

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

TA No. 222/2009
[WP(C) No.1538/95 of Delhi High Court]

Ex AC U/T Kankan ChowdhuryPetitioner

Versus

Union of India & OthersRespondents

With

TA No. 227/09
[WP (C) No.4757/94 of Delhi High Court]

Ex. AC Virender SinghPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Sh.S.M. Hooda, Advocate
For respondents: Ms.Jyoti Singh, Advocate

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON
HON'BLE LT. GEN. M.L. NAIDU, MEMBER**

**ORDER
09.12.2009**

1. Both these petitions were transferred from Hon'ble Delhi High Court to this Tribunal.

2. Both petitions i.e. T.A. no. 222/2009 and T.A. No. 227/2009 involve identical question of law, hence same are disposed of by this common order.

3. For convenient disposal of both petitions the facts of case no.TA No.222/2009 titled as 'Ex. AC U/T Kankan Chowdhury vs UOI & Ors.'" are taken into consideration. Petitioner was enrolled in Air Force as regular combatant soldier on 02.02.1990. Petitioner developed the disease during the training and he was admitted in the military hospital where he was administered the treatment and a proper medical board was constituted which assessed the disability element of the petitioner as 100% for one year. Petitioner was granted the disability pension vide PPO No.06/14/B/564 vide letter dated 27.08.1991. Petitioner prayed that he may be treated as Ex-Serviceman as defined in the Ex-Serviceman (Re-employment in central civil services and posts) Rules, 1979. Petitioner was boarded out on medical ground on 25.09.1990. Thereafter, he applied for civil employment certificate from the authorities declaring him suitable for civil employment as the petitioner applied for civil post under the reserved category of Ex-Serviceman but the petitioner was not treated as an Ex-

Serviceman vide letter dated 25.04.1994. Thereafter, petitioner again applied for the issue of fresh discharge certificate vide application dated 10.05.1994 asking for endorsing the category of Ex-Serviceman but respondents rejected his request vide letter dated 23.05.1994. Hence, petitioner filed the present writ petition before the Hon'ble Delhi High Court which after constitution of Armed Forces Tribunal has been transferred to this Bench for disposal.

4. We have heard learned counsel for parties and perused the record.

5. Learned counsel for respondents has fairly produced before us the definition of 'Ex-Servicemen' which reads as under:-

DEFINITION OF EX-SERVICEMEN

1. The eligibility of the retired Defence personnel to the status of ex-servicemen is governed by the definition as laid down by Department of Personnel and Training. The definition has been undergoing changes from time to time. The following is the broad categorisation:-

(a) **Those released before 01 Jul 68.** Any person who had served in any rank (whether as Combatant or not) in the Armed Forces of the Union and has been released there from otherwise than by way of dismissal or discharge on account of misconduct or inefficiency.

(b) **Those released on or after 01 Jul 68 but before 01 Jul 79.** Any person who had served in any rank (whether as a Combatant or not) in the Armed Forces of the Union for a continuous period of not less than six months after attestation and

released there from otherwise than by way of dismissal or discharge on account of misconduct or inefficiency.

(c) Those released on or after 01 Jul 79 but before 01 Jul 87. Any person who had served in any rank (whether as a Combatant or not) in the Armed Forces of the Union for a continuous period of not less than six months after attestation if discharged for reasons other than at their own request or by way of dismissal or discharge on account of misconduct or inefficiency and not less than 5 years if discharged at own request.

(d) Those released on or after 01 Jul 87. Any person who had served in any rank (whether as a Combatant or not) in the Armed Forces of the Union and was released/retired with any kind of pension from Defence Budget or released on completion or specific terms of engagement with gratuity otherwise than at his own request or by way of dismissal or discharge on account of misconduct or inefficiency.

(e) Govt. of India, Ministry of Defence (Deptt of Ex-Servicemen Welfare) vide their Office Memorandum no.12/1/2005/D (Res) dated 01 Feb 06 has conveyed that it has been decided with the approval of Hon'ble Raksha Mantri that such Recruits who were boarded out/released on Medical Grounds and granted Medical/Disability Pension, will also be covered under the category of Ex-Servicemen for all practical purposes.

(f) Officer cadets boarded out of training academies will be treated as ex-servicemen only for the purpose of employment in civil services.

2. The eligibility of the person to the status of ex-servicemen will be governed by the definition in vogue at the time of his discharge and will not be affected by the changes in the definition subsequent to his discharge.

3. In addition the personnel of Territorial Army(TA) of the following categories viz. Pension holders for continuous embodied service; persons with disability attributable to military service; and gallantry award winners retired on or after 15.11.86 and the personnel of the Army Postal Service (APS) who are a part of the regular Army and retired from such

service, i.e. directly from the Army Postal Service itself without reversion to P&I Department with a pension or who have been released from such service on medical grounds, attributable to military service or circumstances beyond their control and awarded medical or other disability pension are also covered with the definition of ex-servicemen with effect from 19 Jul 89.

6. This was issued by the Government of India on 01.02.2006 and come into force with effect from 01.07.1987. As per this *all the persons including cadet/recruit who had been released from Army, shall be treated as 'Ex-Servicemen'*. Previously, some doubt was raised whether cadet/recruit who was discharged on medical grounds, can be given this benefit or not. This has also been clarified in clause (e) as reproduced as above that if a cadet/recruit boarded out on medical grounds and granted medical/disability pension then he shall also be covered under the category of Ex-Serviceman for all practical purposes. In view of this, the orders passed by the respondents dated 25.04.1994 and 23.05.1994 are set aside. The respondents are directed to issue fresh discharge certificate with an endorsement of petitioner falling in the category of Ex-Serviceman. The petition is accordingly allowed with no order as to costs.

7. In petition bearing No. TA No.227/09 titled as 'Ex.AC Virender Singh vs UOI & Ors.', the petitioner was boarded out on medical ground but at his own request. Therefore, respondents denied him the benefit of certificate of 'Ex-servicemen'. We do not see any reason to take different view in the matter. The petitioner was enrolled in the Air Force as combatant soldier on 16.06.1987 and discharged on medical ground on 23.07.1993 but he sought voluntarily retirement due to this disability. Now the benefit of Ex-Serviceman is denied to petitioner simply on the ground since he had opted to go voluntarily. We do not see any rationale once the man has been discharged on the basis of disability and he has been given disability pension where is rationale in denying him the certificate of ex-serviceman, it appears to be prima facie illogical and irrational. Hence, we also allow this petition. The authorities are directed to issue the fresh certificate of discharge with an endorsement of petitioner falling in the category of Ex-Serviceman. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
December 9, 2009