

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

**T.A. No. 321 of 2009
(Delhi High Court W.P (C) No. 3934 of 1997)**

IN THE MATTER OF:

Ex Rect Rameshwar Dayal**Applicant**
Through J.K. Nayyar, counsel for the applicant

Versus

The Union of India and others**Respondents**
Through: Maj (Retd) Mohan Kumar with Ms Rashmi Singh, counsel for respondents

CORAM :

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

Order

Date: 18-3-2010

1. The applicant had submitted a writ petition (civil) No. 3934 of 1997 in the Hon'ble Delhi High Court challenging the impugned order dated 1.7.1997 passed by the Director, Defence Service Corps (in short

DSC) rejecting his claim for re-enrolment. The same was transferred to this Tribunal on 8.9.2009 under the Armed Forces Tribunal Act of 2007.

2. The applicant, born on 1.6.1963, was enrolled in the Corps of Signals on 6.7.1984 and was undergoing training at Signals Centre, Jabalpur where he completed his initial basic military training. He, however, could not pass the Signals electronic subject and hence he was discharged on 6.12.1986, after rendering two years and five months service. The applicant tried between 1987 to 1994 to get the documents, without success. The counsel for the applicant served a legal notice to the respondents on 31.1.1995 (**Annexure A-5**) and on 16.8.1995 (**Annexure A-4**) applied for issue of his discharge book. The same was provided vide Signals Records letter dated 24.11.1995. On 3.1.1996 (**Annexure A-6**) the counsel for the applicant sent a second legal notice for issuance of the discharge order. He was however informed by Army Headquarters that the discharge order had not been issued he was discharged as “Service no longer required”. He was discharged on the discharge roll and discharge book was accordingly issued by Signals Records.

3. On 7.6.1997 (**Annexure A-2**) the applicant applied for re-enrolment in the Defence Security Corps (DSC). The same was rejected vide impugned order by the Directorate of DSC on 1.7.1997 (**Annexure A-1**) on the grounds that he had not completed five years of qualifying service in the Armed Forces. The applicant submits that this was an illegal stipulation and could have been relaxed in his case. He contends that on the basis of his previous service rendered in the Army he is entitled for re-enrolment in the DSC and the minimum qualifying service of five years can be relaxed as he had completed his basic military training and only failed to qualify in the technical training. The applicant further contends that he was served with a show cause notice and discharged under Army Rule 13 (3) III (v) “Services no longer required”. Since he was in medical category AYE and his character was assessed as “Very Good” he was entitled for re-enrolment being an ex-servicemen but his claim was wrongly rejected. The applicant has prayed that the impugned order of Directorate of DSC dated 1.7.1997 be quashed and an order be issued to the respondents directing them to relax the condition of qualifying service of five years and his petition for re-enrolment in DSC be considered.

4. The respondents in their counter affidavit have stated that the applicant could not pass his minimum qualifying technical trade tests despite being provided extra opportunity and training. The applicant was served a show cause notice on 23.9.1986 and was subsequently discharged on 6.12.1986 under Army Rule 13 (3) Item III (v) “Services no longer required”. The applicant had rendered only two years and 153 days service in the Army. The minimum qualifying service for eligibility for re-enrolment in the DSC is five years colour service. Further the persons discharged from Armed Forces under the clause “Services no longer required” are also not eligible for enrolment in the DSC as per relevant policy. The applicant therefore did not meet the requisite eligibility conditions for enrolment in the DSC. There is also no provision for relaxation of the prescribed eligibility criteria. The respondents have pointed out that the applicant had approached the Court 10 years after his discharge on 6.12.1986 from the Army. His application is thus not maintainable due to delays and laches and the same may be dismissed.

5. We have perused the records and heard the arguments at length. It was contended that the discharge order dated 6.12.1986 was an

administrative action and was not a punishment. Therefore the applicant was entitled for re-enrolment on the basis of his past services in Army. The impugned order dated 1.7.1997 is unjust and unfair and is liable to be quashed. The respondent should have relaxed the condition of five years qualifying service for re-enrolment. On the other hand learned counsel appearing on behalf of respondent rebutted the contents and urged that the applicant was not fulfilling the requisite criteria for re-enrolment. His claim was therefore rightly rejected. Further there is no provision for relaxation of basic criteria. The main point remaining for consideration is whether the impugned order dated 1.7.1997 is suffering from any illegality and requires interference.

6. The applicant, while still a recruit was discharged from the Army after serving two years and 153 days because of his failure to qualify in technical training. Show cause notice was issued and thereafter he was discharged on 6.12.1986 under Army Rule 13 (3) III (v) “Services no longer required”. This order is not under dispute before us. The applicant does not meet the mandatory qualifying requirement of having rendered five years colour service in the Army for re-enrolment into the DSC as per the requirement of policy dated 15.12.1985 (amended time to

time). We have also gone through the said policy. We have also considered the contention whether this basic requirement of qualifying service of five years could have been relaxed. We are of view that such relaxation was not permissible. There is also no provision for relaxation of this mandatory requirement. There is no perversity or illegality in the order. No grounds for interference is made of. Application is dismissed. No costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 18-3-2010