

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

T.A. No. 282/2009

[WP(C) No.151/97 of Delhi High Court]

Ex Capt J.S. Dhillon

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh.Mohan Kumar, Advocate

For respondents: Sh.Ankur Chibber, Advocate

CORAM:

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

**ORDER
12.03.2010**

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.
2. The only short question involved in the present petition is with regard to calculation of pension, whether his 2/3rd Non Commissioned Service is to be counted for the purpose of pension or full period should be counted for the pension.

3. Petitioner was enrolled in the Army Medical Corps on 04.09.1961 as Non Commissioned Officer and he served in the ranks from 04.09.1961 to 06.09.1971. Thereafter, he was granted short service commission. He was dismissed from services on 03.03.1983 as a Captain. He was not granted pension because he has not completed 20 years of qualifying service. As per order dated 21.06.1995, it was mentioned that since the petitioner served in other ranks from 04.09.1961 to 06.09.1971 i.e. 10 years and 3 days, therefore, only $2/3^{\text{rd}}$ of service is counted for the purposes of qualifying service for pension that comes to 6 years and 240 days and he has put in 11 years and 178 days as commissioned service. This total period comes to 18 years and 45 days (55 days). Therefore, he was not eligible for pension but he was granted 50% gratuity by the order dated 28.06.1994. Now petitioner's grievance is that by not counting his non commissioned service fully, he could not complete qualifying period of 20 years for full pension. It is submitted that in view of subsequent amendment now full service period is to be counted for pension. Our attention was invited to Regulation 26 of Pension Regulations for the Army, 1961. The relevant portion read as under:-

26

(a) Commissioned Service- Service as permanent regular commissioned officer and if it is preceded without a break previous service as commissioned officer in the Indian Army, Navy and Air Force, irrespective of the type of commission, jointly or severally, subject to the refund in the prescribed manner to the Government, of the gratuity, if any, other than war gratuity, received in respect of such service.

Provided that

- (i) Any service which was forfeited by special orders, and
- (ii) Any period of unauthorised absence unless pay and allowances are admitted for the period of absence.

Shall not be regarded as qualifying service, nor any period of antedate except as provided in clause (9).

(b) **Service in "the Rank Below that of Commissioned Rank-** Service Armed Forces in the rank below that of commissioned officer, if followed by permanent regular commissioned service without a break, subject to the refund in the prescribed manner of the Government of the gratuity, if any, other than war gratuity, received in respect of such service.

4. As per aforesaid provision now the whole period shall be counted for qualifying service. Clause (b) says that Service Armed Forces in the rank below that of commissioned officer, if followed by permanent regular commissioned service without a break, subject to the refund in the prescribed manner of the Government of the gratuity, if any, other than war gratuity, received in respect of such service. If that is to be taken into consideration then 10 years and 3 days period of non commissioned service i.e. 04.09.1961 to 06.09.1971 and

commissioned service of 11 years and 178 days that makes it to 21 years, 5 months and 29 days that entitles him to full pension. The respondents has decided the matter on the basis of earlier unamended provision of law but this Section 26 now enable the petitioner to count his full non commissioned service for the purposes of qualifying service of 20 years for pension. Therefore, the order dated 21.06.1995 is set aside and respondents are directed to reconsider the case of petitioner for grant of pension on the basis of regulation 26 as stated above. However, the amount of gratuity which has been paid to the petitioner shall be refunded in case he has collected. The entire arrears should be worked out within 3 months from today and be paid to the petitioner with 12% interest.

5. The petition is allowed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
March 12, 2010.