

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

T.A. No. 341 of 2009

WP (C) No 404 of 1991 of Delhi High Court

IN THE MATTER OF:

Ram Pal Singh**Applicant**
Through Ms. Rani Chhabra, counsel for the applicant

Versus

Union of India and Others**Respondents**
Through: Ms Jyoti Singh, counsel for the respondents

CORAM:

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

JUDGMENT

Date: 08/09/2010

1. The applicant had filed writ petition 404/1991 in the Hon'ble Delhi High Court and the same was transferred to the Armed Forces Tribunal on 09/09/2009.
2. The applicant has prayed that Government of India letter dated 15/09/1989 (Annexure P-6) deleting note pertaining to retirement of JCOs in Para 163 of DSR 1987 be quashed. He has also prayed that his retirement order dated 30/11/1990 (Annexure

P-11) be quashed and he should be promoted to Subedar wef 01 Nov 1990 i.e the date vacancy arose alongwith all consequential benefits.

3. The applicant was enrolled in the Army on 12/07/1965 and was governed by Para 163 of DSR 1987 which laid down that Naib Subedar would retire on achieving 28 years of service/55 years of age. The applicant was promoted to Naib Subedar on 01/05/1985. The applicant contends that a warning order dated 30/01/1988 was received indicating the name of JCOs who were due to retire in July 1989.

4. The applicant represented against this warning order and requested that confirmation be given he would retire on completion of 28 years of service. The applicant was informed by the respondents in March 1988 that indeed he was to retire in July 1993 on completion of 28 years of service (Annexure P-1).

5. The applicant contends that Army Headquarters, vide letter dated 15/09/1989 (Annexure P-6), deleted Para 163(A)(iii) and 163(C)(iii) of DSR 1987 wherein Naib Subedar/Subedar enrolled on or after 25/01/1965 and still in service on old terms would retire on completing 24 years of service/50 years age. That applicant contends that he was never informed on this amendment.

6. The applicant avers that in May 1990 he was informed that he was at Serial 13 in list of JCOs due for promotion to Subedar. On 12/07/1990 he was however informed that he would retire on 30/11/1990 on completing 24 years service (Annexure P-2). The applicant submitted his statutory complaint dated 18/08/1990 (Annexure P-5) and the same was rejected.

7. The applicant maintains that reducing the years of service from 28 to 24 years for retirement deprived him promotion to the rank of Subedar and subsequent grant of honorary rank as vacancies for promotion to Subedar rose well before his retirement. The applicant also maintains that he received three months notice prior to his retirement whereas notice of one and half years should have been given.

8. In the counter affidavit the respondents maintain that the applicant was non optee for revised terms of service (Annexure R-1). On enrolment his terms of service laid down that Naib Subedars would retire on rendering 28 years of service. Subsequently Para 163(C)(iii) of DSR was deleted and it was laid down that non optees for the revised terms and service would retire on completing 24 years service/50 years age. The respondents maintain that the

applicant a non optee, was correctly to retire on 30/11/1990 on completion of 24 years service.

9. The respondents admit that the applicant was on the select panel (Serial 13) for promotion to Subedar but retired on 30/11/1990 before his turn came up as vacancies rose only after 01/12/1990.

10. The respondents maintain that Para 163 of DSR 1987 was amended after Government approval vide Army Headquarters letter No A/16097/120/(iii)/AG/PS2(c) dated 15/09/1989 which ruled that "JCOs enrolled prior to 1965 and still serving on old terms will retire on completion of the following service/age limits :-

Naib Subedar - 24 years pensionable service/55 years of age".

11. Call up orders for retirement of the applicant were issued on short notice due to late receipt of Army Headquarters letter dated 15/09/1989 (Annexure R-2) and thus the applicant was only given four months time to complete his discharge drill.

12. The statutory complaint of the applicant was rejected vide Army Headquarters letter dated 15/02/1991 (Annexure R-3).

13. In a rejoinder affidavit the applicant maintains that the respondents amended his date of retirement retrospectively. He maintains that the respondents deliberately kept vacancies of Subedar unfilled in order to deprive his promotion. The applicant

maintains that a vacancy had occurred on 01/11/1990 and he should have been promoted to the rank of Subedar.

14. The respondents maintain the retirement age was corrected to read 24 years to confirm with ages of retirement as laid down in Army Instructions 9/S/1965. In support of the contentions the respondent cited Hon'ble Supreme Court of India Judgement given in WP No 1073-1100 dated 18/01/1985 in case of **K Nagraj and others Vs State of Andhra Pradesh and others** (1985 (2) SLR 337) which ruled that the Government was competent to reduce the age of retirement.

15. We have heard the arguments and perused the records. The applicant was initially enrolled under terms of engagement which indicated that Naib Subedar was to retire on rendering 28 years of service. The applicant was a non optee for revised terms of service. He was on select panel for promotion to the rank of Subedar but could not be promoted since the Government reduced the age of retirement of Naib Subedar to 24 years of service and being at serial 13 no vacancy arose before he retired. The applicant has not been able to establish that any vacancy was available before his retirement. The authority was at liberty to alter the ages of retirement and that cannot be termed as arbitrary or irrational.

The Hon'ble Supreme Court Judgement of **K Nagraj and others Vs State of Andhra Pradesh and others (Supra)** supports this action of the respondents. The judgement cited by the learned counsel for the applicant given in case of **H L Trehan and others Vs Union of India and others (1989 (1) SCC 764)** is not helping his contentions, as that is not related to reduction in age. No injustice has been done to the applicant and no interference is warranted. Application dismissed. No costs.

Z.U.SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open court
Dated: 08/09/2010