considered. The plea of the learned Counsel is not correct because even in the general instructions the priority 4 has been defined along with the form to be filled which is A4. If in order to avail a priority 4 a candidate has to fill the form then the requirement or the certificate required for filling the form A4 will also qualify the requirement of priority 4. The form A4 which was filed by the candidate specifically contemplated filing of the latest PPO stating percentage of disability granted with disability element awarded for life. In the circumstances it will be not correct to hold that the requirement under form A4 are meaningless and are not relevant and required for eligibility of priority 4.

16. The precedents relied on by the petitioner are quite distinguishable. In *Nasiruddin and Ors. (Supra)* the Supreme Court had held in respect of Rajasthan Premises (Control of Rent and Eviction) Act, 1950 which contemplates a tenant to deposit the amount of rent determined within 15 days of the date of determination or within such further time not exceeding three months. It was held that the power of the Court is limited and the time cannot be extended for such deposit exceeding three months because if the statutory provision is plain and unambiguous, the Court shall not interpret the same in a different manner, only because of harsh consequences arising there from.

17. The Supreme Court in *Nasiruddin (Supra)* had rather held that there exist a presumption that the legislation has not used any superfluous words and the real intention of the legislation must be interpreted from the language used and the use of expression shall or may not be decisive for arriving at a finding as to whether the statute is directory or mandatory. In the present case priority 4 has been stipulated in the general instruction as "disability in service and boarded out with disability attributable to military service". This priority 4 in general instruction is not limited to the words detailed there but also have the form A4 which is a part of general instruction which is also to be filed by the candidate. Requiring a candidate to fill form A4 and stipulating it in the general condition, therefore, cannot be a mere formality. The condition stipulated in the form A4 cannot be termed superfluous. No doubt when a beneficial provision has to be interpreted, it has to be construed liberally so as to give it a wider meaning but at the same time the words and the requirement stipulated is not to be ignored. If the requirement contemplated under form A4 is that the latest PPO stating percentage of disability and disability element awarded for life is not necessary, then the respondents would not have asked the candidates seeking a reserve seat to produce such a certificate. If for allotting a seat in priority 4, only a certificate stipulating that the person has been boarded out on account of disability was sufficient, then other requirement as detailed in form A4 would not have been mentioned nor the requirement of a certificate by CDA (P) Allahabad would have been indicated.

18. In *G.P. Ceramics Pvt. Ltd. (Supra)* the Supreme Court had held that where the rule prescribes a form for the application, the requirement laid down in the form shall also be necessary as otherwise the requirement and the form shall be superfluous and it is not expected that the superfluous information would be sought in a form.

19. In the facts and circumstances, therefore, it cannot be held that merely on account of being boarded out on account of disability attributable to military service, a ward of a person will be entitled for a reserved seat. Unless the disability pension awarded to such a person has an element of disability and which is also for life, such a person is not eligible for a reserved seat for the ward. The inevitable inference in the facts and circumstances is that the petitioner cannot be placed in the priority 4 for a reserved seat and the decision

of the respondent not to grant a reserved seat to the petitioner under the reserved quota cannot be faulted.

20. Therefore, for these reasons the petitioner is not entitled for any relief. The writ petition is without any merit and is liable to be dismissed. The writ petition is, therefore, dismissed. Parties are left to bear their own costs.