

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

**T.A. No. 182 of 2010
(Delhi High Court W.P (C) No. 9792 of 2009)**

IN THE MATTER OF:

Havildar Ashok Kumar Singh**Applicant**
Through Major K. Ramesh (Retd), counsel for the applicant

Versus

Union of India and Others**Respondents**
Through: Ms Jasmine Ahmed counsel for the respondents

CORAM:

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

Order

Date: 10 -5-2010

1. The applicant filed a writ petition (civil) No. 9792 of 2009 in the Hon'ble Delhi High Court praying that orders of his discharge which was initiated vide movement order dated 20.6.2009 (Annexure P-2) be

quashed and he be granted two years extension of service. The same was transferred to the Armed Forces Tribunal 5.11.2009 on its constitution.

2. The brief relevant facts are as under that the applicant was enrolled in the Army on 06.7.1985. He was awarded 7 days RI for committing an offence under Army Act Section 40 (a) on 2.10.1995 for using criminal force against a superior officer (Annexure P-3). He was denied 2 years extension of service vide order of his discharge dated 20.6.2009 (Annexure P-2) in view of Army HQ policy dated 21.9.1998 (Annexure 5) which debars extension of service to persons for specified category of offences. The applicant contends that another Army HQ promotion policy dated 10.10.1997 (Annexure P-4) prohibits promotion for three years for the same offences. It is submitted that the applicant committed the offence when he was a sepoy way back in 1995. Subsequently he was promoted to the rank of havildar (Hav) on 01.1.2007 and qualified in cadre for promotion of JCO on 30.9.2008. The contention of the applicant is that if he can be considered for promotion there is no reason for being denied extension 14 years after the commission of his one and only offence. This is violation of Articles

14 and 16 of the Constitution. The applicant has prayed that the order of his discharge communicated vide movement order dated 20.6.2009 be quashed and he be granted two years of extension of service.

3. The respondents in their counter affidavit have brought out that the applicant, in 1995, had used criminal force against a superior officer and was punished under Army Act Section 40 (a) and thus he was permanently debarred from grant of extension of service vide Army HQ policy dated 21.9.1998. The respondents have stressed that promotion and extension of service are entirely different subjects and policies governing them vary from each other. The respondents have therefore recommended that the application be rejected.

4. We have heard the arguments at length and perused the records. We have also considered the rival submissions made by the learned counsel of the parties and also perused Army HQ policy for promotions dated 10.10.1997 (Annexure P-4) and Army HQ policy for extension dated 21.9.1998 (Annexure P-5). The applicant was punished under

Army Act Sec 40 (a) on 2.10.1995. The promotion order is not under challenge before us, otherwise it is related to an incident of 1995. During course of arguments an attempt was made to show that the applicant should not have been punished under Army Act Section 40 (a). As the said punishment was not challenged now it cannot be challenged before us at this belated stage. Contentions placed in this respect are not sustainable and hereby rejected. As per promotion policy punishment under Army Act Section 40 (a) debars promotion for three years. For extension in service the policy dated 21.9.1998 would be applicable. Under that policy if an Army person is convicted under Section 40 (a) he would not be entitled for extension. These two policies are meant for different purposes. It is clear that extension in service cannot be claimed as in the case of promotion. Thus the contentions of the applicant that if he was eligible for promotion why should he not be given extension, are not sustainable. There is no commonality between them. Policy for extension cannot be compared with other policies. The policy for extension has not been challenged in this petition. They would depend on the requirements of the service (Army). The applicant can not draw any relief from the policy on promotion dated 10.10.1997 (Annexure P-4). He is not entitled for extension vide policy letter dated 21.9.1998

(Annexure P-5). There is no illegality and infirmity in the impugned order dated 20.6.2009. Application is hereby dismissed. No costs.

MANAK MOHTA
(Judicial Member)

Z.U.SHAH
(Administrative Member)

Announced in the open court
Dated: 10-5-2010