

9

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH  
AT NEW DELHI

TA No. 533/2009

[W.P. (C) No.2353/1992 of Delhi High court]

Col. M.P. Kalra

.....Petitioner

Versus

Union of India &amp; Others

.....Respondents

For petitioner: None

For respondents: Lt Col S.Geroge

**CORAM:**

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

**ORDER**  
**16.12.2009**

1. This petition was transferred from Hon'ble Delhi High Court to this Tribunal.
2. By this writ petition, petitioner has prayed to issue a writ in the nature of certiorari or any other appropriate writ and order quashing the order dated 12.05.1992 passed by respondent

fo

no.1 and issue a direction quashing the orders dated 26.04.1989 and 11.05.1990.

3. Brief facts necessary for disposal of present petition are that petitioner is a retired Army officer and is challenging the action of respondent no.1 forfeiting 50% of his pension for a period of 2 years during which petitioner had accepted gainful employment, after his retirement, without prior permission of the Government. Petitioner retired as a Colonel from the Indian Army on 30.09.1988 on superannuation after attaining the age of 52 years. While in service, on 01.09.1988, he had applied for a post of Assistant Secretary in the "Institute of Electronics and Telecommunication Engineers", New Delhi. The said application for employment was forwarded to aforesaid institution through proper channel i.e. through respondent no.2 M.S. Branch. The petitioner was offered employment after selection on 28.11.1988. Petitioner was informed vide letter dated 27.12.1988 that he is required to obtain Government permission. The petitioner vide his letter dated 09.01.1989 in reply to letter dated 27.12.1988 sent the required information and stated interalia that as his application for employment was forwarded by respondent no.2 and further he

had informed respondent no.2 about his selection with the said institution. Vide letter dated 26.04.1989 respondent no.2 informed the petitioner that his request for seeking Ex-post-facto permission is declined as the petitioner joined in November, 1988 soon after getting offer from the institution. Thereafter, petitioner was informed vide order dated 12.05.1992 that his 50% pension for the period 29.11.1988 to 30.09.1990 will be forfeited. In the order dated 12.05.1992, it was mentioned that "*circumstances leading to his accepting gainful employment without prior permission of the Government, the President in exercise of the powers conferred by Regulations 4 and 5 of Pension Regulations for the Army Part-I(1961) read in conjunction with Army instruction 2/S/74 has been pleased to forfeit 50% of his pension for period with effect from 29 Nov 88 to 30 Sept 90 i.e. the period in which he is required to seek prior permission of the Government to taken any commercial employment.*" Hence, petitioner challenged the same by filing present writ petition which has been transfer to this Bench for disposal after constitution of Armed Forces Tribunal.

4. The contention of the petitioner was that in similar cases permission was granted to two persons namely Maj Gen

J.C. Alhuwalia(Retd.) and May Gen Prem Prakash (Retd.)  
whereas in case of petitioner, the permission has been refused.  
However, in reply respondents taken the position that both  
persons taken prior permission before joining commercial  
employment whereas petitioner did not sought such prior  
permission before joining commercial employment and hence, Ex-  
post-facto permission was declined to the petitioner.

5. Petition was admitted by Hon'ble Delhi High Court and  
interim order against recovery was passed and same was made  
absolute on 13.01.1993.

6. The petition was filed in the year 1992 and now it has  
come for final disposal before us.

7. We hardly see any reason to modify this interim stay  
confirmed by Hon'ble Delhi High Court. Although petitioner by  
abundant caution should have obtained prior permission but as  
we know job opportunities are scarce and if he loses the chance,  
he may not get the job in a private organisation. Therefore,  
looking to the circumstances he joined and sought Ex- post-facto

13

permission for joining the commercial organisation before the period of two years. This was a too small matter. The Authorities should have granted to him Ex-post-facto sanction as it was mere a formality because the institution he was joining would not compromise with the Defence establishment. It is purely a technical institute and some courtesy could have been extended by the respondents. However, it was not given to the petitioner. Looking to the facts and circumstances of the present case, we quash the orders dated 12.05.1992, 26.04.1989 and 11.05.1990. Petitioner's pension is restored and no recovery should be made from pension of petitioner.

8. The petition is accordingly allowed with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

**M.L. NAIDU**  
(Member)

**New Delhi**  
**December 16, 2009**