

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

T.A. No. 326/2009

[W.P. (C) No. 7534/2009 of Delhi High Court]

Shashi Kumar

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh.Yashpal Rang, Advocate.

For respondents: Sh.Ankur Chibber, Advocate with Capt Alifa Akbar.

**CORAM:**

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

**ORDER  
28.07.2010**

1. The present petition has been transferred from Hon'ble Delhi High Court to this Tribunal on its formation.

2. Petitioner by this petition has prayed that his discharge order dated 31.12.1995 may be quashed and a

direction may be given to the respondents to grant him the permanent commission in AMC(NT) notionally, from the date it was granted to the other candidates, selected for 1986 batch, with all consequential benefits.

3. The petitioner was enrolled in Army Medical Corps on 14.07.1971. He discharged his functions satisfactorily and he was promoted as Naik in 1983 and as Havildar on 06.11.1985. In the year 1986, he applied for AMC (NT) Permanent Commission, to be appointed as the Commissioned Officer against 1986 quota. On 07.01.1987 interview letter was issued asking him to appear on 01.02.1987 and the interview was held on 01.02.1987 to 05.02.1987. He was selected by Service Selection Board, after clearing the interview and he was placed at serial no.31 in merit list out of total 62 candidates. The recommendations of the Service Selection Board were forwarded to respondent no.3 for final selection. The petitioner was finally selected and on 03.12.1992, he was promoted as Naib Subedar. On 21.10.1993 and 23.03.1994, he applied for pre-mature retirement. However, both his requests were rejected. On 11.08.1995, he made afresh

request for pre-mature retirement. Meanwhile, it is alleged that a case was filed against the appointments made by respondent no.2 against 1986 batch granting the permanent commission, ignoring the merit list prepared by Service Selection Board came up for hearing before the Hon'ble Supreme Court in Civil Appeal No.2362 of 1988 titled as Hav Virender Singh vs. Union of India and Civil Appeal No.2363 of 1988 titled as Hav Hans Raj Sharma vs. Union of India and ors. On 09.09.1994, the Hon'ble Supreme Court was pleased to allow the appeals directing the respondents to grant permanent commission in AMC (NT) from the date, it was granted to other candidates, selected for 1986 quota. However, it was also ordered that selected candidates who are already working on promotional post shall not be disturbed. This judgment is reported in 1994 Suppl. (3) SCC page 498 whereby the Lordship of Hon'ble Supreme Court allowed the appeals and *directed the respondents to allow Permanent Commission in the Army Medical Corps (Non-Technical) to the appellants from the date it was granted to other candidates selected for 1986 quota and further directed that appellants shall be entitled notionally to all consequential benefits including promotion and seniority, except the payment of back wages.* However, the Lordship made

it clear that *while determining seniority of the appellants the seniority or promotion given to any selected candidate who is already working on a promotional post shall not be disturbed*. In view of this new development, petitioner thought it proper to revoke his request for pre-mature retirement. Therefore, he revoked his letter of resignation on 11.08.1995, orally on 26.12.1995 and in writing on 28.12.1995. Before it could happen, Authorities has already accepted his resignation on 09.10.1995 and relieved him with effect from 31.12.1995. Meanwhile, he filed a writ petition before the Hon'ble Punjab & Haryana High Court and Hon'ble Punjab & Haryana High Court directed the respondents to dispose of his representation and the said representation was disposed by the respondents on 18.02.2003. Despite the revocation of letter of resignation by the petitioner orally on 26.12.1995 and in writing on 28.12.1995, he was relieved from the post. Therefore, he approached the Hon'ble Delhi High Court by filing present writ petition which was transferred to this Tribunal on its formation.

4. Learned counsel for the petitioner submitted that once the petitioner has revoked the letter of resignation before he was

relieved, the respondents should not have been acted upon earlier offer of resignation and petitioner should not have been relieved on 31.12.1995. Learned counsel submitted that once the offer has been revoked before it can be accepted then that offer cannot be acted upon.

5. Learned counsel for the petitioner has cited the judgments of Hon'ble Supreme Court in the cases of Shambu Murari Sinha vs. Project & Development India & Another – (2000) 5 Supreme Court Cases 621, J.N. Srivastava v. Union of India – (1998) 9 SCC 559, Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia – (1997) 4 SCC 280 and Balram Gupta vs. Union of India – 1987 Supp. SCC 228.

6. In the case of Shambu Murari Sinha vs. Project & Development India & Another their Lordships have held that *the question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective.* The question answered in favour of petitioner.

Same view was taken in subsequent judgments by Hon'ble Supreme Court in cases Balram Gupta v. Union of India, J.N. Srivastava v. Union of India and Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia in which it was held that *the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed.*" Same reasoning is applicable in the present case.

7. However, learned counsel for the Union of India has strongly submitted that the procedure in the Army is something different. Here the resignation even after acceptance takes time for relieving the person from service. It is true that if the resignation is accepted and incumbent has not been released till then jural relationship like Master and Servant continue between the incumbent and the Army.

8. In this connection, our attention was invited to Rule 11 of Army Rules which says that *a person who is discharged that discharge can be cancelled by the Authority, superior to the Authority either without any condition or subject to such conditions*



*as such discharged person accepts.* Therefore, Authority has a right to revoke the discharge order then similarly the incumbent has also right to withdraw the letter of resignation before it is being effective.

9. Similarly our attention was invited to Rule 16 B of Army Rules which says that *the retirement of an officer at his own request before he becomes liable to retirement under rule 16A shall require the sanction of the Central Government. An officer whose request to retire is granted may, before he is retired, apply to the Central Government for withdrawal of his request. The Central Government may, at its discretion, grant such withdrawal of his application.*

10. Since power is there with the respondents that they can permit his request for retirement, therefore, there is enough power with respondents to permit the incumbent to withdraw his resignation. Similarly, in the present case incumbent before the effective date has withdrawn his resignation, therefore it should not have been acted upon. This action of respondents relieving

the petitioner on 31.12.1995 despite the fact that he has revoked the same orally on 26.12.1995 and in writing on 28.12.1995, was totally illegal and against the law laid down by Hon'ble Supreme Court. Hence, we allow this petition and set aside the order dated 31.12.1995 and subsequent order issued by the respondents in pursuance of the order passed by Hon'ble Punjab & Haryana High Court dated 18.02.2003 is also set aside. No costs.

11. Petitioner will not be given any monetary benefits as same was denied by the Hon'ble Supreme Court in case of Hav. Hans Raj Sharma (Supra) but he will be given notional benefits in pension and other benefits flows therefrom.

**A.K. MATHUR**  
(Chairperson)

**M.L. NAIDU**  
(Member)

**New Delhi**  
**July 28, 2010.**