

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

T.A. No. 288/2010
[W.P. (C) No. 1470/2007 of Delhi High Court]

Maj. (Retd.) Parminder SinghPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Ms. Tinu Bajwa, Advocate.

For respondents: Sh. Mohan Kumar, Advocate, proxy counsel for
Sh. Anil Gautam, Advocate.

CORAM:

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

**ORDER
04.08.2010**

1. Present petition received on transfer from Hon'ble Delhi High Court after formation of this Tribunal.
2. Petitioner by this petition has prayed that by writ of certiorari letters dated 24.08.2005, 04.05.2006, 05.04.2006, 14.06.2006 and 28.06.2006 may be quashed and respondents may be directed to pay various dues such as service gratuity on completing more than 10 years of service and transfer grant and other terminal benefits.

3. Petitioner was commissioned in Indian Army on 10.06.1995 and he continued to serve in Indian Army without any blame and thereafter he was relieved from service on 25.06.2005 and he claimed his terminal benefits like gratuity as he had put in more than 10 years of service. This request was not exceeded to by the respondents and his request for grant of terminal benefits and gratuity as per Regulation 25 (b) was denied to him. Hence, he filed the Writ Petition in Delhi High Court in the year 2007 but no reply was filed till this date. We have also granted time to the respondents to file their reply on 27.01.2010 and from time to time adjournments were granted but till this date no reply was filed by the respondents.

4. The main contention of the petitioner is based on the decision rendered by Hon'ble Supreme Court in the case of Union of India and Others vs. Lt. Col. P.S. Bhargava - (1997) 2 SCC 28. Learned counsel for the petitioner submitted that petitioner has put in more than 10 years of service, therefore, as per Regulation 25 (b), he is entitled to a gratuity. But it appears that consistently the respondents have taken the position that he is not entitled as he has voluntarily sought discharge. A similar question has come

up before Hon'ble Supreme Court in the case of Lt. Col. P.S. Bhargava (supra) and in that case their Lordships have observed after interpreting the Regulation 16 which deny the pension to the incumbent on resignation and after discussion their Lordships have observed as under :-

“Regulation 16 does not cover a case of voluntary resignation. Regulation 16 (b) does refer to a case where an officer who has to his credit the minimum period of qualifying service being called upon to resign whose pension can be reduced. Had the Regulations intended to take away the right of a person to the terminal benefits on his voluntary resigning, then a specific provision similar to Regulation 16 (b) would have been incorporated in the Regulations but this has not been done. Once an officer has to his credit the minimum period of qualifying service, he earns a right to get pension and as the Regulations stand, that right can be taken away only if an order is passed under Regulation 3 or 16. The cases of voluntary resignations of officers, who have to their credit the minimum period of qualifying service are not covered by these two Regulations and, therefore, such officers, who voluntarily resign, cannot be automatically deprived of the terminal benefits”.

In view of the decision given by Hon'ble Supreme Court, the grievance of petitioner is justified, incumbent who voluntarily resigns the terminal benefits flowing from the service rendered by him, cannot be denied. Their Lordships have also discussed the scope of Regulation 16 and their Lordships have

held that terminal benefits can only be denied to the incumbent in terms of Regulation 16 but in case incumbent resigns voluntarily, whatever benefits accrued to him cannot be denied. This was the case of a resignation with the request to release his pensionary benefits. In the present case, petitioner is not entitled to pensionary benefits because he has not put in 20 years of service, petitioner in this petitioner is claiming only gratuity as per Regulation 25 (b) as he has put in 10 years of qualifying service for gratuity. We do not see any reason to deny him this gratuity as per the law laid down by Hon'ble Supreme Court in the case of Lt. Col. P.S. Bhargava (supra). Hence, we allow this petition and direct the respondents to release the gratuity to the petitioner and other terminal benefits as are admissible to him in accordance with law. The whole exercise may be completed as far as possible within three months from today. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
August 05, 2010.