

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

OA/02/10

**HAVILDAR SHIV KUMAR
(6380173-M)
S/O. SH. CHIRANJI LAL SHARMA
R/O. VILL. KHAYMAI, P.O. CHILAWATI
TEHSIL GABHANA
DISTRICT ALIGARH U.P.**

THROUGH : SH. J.S.MANN, ADVOCATE

...APPLICANT

VERSUS

- 1. UNION OF INDIA
THROUGH ITS SECRETARY
MINISTRY OF DEFENCE
NEW DELHI-110 001.**
- 2. CHIEF OF ARMY STAFF
SENA BHAWAN
NEW DELHI.**
- 3. ADDL DATEDE GENERAL PERSONNEL SERVICES
ADJUTANT GENERAL'S BRANCH
ARMY HEADQUARTERS
'A'WING, SENA BHAWAN
DHQ PO
NEW DELHI-110 011.**
- 4. HEAD QUARTERS 50 (I) PARA BRIGADE
C/O 56 APO**

THROUGH : LT COL NAVEEN SHARMA

...RESPONDENTS

CORAM :

**HON'BLE SH. S.S.KULSHRESTHA, MEMBER
HON'BLE SH. S.S.DHILLON, MEMBER**

ORDER

Dated : 23.03.2010

1. This petition has been brought for quashing the order dated 15.12.2008 passed by the Chief of the Army Staff whereby rejecting the statutory complaint dated 28.04.2008 filed by the applicant. Simultaneously, prayer has also been made that he be granted extension in age in view of the policy issued by the Army Headquarters vide Letter No. B/33535/AG/PS-2(C) dated 18.11.2005, read with Para 149 (C) to Regulation for the Army and Para 319 of Combined ROI ASC 1993. It is contended on behalf of the applicant that he falls within the eligibility zone and the discretion was to be exercised by the Chief of the Army Staff by taking into consideration his eligibility and the attending circumstances such as that his case was recommended by his superiors for consideration. Moreover, in the exceptional circumstances, the course he has attended and his posting in 50 Parachute Brigade, which were referred to in his representation, ought to have been taken into consideration.

2. This application is resisted on behalf of Union of India contending that the policy decision, as has been referred by the applicant, if read in totality, would itself clarify that the applicant is not eligible to

be considered for giving the benefit of enhancement in age. Whatever be the course he had done during his posting, it would not make out to be an exceptional case for which the benefit of that scheme is to be given.

3. In order to appreciate the points involved in this application, it shall be useful to make a brief narration of the facts. Havildar/Clerk Shiv Kumar was enrolled in Army on 27.03.1984 and got converted into graduate entry direct Havildar Clerk on 24.06.1990. He had also completed Promotion Cadre for JCO (PCJ) and NCO Clerk Course (NCC) successfully and was eligible for promotion. But, for reasons not known to the applicant, till this date he has not been granted any promotion. It is next contended that the applicant had undergone 'PARA MOTOR' course in Army Adventure Wing that comes under High Risk Adventure Activities. In the given circumstances, the applicant was entitled for relaxation in age by one year for promotion to Junior Commissioned Officer (JCO). It is also submitted by him that his candidature was rejected by the impugned order without taking into consideration the important features that the 'PARA MOTOR' course would fall within the scope of High Risk Adventure Activities. In order to appreciate as to how far under that scheme the applicant is entitled to resort to the benefits of enhancement in age of superannuation, the

relevant para of the Regulations for the Army 1987 may be extracted here under:

149. Promotion –JCOs- (a) NCOs except those given in sub para (b) below will not normally be promoted to the rank of JCO if over 40 years of age or with more than twenty two years’ service.

(b) NCOs of the undermentioned categories will not be promoted to JCO rank if over 46 years of age or with more than 25 years of service:-

- (i) Clerks GD, GD (SD) and Store.**
- (ii) Storekeeper (Storeman Technical)**
- (iii) Ammunition (Technicians) Examiners**
- (iv) Personal Assistants (ASC)**
- (v) Instructors AEC**

(c) The age and service limits given in sub-paras (a) and (b) above may be waived in very exceptional cases with the permission of the COAS.

4. In pursuance of the above Regulations, guidelines were also issued by the Additional Directorate General Personnel Services vide Letter No.B/33535/AG/PS-2 (C) dated 18.11.2005 which in particular also speaks about the exceptional circumstances when the benefit of enhancement in age can be granted. It reads as under:

(a) A case based on an “outstanding achievement” by an individual which bring credit to the Army.

(b) A most peculiar case normally rarely to happen and cannot be used as a precedent later to seek for a similar treatment to another case.

(c) A rare qualification provided that the retention of an individual by virtue of that qualification is an inescapable requirement of the service.

.....Exceptional circumstances as specified in the above letter of 09 Jan 62 do not have any scope for discretion on case to case basis. Excellence in sports such as representing the Services in any sports activities and high risk adventure activities etc. could also be considered as exceptional circumstances depending on the merit of case. Individuals getting gallantry awards like PVC, MVC, AC etc may also qualify as exceptional circumstances for grant of relaxtion.

5. In the letter, exceptional circumstances have been spelled out that where the Army Personnel has excellence in Sports, such as representing the Services in any sports activities and high risk adventure activities etc. are to be taken into consideration. There is nothing on record that the applicant at any point of time had excelled in Sports. However, arguments were advanced on behalf of the applicant segregating the part of sport activities and kept the requirement to be confined at high risk activities. We find logic in the submission of the petitioner that here the word ‘and’ may also be interpreted to mean ‘or’.

Reliance may be placed in the case of *Municipal Corporation of Delhi Vs. Tek Chand Bhatia*, AIR 1980 SC Page 360. But petitioner undergoing the course such as “PARA MOTOR” course would not be construed to be the high risk adventure activity. Merely getting a reply from one or other authority and recommendations made by his seniors would not render these ‘exceptional circumstances’ to be interpreted with a different meaning. Further, emphasis has been made on behalf of the applicant that harmonious interpretation of the ‘exceptional circumstances’ is to be made. As has already been indicated above, here exceptional circumstances have been laid down, which are clear and it would not require any other interpretation. Here the Regulation 149 and the guidelines are in themselves precise and unambiguous then to expound those words, natural and ordinary sense be applied. (*See Shri Ram Vs. State of Maharashtra*, AIR 1961 S.C. 674). **Having regard to the facts and circumstances of the case, the applicant does not fall within the scheme for the enhancement of the age. There is no merit in the case. Accordingly, the application is dismissed.**

S.S.DHILLON
(Member)

S.S.KULSHRESTHA
(Member)

**PRONOUNCED IN THE OPEN COURT
TODAY ON 23RD MARCH, 2010**