

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

3.

OA 1876/2024

Ex GDSM Jai Kartar

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Nawneet Krishna Mishra, Advocate
and Mr. Raj Kumar, Advocate

For Respondents : Mr. Sundeep Kumar, Advocate with
Maj A R Subramaniam, OIC Legal

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

31.05.2024

The applicant vide the present OA makes the following prayers :-

“(a) Quash the Impugned Certificate dated 01.05.2024 issued by the Rajya Sainik Board and to direct the respondents to issue correct certificate placing son of the applicant in Priority -IV.

“(b) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost of the application in favour of the applicant and against the respondents.”

2. Taking into account the contentions raised on behalf of the applicant vide Para 4.4 of the OA by the effect that the ward of the applicant has recently cleared JEE (Main)-2024 examination in the Defence Service Quota and the oral submission that the said interview process and admission process would be in the month of June, 2024 it was considered essential whilst issuing notice of the OA to the respondents that the respondents verify

the document placed at Annexure A-3 to the OA which reads to the effect :-

“DISABILITY CERTIFICATE

It is certified that No. 13689388A Ex Gdsm Jai Kartar was enrolled in the Army on 25 Oct 1987 and discharged from service wef 22 July 1995 under Rule 13(3) III (v) of Army Rule 1954 as Permt LMC and No Sheltered appt was available in medical category “BEE(P)” for the diagnosis of “Neurosis”. Accordingly, Release Medical Board held at 167 Mil Hosp, Pathankot on 13 May 1995. The disability has been regarded as “Aggravated to Mil Service” with the degree of disablement at 20% for life with effect from 22 Jul 1995.”

3. Learned counsel on behalf of the respondents submits that they do not dispute the veracity of the document Annexure A-3 to the OA

- Annexure A-3 placed on record thus brings forth that;
- the applicant was enrolled in the Indian Army on 25.10.1987;
- he was discharged from service with effect from 22.07.1995 under Rule 13(3)III (v) of Army Rule 1954 as Permanent LMC;
- and so was so discharged, there being no sheltered appointment available in medical category “BEE(P)” for the diagnosis of “Neurosis”; and
- that the disability had been regarded as being aggravated to military service with a degree of disablement at 20% for life with effect from 22.07.1995.

4. A submission is now sought to be made on behalf of the respondents that the percentage of disablement and the aspect of aggravation and attributability needs to be ascertained on correlation with the RMB to assail the aspect of attributability of the disability of the applicant as being due to military service.

5. On behalf of the respondents has been submitted the copy of document F. No. 6(1)/2017/D(Res-II) dated 21.05.2018 to submit to the effect that the action of the respondents which has been impugned by the present OA whereby the respondents have chosen to issue the Education Concession Certificate for the ward of the applicant in Priority -VI which relates to wards of ex-serviceman is correct, placing reliance on the contents of the said letter which read to the effect :-

*“To
The Chief Secretariat/Administrators
All States/UTs.*

*Subject: Inter-se priority for reservation/
preference to the wards of Armed Forces personnel by
States/Uts for admission to Medical/ Professional/
Non-Professional Courses.*

*Approval of the Competent Authority is
conveyed to the removal of Yudh Sewa Medal series of
Awards i.e. Sarvottam Yudh Seva Medal, Uttam Yudh
Seva Medal and Yudh Seva Medal from Category V of
the priority list for reservations/preferences to the
wards of Armed Forces personnel by States/ UTs/
Central/ State Universities/ Autonomous Institutions
for admission in medical/ professional/ non-
professional courses. The revised list of priorities will
be as follows:-*

*Priority I : Widows/Wards of Defence personnel
killed in action.*

*Priority II : Wards of disabled in action and boarded
out from service.*

Priority III : Widows/Wards of Defence personnel who died while in service with death attributable to military service.

Priority IV : Wards of disabled in service and boarded out with disability attributable to military service.

Priority V : Wards of Ex-serviceman and serving personnel who are in receipt of Gallantry Awards:

(i) Param Vir Chakra

(ii) Ashok Chakra

(iii) Maha Vir Chakra

(iv) Kirti Chakra

(v) Vir Chakra

(vi) Shaurya Chakra

(vii) Sena, Nau Sena, Vayu Sena Medal

(viii) Mention-in-Despatches.

Priority VI : Wards of Ex-Servicemen.

Priority VII : Wives of :

(i) defence personnel disabled in action and boarded out from service.

(ii) defence personnel disabled in service and boarded out with disability attributable to military service.

(iii) ex-servicemen and serving personnel who are in receipt of Gallantry Awards.

Priority VIII : Wards of Serving Personnel.

Priority IX : Wives of Serving Personnel.

2. This issues with the approval of Hon'ble Raksha Mantri and supersedes our earlier letters of even number dated 19.05.2017 and 30.11.2017 on the subject.

(Santosh)

Joint Secretary (Res.II)

Tel. 23015772"

with specific reliance on the terms of Priority-IV therein reproduced herein again which reads to the effect :-

"Priority IV : Wards of disabled in service and boarded out with disability attributable to military service."

to submit to the effect that in as much as, the applicant had been discharged from the Indian Army in Permanent LMC in as much

as there was no sheltered appointment available in the medical category BEE(P) for the diagnosis of Neurosis, and that disability had been regarded as aggravated to military service with the degree of disablement at 20% for life with effect from 22.07.1995, in as much as, that disability was not regarded as attributable to military service, the applicant's ward cannot fall in Priority-IV within the terms of the letter dated 21.05.2018 and has to fall within the category of Priority-VI.

6. In relation to this contention raised on behalf of the respondents, it is essential to advert to Para 48(a) of the Pension Regulation for the Army 1961 which read to the effect :-

“48(a) Unless otherwise specifically provided a disability pension consisting of service element and disability element may be granted to an officer who is invalided out of service on account of a disability which is attributable to or aggravated by military service in non-battle casualty cases and is assessed at 20 percent or more.”
(emphasis supplied)

It is apparent and explicit in terms of Regulation 48(a) of the said Pension Regulation for the Army 1961, that both in relation to disabilities which are either attributable to or aggravated by military service in non-battle casualty cases and are assessed with a disablement of 20% or more, the Armed Forces personnel is entitled to the grant of the disability element of pension.

7. In these circumstances, the distinction that is sought to be drawn vide the classification of Priority-IV in letter F. No. 6(1)/2017/D(Res-II) dated 21.05.2018 which seeks to grant the

benefit of Priority-IV to wards of disabled personnel in service and boarded out with disability only where it is **attributable** to military service as distinguished from those who have been so boarded out with disability **aggravated by military service admittedly**,~ cannot be countenanced.

8. That the applicant has been boarded out from service because of his disability is expressly clear from Annexure A-3 dated 12.07.2023 placed on the record which document and which factum has not been refuted by the respondents.

9. In these circumstances, the prayer made by the applicant is allowed and the impugned Education Concession Certificate dated 01.05.2024 issued by the Rajya Sainik Board is quashed and the respondents are directed to issue the correct Education Concession Certificate placing the ward of the applicant in Priority-IV, within a period of two weeks from today.

10. The prayer made on behalf of the respondents seeking the confinement of the observations made hereinabove to be treated only for the purpose of the present case is declined.

11. The copy of this order be given *DASTI* as prayed.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

Yogita