



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

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Reserved on: 25th May, 2023
Pronounced on: 03rd July, 2023

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W.P.(C) 3285/2023

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CM APPL. 12796/2023

VINEY CHAUDHARY

..... Petitioner

Through: Mr. Vijay Singh, Mr. Ashwani
Kumar & Ms. Garima Verma,
Advocates.

versus

1. UNION OF INDIA

Through the Ministry of Defence,
Department of Ex-servicemen Welfare,
Room No. 237 'B' Wing,
Sena Bhawan, New Delhi

2. SECRETARY HIGHER EDUCATION

Directorate of Higher Education,
Govt. of NCT of Delhi,
B-Wing, 2nd Floor, 5 Sham Nath Marg,
New Delhi-54

..... Respondents

Through: Mr. Anil Soni, CGSC with Ms.
Archana Surve, Govt. Pleader &
Ms. Priya Singh, Advocate for
R-1/UOI.

Mr. Santosh Kumar Tripathi,
Standing Counsel, GNCTD with
Mr. Kartik Sharma, Advocate for
R-2.



CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner to quash the impugned Order/Letter dated 21.05.2018 of Respondent No. 1 giving the categories of Priority within the reservations provided in the Army quota of 5% for admission to various Colleges; and to give directions to the respondent Nos. 1 and 2 to treat/include Priority No. VIII above the Priority No. VI or in alternative to consider both the Priority Nos. VI and VIII at the same podium for the admissions in the forthcoming Academic Year 2023-24.
2. The wife of the petitioner is serving as Lieutenant Colonel in the Indian Army and is currently posted at New Delhi. The son of the petitioner, namely, Master Divyansh Chaudhary, is a student of Class XII in Delhi Public School, R.K. Puram, who is aspiring to become a Software Engineer to pursue Bachelor of Technology (*hereinafter referred to as "B.Tech"*) Course for which the qualifying examination is the Joint Entrance Examination (Main) (JEE), and the said examination was scheduled to be conducted w.e.f. 06.04.2023 to 12.04.2023.
3. The respondent No. 1 *vide* its Letter/Order dated 21.05.2018 made nine categories along with their Priorities for providing reservation to the medical/professional/non-professional courses throughout the country in the following manner: -



- “Priority-I: – Wards of Defence Personnel Killed in action.
Priority-II: – Wards of serving Defence Personnel disabled in action.
- Priority-III: – Wards of Defence 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.
- Priority-V: – Wards of Ex-servicemen and Serving Defence Personnel who are in receipt of Gallantry Awards.
- Priority-VI: – Wards of Ex-servicemen.
- Priority-VII: – Wives of Ex-servicemen and Serving Defence Personnel who are in receipt of Gallantry Awards.
- Priority-VIII: – Wards of Serving Personnel.
- Priority-IX: – Wives of Serving Personnel.”

4. The eligible candidates under their respective category would be entitled to admission as per their Priority irrespective of their ranks/marks scored which would become relevant when there are more than one candidate under one Priority. Thus, even a meritorious candidate will not be offered a seat under this reservation, if a candidate, higher in Priority, is willing to take that seat, even though he has got lower marks/rank.

5. The son of the petitioner while going through the counselling/cut-off charts of various Engineering Colleges of Government of National Capital Territory of Delhi (*hereinafter referred to as “GNCTD”*) found that the majority of reservation benefits is being taken away only by Priority-VI leaving no seat available for the remaining Priorities, especially Priority-VIII, in getting admission to various professional



courses. The aforesaid anomaly was raised by the petitioner before the Competent Authority but not a muscle was moved.

6. Thereafter, the petitioner made the Representation dated 16.12.2022 to the respondents, but no response to the said Representation was forthcoming from the respondents.

7. The petitioner, thereafter, raised his Grievance bearing No. (MODEF/E/2023/0000732) dated 03.02.2023 online through E-Portal of the respondent No. 1, and the same was followed by the Reminders dated 08.02.2023 and 17.02.2023, but the concerns of the petitioner fell on deaf ears as the respondent No. 1 neither tried to rectify the anomaly nor bothered to reply to the communications made by the petitioner.

8. It is claimed that while categorising the Priority-V and the Priority-VII, both wards of Ex-servicemen and of Serving Personnel have been put in the same category; however, no intelligible differentia has been applied while categorising the Priority-VI and the Priority-VIII. In fact, it is a biased act to give deliberate benefit to the wards of Ex-servicemen over the Serving Personnel.

9. It is also claimed that in Priority-VI, almost all seats of core branches of B.Tech course are being taken by the wards of Ex-servicemen and the wards of Serving Personnel have been left to choose from the seats which are left out. The wards of the Serving Personnel are discouraged because of being denied the benefit of Priority which is being given to the wards of Ex-servicemen.

10. It is asserted by the learned Counsel for the petitioner that a person, who is covered in the category of Ex-servicemen, has worked in the



Armed Forces for minimum pensionable service i.e., 15 years for other ranks and the JCOs, and 20 years of service for Commissioned Officers, and who have either been retired, relieved or discharged from the service whether at their own request by the Organisation due to under optimum performance for next promotion. A Serving Personnel, on the other hand, continues his or her service and performs excellently well and gives his or her cent per cent to the service of the nation. Therefore, the wards of Serving Personnel should be given higher Priority at all times as they have to face untimely shifting due to posting, lack of amenities due to the posting in remote areas, lack of care, risk factors in the sensitive areas etc. while no such hardships are being faced by the wards of retired personnel.

11. It is further claimed that because of the said biased categorization, the chances of Serving Personnel applying for retirement may increase, especially at a point of time when their wards are in XI or XII class, so that their wards are also able to get the same benefit of Priority in the category of retired servicemen.

12. The petitioner has thus, challenged the Letter/Order dated 21.05.2018 on the grounds that the priority categorization between Priority VI and Priority VIII is violate of his Fundamental and Legal Rights and he has been deprived of his Right to Equality. The petitioner has sought quashing of the impugned Order/Letter dated 21.05.2018 and directions to the respondent Nos. 1 and 2 to treat Priority No. VIII above the Priority No. VI or in alternative to consider both the Priority Nos. VI and VIII at the same podium for the forthcoming Academic Year 2023-24.

13. **The respondent No. 1 in its Counter-affidavit** has asserted that the Equality does not mean a mechanical application of law amongst all



the persons who are not similarly situated. The Serving Personnel and the Ex-servicemen are not equal and there is nothing violative in providing the separate categories in respect of the two. Moreover, these Priorities have been listed after detailed deliberations with all the stakeholders and after obtaining approval of honourable Defence Minister.

14. It is further explained that the Department of Ex-servicemen Welfare issues Guidelines for welfare of Ex-servicemen from time to time and this Policy has also been issued giving Priority to the wards/wives of Ex-servicemen in professional/non-professional courses. Initially, the seats are primarily meant for wards of Ex-servicemen. The wards of Serving Personnel were added subsequently to utilise the remaining seats, if any.

15. It is further stated that the Grievance dated 03.02.2023 made by the petitioner through E-Portal was duly replied by KSB on 03rd March, 2023.

16. **The petitioner in his Rejoinder** has submitted that the only reason given by the respondent No. 1 for intelligible differentia classification for the wards of Ex-servicemen and the of the Serving Personnel is that the latter are drawing more benefits in terms of allowances than the retired personnel which is not only a false statement but has also no co-relation to the issue involved in the present petition. The Ex-servicemen also have various monetary benefits, like financial assistance for education of the children upto XII Standard and Graduation to the children and Post-Graduation for widows of Ex-servicemen which is not applicable to the wards of the Serving Personnel as CEA (applicable upto XII Standard). The Ex-servicemen get pension and also get the same rate of interest (as is applicable in AFPP) by depositing the fund in PPF in



Bank/Post Office and also get the tax benefit of upto Rs. 1,50,000/- under Section 80C of the Income Tax Act. The Ex-servicemen also get various other benefits like allotment of Mother Dairy Booth, Safal Outlet, Management of CNG Station, Coal Transportation and Tipper attachment, Operation of Security Agency, Retail Outlet Dealership of Oil Product Agency and Distributorship by Oil Marketing Companies, Technical Services, Job Reservations in PSUs and other Agencies (Central and the State Government), and in no terms can it be held that the Ex-Servicemen are getting less benefits than the Serving Personnel .

17. Further submitted that normally the benefit of this Policy is applicable only when the wards of Armed Forces Personnel reaches 17 years of age as recruitment in Armed Forces is mostly done for unmarried candidates. The Serving Personnel who would have already completed their 19 or 20 years of service by the time child completes XII Standard when he would be able to reap the benefit of this Policy while those who have rendered their services for 5 years for Officers (SSCOs) and 15 years for Personnel Below Officer Rank (PBOR) can opt for retirement and can avail the status of Ex-servicemen.

18. The petitioner has submitted that there are generally two grounds for release from service i.e., either the personnel is not recommended by the Commanding Officer to continue service (on merits or medical grounds) or he himself has chosen to leave the service keeping his personal gain above the national interest, mostly in a situation when a Serving Personnel foresees no future career progression in service and choose to retire in order to reap the benefits of Ex-servicemen status. On the contrary, the meritorious personnel keep continuing their services till



the same is required by the higher authorities. Therefore, despite the fact that the Serving Personnel have been performing their duties with full dedication neglecting their families and children, still their children are deprived of benefit of reservation.

19. The Department of Ex-servicemen Welfare *vide* its various Orders dated 19.05.2017, 30.11.2017 and 21.05.2018 sub-categorize Serving Personnel mostly into three categories which reads as under:

- “(i) *Ward of Gallantry Award winner serving personnel.*
- “(ii) *Wives of Gallantry Award winner serving personnel.*
- “(iii) *Wards of serving personnel.*”

20. In Priority-V and Priority-VII (III), the wards and wives of Gallantry Award winners Serving Personnel as well as Ex-servicemen have been placed together in the same category as the candidates from these two categories are very less. Almost 90% of the candidates seeking admission to professional courses are from non-Gallantry Award winner category, but the wards and wives of Serving Personnel have been kept in the lower category as Priority-VIII, while the wards and wives of Ex-servicemen have been placed in Priority-VI.

21. The petitioner has claimed that the wards of serving personnel who have put in more years, should not be treated below the wards of ex-servicemen; rather they should be given priority to the children of Ex-Servicemen as they undergo many hardships due to the parent's posting in remote and hill areas which makes the participation of the parents negligible in the education of the wards. The children of serving personnel struggle a lot to get admission in desired courses in reputed colleges even after securing a better ranking in JEE Main Examination as



in the present case.

22. The petitioner's child Divyansh Chaudhary had taken the JEE (Main)-2023 Examination conducted by National Testing Agency. The result has been declared on 29.04.2023 wherein he has got 89.8177595 percentile with Rank of 114810 CRL. The Department of Higher Education, Govt. of NCT of Delhi affiliated Universities conducts two types of counselling for admission in B.Tech courses in their affiliated colleges, Guru Govind Singh Indraparastha University (GGSIPU) & Joint Admission Counselling (JAC) (DTU, NSIT, IIIT-D, IGDTUW, DSEU etc.) on the basis of result of JEE (Main).

23. GGSIPU has closed registration process for admission in B.Tech course for the year 2023. The petitioner's ward has been registered under category VIII. The Joint Admission Counselling (JAC 2023) would start from first week of June 2023. The petitioner has thus stated that one seat may be held back in the B.Tech course till the disposal of the present petition.

24. **Submissions heard.**

25. The petitioner has challenged the Order F.No.6(1)/2017/D(Res.II) dated 21.05.2018 issued by Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare providing inter-se priority for reservation/ preference to the wards of Armed Forces personnel by States/UTs for admission to Medical/Professional/ Non-Professional Courses. The revised list of categorization of priorities has been defined 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-Servicemen 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."

26. It is pertinent to mention here that the petitioner has not challenged the reservation of 5% provided to the wards of Armed Forces Personnel but is aggrieved by the wards of ex-servicemen being placed in Priority VI while wards of serving personnel being placed in Priority VIII in the revised list of Priorities. According to the petitioner there is no intelligible differentia for placing the wards of serving personnel in a category below



the wards of ex-servicemen on the grounds that while ex-servicemen have not only retired from their services and are no longer serving the nation, but at the same time they are getting their pensions as well as due benefits which are commensurate to those which are being enjoyed by the serving personnel. Also, the serving personnel are continuing to face the hardships of service which percolate to their wards as on account of their service contingencies the parents are not able to be equally involved in the education of the wards.

27. The grievance of the petitioner is that while considering the reservation in the prescribed categories, the wards of Ex-Servicemen who fall in Priority VI practically take away the reserved categories despite having scored better ranking, leaving very few vacancy seats for the wards of serving personnel to get the benefit of reservations. The petitioner has challenged only Government of India Order dated 21.05.2018 limited to Priority VI and Priority VIII.

28. We at the outset, need to highlight that what is being questioned is the categorization of the priorities in between the wards of ex-servicemen and those of service personnel as not based on any intelligible differentia and that the Priority VIII should be merged with Priority VI.

29. The Apex Court in the case of *Union of India vs. M. Selvakumar* (2017) 3 SCC 504 has held that Horizontal reservations in the matter of governmental policy is not in the domain of the Courts to embark upon an inquiry whether a particular public policy is wise and acceptable or whether a better policy can be evolved. However, where a policy decision can be faulted on the grounds of mala fide, unreasonableness, arbitrariness or unfairness, the Courts are not prevented to interfere in



those circumstances. Similar view has been expressed by the Apex Court in the case of Ugar Sugar Works Ltd. vs. Delhi Administration (2001) 3 SCC 635 and in the decision of State of Madhya Pradesh vs. Mala Banerjee (2015) 7 SCC 698.

30. In the present case, it is not as if the wards of serving personnel have been denied the benefit of reservations to the benefit of wards of ex-servicemen. It is a policy decision taken by the Government of India, Ministry of Defence to define the manner in which the reservations by the wards of Army personnel in difference categories shall be availed. There is neither any arbitrariness, unreasonableness or mala fide brought forth in the categorization of the wards in Priority VI and Priority VIII.

31. The cases where a policy decision may be interfered with by the Court is evident from the case of The Chief Secretary vs. D.Kuralarasan MANU/TN/6162/2021 wherein while taking out the advertisement for admission, the children of serving personnel were completely excluded. In that context, it was observed that the exclusion of the wards of the serving personnel without any basis or justification was unreasonable and the Court interfered to say that they be also included in the Priority list for admission to the professional course.

32. In the present case the Government of India Order dated 21.05.2018 providing the priority categories amongst the 5% reservations for the wards of Armed Forces personnel has been duly incorporated in the Joint Entrance Examination (JEE) Main, 2023 for admission to the various colleges of Delhi to be conducted online with the support of National Informatics Centre.

33. In the present case, the Government of India Order



F.No.6(1)/2017/D (Res.II) dated 21.05.2018 has provided the Priority list in the order in which the quota of 5% is to be distributed amongst the wards of Armed Forces Personnel, whether retired, disabled or serving in the admissions of the professional courses. The entire scheme of Priority list shows that the benefit of reservations was essentially intended for the widows and wards of defence personnel who have either been killed or boarded out on account of disability attributable to military services. In Category V and in Category VII, wards and wives respectively of Ex-Servicemen as well as serving personnel have also been given the benefit of being placed in Priority V and Priority VII.

34. The question which has been raised by the petitioner is that when wards and wives of ex-servicemen as well as serving personnel who are in receipt of Gallantry Awards, can be placed together in one category, be in Priority V or Priority VII, then there is no reason for placing the wards of serving personnel in the last but one category i.e. Priority VIII while the wards of ex-servicemen get the benefit of priority VI.

35. It has been explained by the respondent No.1 in the counter-affidavit that essentially the Government of India had taken a decision to give the benefit to the wives and wards of ex-servicemen or Gallantry Award holders, but in the scheme of things, it was found that some vacancies still remained vacant after giving the benefit to the wards of all the categories. It is only to ensure that the benefit of reservation is fully utilized and exhausted and does not go unutilized that the category of wards of serving personnel has been added as Priority VIII.

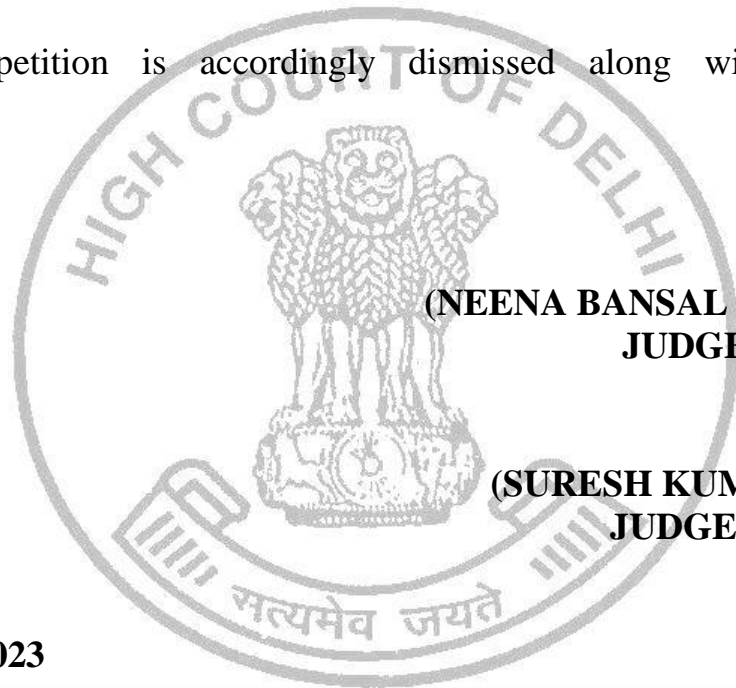
36. The classification has been done and the wards of serving personnel have been included even though in Priority VIII only to ensure that the



benefit of 5% reservation on the whole is availed enures to the benefit to the wards of Armed Forces Personnel.

37. The Horizontal utilization of reservation quota is essentially determined by the Government Order F.No.6(1)/2017/D(Res.II) dated 21.05.2018. No arbitrariness or mala fide has been brought forth in the said policy. We do not find any ground to interfere with the Government Order dated 21.05.2018 or to reshuffle the Priority categories as provided therein.

38. The petition is accordingly dismissed along with pending application.



**(NEENA BANSAL KRISHNA)
JUDGE**

**(SURESH KUMAR KAIT)
JUDGE**

JULY 03, 2023

S.Sharma/va