

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

T.A. No. 249 of 2009

W.P.(C) No.8159 of 2009 of Delhi High Court

IN THE MATTER OF:

Devi Singh**Applicant**
Through: Mr. B.L. Goswami, Counsel for the applicant

Versus

Union of India & Ors.**Respondents**
Through: Mr. Ankur Chibber, Counsel for the respondents

CORAM:

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

JUDGMENT

Date: 09/12/2010

1. The petitioner/applicant filed Writ Petition (Civil) No.8159/2009 before the Hon'ble Delhi High Court on 06.04.2009 challenging the order of his discharge with a prayer to reinstate the applicant in service with full back wages. Along with the writ petition the petitioner/applicant has also filed an additional affidavit for condonation of delay in filing the writ petition. Thereafter, the case was transferred

to this Tribunal. Notice was issued to the respondents and respondents filed their counter.

2. Brief facts for the just disposal of the application are narrated as under.

3. The applicant was enrolled on 28.12.1995 in Indian Army as guard in Regiment Center, Kamptee. It is contended that on 21.06.1996 he was discharged from the army under Army Rule 13(3) Item (IV) as unlikely to become an efficient soldier, without holding any test by Invaliding Medical Board. He further states that pursuant to passing of a decision by Hon'ble Delhi High Court in the case of ***Subedar (SKT) Puttan Lal vs. Union of India & Ors.*** on 20.11.2008. He also sent notice to the concerned officer, but the respondents have neither replied nor taken any action nor any redressal was granted. Thereafter, he filed the writ petition.

4. The respondents in their counter affidavit have submitted that the applicant was weak in training and failed to

pass basic training i.e. drill and running and he was relegated twice and also given extra time to complete his basic training. Yet throughout training period he was found weak in all aspects of training and due to his weakness and not taking keen interest in the exclusive training, he did not come up to the required standard and could not complete his basic military training. It was also contended that passing of basic military training tests were mandatory. Thereafter, on 20.06.1996 he was discharged as unlikely to become an efficient soldier under Item (IV) of the table 13(3) of the Army Rule, 1950. He was not placed in any low medical category, therefore, there was no need of holding invaliding medical test. His legal notice was considered, rejected and conveyed vide letter dated 23.03.2009.

5. We have heard the arguments. During the course of arguments learned counsel for the applicant reiterated the grounds as stated in the application and contended that additional chances, to pass the requisite test, should have been given, but the respondents failed to do so. A prayer

was made to quash the discharge order and he be reinstated. It was also contended that before discharge no notice was given to him. Learned counsel appearing for the respondents stated that despite several chances applicant could not pass the requisite tests. Thereafter, he was discharged as per rules after considering all aspects. There was no need of holding Invaliding Medical Board as he was not discharged under LMC head. The applicant is not entitled to any relief. He was discharged in the year 1996, but had sent legal notice on 24.02.2009, after a gap of 13 years. Learned counsel for the respondents also placed reliance on the decision given in ***Union of India & Ors. v. Dipak Kumar Santra*** (2009) 7 SCC 370, in which a recruit failed twice in proficiency and aptitude test and was discharged. His discharge was maintained by the Apex Court.

6. We have considered the rival submissions and perused the record as well as the judgment cited by learned counsel for the respondents. From the perusal of record it is revealed that due chances were given to the applicant for

passing the requisite tests, but he failed to pass the same. The applicant has failed several tests during training. The contentions of the applicant that extra chances were not given are not correct. There was no need to give separate notice as he was aware of test result. He was discharged under the Army Rule 13(3) Item (IV) in the year 1996 as unlikely to become an efficient soldier. For that before discharging there was no need of holding Invaliding Medical Board. The applicant was not discharged on the basis of lower medical category, therefore, the judgment referred by him given in **Subedar (SKT) Puttan Lal** case (supra) does not support his contentions. The applicant was discharged in 1996 and he approached the Court in the year 2009 at a very belated stage. There is no ground for condoning the inordinate delay of 13 years in approaching the Court. On the basis of the aforesaid discussion, the applicant is not entitled to any relief. Our conclusion also gets support from the judgment given in **Dipak Kumar Santra** (supra) cited by learned counsel for the respondents.

7. In the net result, no interference is required, the application filed by the applicant is liable to be dismissed. The same is, accordingly, dismissed. No order as to costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the day of 09th December, 2010