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

+ **W.P.(C) 9105/2025 & CM APPL. 38737/2025**

NAVEEN KUMAR

.....Petitioner

Through: Mr. Ajit Kakkar, Ms. Jigyasa, Mr. Aditya, Mr. Tejas, Ms. Chetna and Mr. Aman Kumar, Advocates.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Ms. Richa Kapoor, Ms. Udipti Chopra, Mr. Kunal Anand and Mr. Harsh Gautam, Advocates for FCI. Mr. Gaurav Barathi, SPC with Mr. Harsh Gupta, Advocates for R-1.

+ **W.P.(C) 9123/2025 & CM APPL. 38761/2025**

PARDEEP

.....Petitioner

Through: Mr. Ajit Kakkar, Ms. Jigyasa, Mr. Aditya, Mr. Tejas, Ms. Chetna and Mr. Aman Kumar, Advocates.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Ms. Richa Kapoor, Ms. Udipti CHopra, Mr. Kunal Anand and Mr. Harsh Gautam, Advocates for FCI. Mr. Vivek Sharma, SPC with Ms. Prerna Singh, Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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07.07.2025



1. Issue notice. Ms. Richa Kapoor, learned counsel, accepts notice on behalf of FCI. Mr. Gaurav Barathi, learned counsel, accepts notice on behalf of Union of India [“UOI”] in W.P.(C) 9105/2025. Mr. Vivek Sharma, learned counsel, accepts notice on behalf of UOI in W.P.(C) 9123/2025.
2. The petitioners were applicants for the post of Assistant Grade-III (Depot) in the respondent – Food Corporation of India [“FCI”], pursuant to an advertisement dated 03.09.2022.
3. The advertisement was for recruitment in various posts divided zone wise. The petitioners applied for the post of Assistant Grade-III (Depot), North Zone, in the ex-servicemen category. The ex-servicemen category itself was categorised into “*Normal Ex-Servicemen*” [“ESM-I”] and “*Disabled Ex-Servicemen/Dependents of Ex-Servicemen*” killed in action [“ESM-II”]. Reservation of 10% was provided for ESM-I category and 4.5% for ESM-II category. It was also provided that unfilled vacancies advertised under ESM-II category, would be made available to ESM-I category.
4. The petitioners are admittedly ex-servicemen who were invalidated out of service. However, by communications dated 06.07.2023, the respondents sought justifications for the petitioners’ claim that they fall within ESM-II category. The petitioners submitted their respective explanations in this regard, on 10.07.2023. Posting orders were thereafter issued, in which both the petitioners’ names find place, noting that they have been selected under the ESM-II category. Offers of appointment were issued to them on 24.09.2023.
5. However, it has subsequently been contended by the respondents



that the petitioners do not fulfil the conditions for appointment under the ESM-II category, as laid down by the Government of India in Office Memorandum [“OM”] dated 21.02.1981. Their appointments were, therefore, terminated by orders dated 18.01.2025, against which they approached this Court by way of W.P.(C) 1094/2025 and W.P.(C) 1287/2025. The Court recorded the submission of FCI that the termination orders would be reconsidered after giving the petitioners a hearing before the competent authority.

6. Pursuant to these orders, the respondents have issued orders dated 25.06.2025, maintaining the position that the petitioners do not fall within the category of “*Disabled Ex-Servicemen*” under the recruitment advertisement. This has brought the petitioners back before the Court.

7. Mr. Ajit Kakkar, learned counsel for the petitioners, states that interim applications for stay of the impugned order have also been filed, but have not come on record. Copies of the applications [filed under Diary No: 4399698/2025 in W.P.(C) 9105/2025 and Diary No: 4400118/2025 in W.P.(C) 9123/2025] have already been served upon learned counsel for the respondents. The applications have been handed over in Court, and are taken on record. The Registry is directed to number the applications. The applications are taken on board.

8. The contention of the respondents, as evident from the impugned orders, is that the petitioners do not fall within the category of “*Disabled Ex-Servicemen*”, as their disability was not “*attributable to military service*”, but “*aggravated by military service*”. It is contended that in terms of OM dated 21.02.1981, priority is to be accorded only to those ex-servicemen whose disability is attributable to military service.



9. *Prima-facie*, I do not read the OM thus. It records that “*Priority-I*” is to be accorded to servicemen disabled during war or in peacetime, whose disability is attributable to military service, but does not expressly state that other disabled ex-servicemen are not entitled to the benefit of reservation at all. The advertisement also does not expressly define the term “*Disabled Ex-Servicemen*”, which would bring a person within the ESM-II category. In this case, the disability is admittedly aggravated by military service.

10. Further, in the present case, the justification of the petitioners was sought prior to their appointment. The fact that they submitted their justification, and were subsequently issued posting orders and offers of appointment, suggests that the respondents were also satisfied that they fall within the required category. The orders of termination were issued more than one year after the petitioners had been appointed. They have now been in service for almost two years. In these circumstances, I am of the view that the petitioners have made out a *prima facie* case for grant of interim relief, and the balance of convenience is also in their favour.

11. During the pendency of the writ petitions, the respondents are directed to maintain *status quo*, with regard to the petitioners’ service.

12. Needless to state, the aforesaid observations are *prima facie*, and subject to the outcome of the writ petitions. The continued service of the petitioners, pursuant to this order, will not create any special equities in their favour.

13. Counter affidavits be filed within three weeks from today. The counter affidavit to be filed by FCI will also state as to whether benefit of the ESM-II category has been consistently denied to candidates falling



within the category of disability aggravated by military service, across all zones.

14. Rejoinders thereto, if any, may be filed within two weeks thereafter.

15. List before the learned Registrar on 28.08.2025, for completion of pleadings.

16. List before the Court on 10.12.2025.

PRATEEK JALAN, J

JULY 7, 2025
SS/KA/AD/