

26

COURT NO. 3,  
ARMED FORCES TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI

T.A. NO. 289 OF 2009  
(WP(C) No. 9990 OF 2005 of Delhi High Court)

IN THE MATTER OF :

Shri P.P. Singh .....Applicant  
Through Sh. S.N. Kalra, Counsel for the applicant

Versus

The Union of India and Another .....Respondents  
Through: Sh. Gaurav Liberhan, counsel for respondents

CORAM :

HON'BLE JUSTICE MANAK MOHTA, JUDICIAL MEMBER,  
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER

JUDGMENT

Dated: 16-12-2009

1. The applicant has filed a Writ Petition (Civil) bearing No. 9990 of 2005 before the Hon'ble Delhi High Court. On creation of the

Armed Forces Tribunal under the Armed Forces Tribunal Act 2007 the same was transferred to the Armed Forces Tribunal on 5.10.2009. The applicant has challenged the legality of impugned order dated 15.6.89 (**Annexure R-5**) the order of discharge from services without holding inquiry and without giving an opportunity to explain his position.

2. The applicant has further prayed that direction be issued to the respondents to reconsider grant of pensionary benefits and to set aside the order terminating his service and requested for consequential benefits.

3. The relevant points contained in the petition are discussed in the succeeding paragraphs.

4. The applicant joined the Indian Air Force (IAF) on 11.2.1976 and served as mechanical transport driver till his services were terminated on 24.7.1989 after 13 years and 164 days service under the clause **"Services no longer required – unsuitable for further retention in the IAF"**.

28

5. The applicant has submitted that since he had earlier been punished for minor alleged offences the termination of his services was illegal and unsustainable. In any case the termination just one year and 201 days short of making him eligible for a pension was against the principles of natural justice.

6. The respondents have refuted the contentions and stated that the applicant has approached the Hon'ble Delhi High Court intentionally after a lapse of 16 years of his termination. This had been done because the applicant was aware that old records are periodically weeded out and destroyed. The said file relating to the applicant was destroyed after expiry of its retention period. It was further alleged that the petition should therefore be rejected on grounds of delay alone. A reference was made in the case of Ex JWO BS Rathore Vs. UOI in W.P (C) No. 7849 of 2004 wherein the Hon'ble Delhi High Court dismissed the petition vide order dated 17.5.2004 with the observation **"in view of the fact that there is a delay of 11 years in filing writ petition, the same is dismissed"** (Annexure R-1).



29

7. It was submitted that the policy for discharge of "habitual offender" is laid down in Air HQ letter NO. HQ/C23406/685/PS dated 14.8.1984 (Annexure R-2) (Colly). It stipulates dismissal of personnel with a total number of six punishments (red and black entries) or four red ink entries. The applicant has nine entries (both red and black) and therefore he was declared a habitual offender. The competent authority that is the Air Officer-in-Charge Personnel (AOP), after giving due notice and considering the material related to the applicant and approved his discharge vide Air HQ letter No. HQ/C40801/190/PA-II dated 09 June 1989 under the authority of Chapter III Rule 15 Clause 2(g)(ii) of the Air Force Rules 1969 with the remark "SERVICE NO LONGER REQUIRED UNSUITABLE FOR RETENTION IN THE IAF". A copy of discharge order No. RO/2510/1/ERW (Dis) dated 15 June 1989 (**Annexure R-5**) (Colly).

8. The respondents also submitted that at the time of discharge the applicant had a total qualifying service of 13 years and 165 days whereas Para 121 of the Pension Regulations of the Air Force 1961 mandates a minimum qualifying service of 15 years for grant of

30

service pension and as such the applicant was not entitled to any pensionary benefits.

9. It was also stated that the applicant's case does not fall under the category of "double jeopardy" and discharge under the Habitual offender policy is valid and constitutional.

10. We heard the arguments and perused the records. During the course of arguments counsel for the applicant reiterated the grounds mentioned in the petition and made request that in the given circumstances termination order be quashed and he be treated in service and pensionary benefits may also be awarded. Counsel for the respondent refuted the contentions and contended that neither the termination order deserves to be quashed nor application is entitled for pensionary benefits. After considering the rival submissions as the termination order was passed in 1989 on the grounds of "habitual offender" and from the perusal of the records the applicant was given opportunity of being heard before termination orders has been passed. The applicant has filed after 16 years. He has not been able to satisfy that he was not awarded nine punishments. No interference is

31

required in this matter. Further as he has not completed 15 years of service therefore he is also not entitled for pensionary benefits. On the basis of the aforesaid discussion the application is liable to be quashed and that is hereby quashed.

11. No orders as to costs.

**MANAK MOHTA**  
**(Judicial Member)**

**Z.U. SHAH**  
**(Administrative Member)**

**PRONOUNCED IN THE OPEN COURT**  
**Today on Date: 16-12-2009**