

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

T.A. No. 189 of 2010

WP (C) No 9691 OF 2009 of Delhi High Court

IN THE MATTER OF:

Lance Naik Nagappa KGApplicant
Through Maj (Retd) K Ramesh, counsel for the applicant.

Versus

Chief of the Army Staff & OrsRespondents
Through: Col (Retd) R Balasubramanian, counsel for the
respondents.

CORAM:

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

JUDGMENT

Date: 08/10/2010

1. The applicant had filed WP (C) 9691/2009 in Hon'ble Delhi High Court and the same was transferred to this Tribunal on 05/11/2009. The applicant has prayed that the order of his discharge dated 26/02/2009 (Annexure P-2) be set aside and he be reinstated and promoted.

2. The applicant was enrolled in the Army (AOC) on 17/07/1989. Being a Low medical category he was discharged without invaliding medical board on 30/06/2008. He was however reinstated on 13/02/2009 subsequent to judgement dated 20/11/2008 in the case of Subedar Puttan Lal.

3. The applicant avers that he was discharged again for second time vide order dated 26/02/2009 (Annexure P-2). He was struck of strength on 31/07/2009.

4. The applicant filed writ petition on 22/06/2009 to seek reinstatement on the ground that he should not have been discharged without a proper invaliding board.

5. The applicant states that after his reinstatement he should have been promoted Naik because he was entitled to all consequential benefits and his batch mates were already Naiks.

6. In their counter affidavit the respondents have stated that the applicant was enrolled on 17/07/1989. He was downgraded to medical category P-3 (Permanent) and discharged on 30/06/2008 on medical grounds. He was however reinstated on 13/02/2009 subsequent to the judgement dated 20/11/2008 in the case of Subedar Puttan Lal.

7. The applicant was due for all consequential benefits but he could not be detailed for promotion cadre to Lance Naik since he was not eligible for the same as he had not passed Army Certificate of Education Class III which was a necessary for pre-requisite for detailment. The applicant was thus not eligible for promotion to the rank of Naik, unlike his other batch mates who had become eligible, attended the cadre and promoted to Naik.

8. The applicant was discharged on 31/07/2009 on completion of his terms of engagement after 20 years service as laid down vide Government of India, Ministry of Defence letter dated 03/09/1998. The respondents maintain that the applicant was not discharged on medical grounds as projected by him and thus there was no requirement of holding an invaliding medical board. The respondents maintain that the applicant has presented wrong facts and the case be dismissed with costs.

9. In a rejoinder to the counter affidavit the applicant has reiterated the same points projected by him earlier.

10. We have heard the arguments and perused the record. The applicant was initially discharged on 30/06/2008 on medical grounds without holding the requisite invaliding medical board. He was thus

reinstated on 13/02/2009 with full back wages. The applicant was not eligible for promotion to the rank of Naik since he had not qualified on Army Certificate of Education Class -III and was thus ineligible for being detailed on promotion cadre to Lance Naik. The applicant should have made attempts to qualify on the same since he was aware of the qualifications for further promotion.

11. The order of the discharge of the applicant on 31/07/2009 (Annexure P-2) clearly indicates "**on fulfilling terms of engagement/age limit**". The applicant was not discharged due to medical ground and there was no requirement of holding an invaliding medical board. He was also not entitled for promotion to higher rank. We note that the complete facts have not been narrated in application by the applicant. No relief is warranted. Application dismissed. No costs.

Z.U.SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the day of 08th October, 2010