

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
M.A. No.429 of 2010 IN T.A. No. 341 OF 2010
W.P.(C) No.3829 of 2003 of Delhi High Court**

IN THE MATTER OF :

Ex. LAC Rajesh Kumar

.....Applicant

VERSUS

Union of India & Ors.

.....Respondents

Dated: 06-12-2010

Present: Mr. Narender Kaushik, counsel for the Applicant.

Wg. Cdr. Ajit Kakkar, officer for respondents.

M.A. No.429/2010

Heard on miscellaneous application. The main T.A. was dismissed for non-prosecution on 27.10.2010. Thereafter, the applicant filed an application stating reasons for restoration on 26.11.2010.

Considering the submissions and seeing the grounds, as stated in the application, dismissal order is set aside. T.A. be restored to its original number.

Application stands disposed of.

T.A. No.341/2010

Learned officer appearing on behalf of respondents side states that new counsel is to be appointed in this case and prays that time may be granted accordingly. Time is granted as prayed.

Put up on 07.02.2011.

**Z.U. SHAH
(Administrative Member)**

**MANAK MOHTA
(Judicial Member)**

Dated: 06-12-2010

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI
15.**

T.A. No.341/2010

WP(C) No.3829/03

Ex LAC Rajesh Kumar

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. Narender Kaushik, Advocate.

For respondents: Mr. Satya Sehrawat proxy for Mr. Ankur Chibber,
Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER

03.09.2012

1. This Writ Petition was filed before the Hon'ble Delhi High Court which has been transferred to this Tribunal after its formation.
2. This petition is directed by the petitioner to quash the charge-sheet and punishment order dated 13.09.1997 and discharge order dated 21.08.1998 discharging the petitioner w.e.f. 10.09.1998 and also to reinstate the petitioner with all consequential benefits.
3. The petitioner was enrolled in the Air Force in 1987 in pursuance to the advertisement and notification issued in 1987. It is alleged that the petitioner was malafidely charge-sheeted for creating disturbances and punished whereas fact was far from the truth. It is also submitted that the petitioner's mother was sick in April 1994 and he overstayed leave granted for 25 days and was punished with 14 days confinement to camp. The petitioner's acknowledgment receipt of having sent the telegram for extension of leave was torn up by the CAO and punished him accordingly. But due to the fear of AOC-in-C who created terror by his illegal policies and rules which has

caused many such discharge and dismissal on account of habitual offender policy and otherwise, the petitioner did not raise any grievance to avoid the wreath of the AOC. In 1995, petitioner again overstayed leave for 9 days due to self sickness but was punished with 3 extra duties and as there was lot of harassment at the hands of CO, the petitioner out of frustration again overstayed 20 days and was punished with 14 days detention.

4. In 1996, due to continuous illegal harassment and extortion of illegal work like cutting grass for continuously two hours in the evening every day by the order of the then AOC, out of frustration the petitioner again remained over stayed for 33 days. The petitioner was awarded 7 days detention. In 1997, the petitioner was again over stayed for 31 days and punished accordingly. On 13.09.1997 the petitioner was also falsely implicated and punished for one day absence.

5. The petitioner was declared habitual offender in November 1998 and was issued a show cause notice as to why the petitioner should not be discharged from service on account of habitual offender's policy of 1984. The petitioner replied to the show cause notice and thereafter vide letter dated 21.08.1998 the petitioner was discharged from service w.e.f. 10.09.1998.

6. Thereafter, the petitioner filed a representation with the respondents and submitted that as per policy dated 03.02.1998, the petitioner is entitled to special pension and gratuity as he has put in more than 10 years of service. Thereafter, the petitioner has filed the present petition with the aforesaid reliefs.

7. Reply to the petition has been filed by the respondents submitting that the petitioner is an habitual offender and as per the Habitual Offender's policy, a show cause notice was issued to him and therefore, he was discharged

from service. So far as grant of special pension and gratuity is concerned, it is pointed out that as per para 11 of the policy dated 03.02.1998 which clearly contemplates that Special Pension and Gratuity is granted only to those PBORs who are discharged in large number in pursuance of Government Policy i.e. (i) reducing of strength and (ii) re-organisation which results in disbandment of any unit, formation. The petitioner was discharged under the Clause "Services no longer required- unsuitable for further retention in IAF" because of more than 6-7 red ink entries. As such, the policy letter dated 03.02.1998 is not applicable to the petitioner.

8. We have heard the learned counsel for both the parties and perused the record.

9. Learned counsel for the petitioner submitted that he is entitled to special pension as well as gratuity after putting more than 10 years of service. Reference is made to sub para (5) of the policy dated 03.02.1998. We have bestowed our best consideration to the arguments advanced by the learned counsel for the parties and after reading the whole scheme of policy dated 03.02.1998, it clearly transpired that special pension and gratuity is given to the persons only in the event of (i) reducing of strength and (ii) re-organisation which results in disbandment of any unit or formation. The normal period for qualifying service of pension is 15 years of service. The petitioner herein has not put in 15 years of service, therefore, he is not entitled to pension or gratuity as per the aforesaid policy of the Government.

10. Learned counsel for the petitioner also submits that some other persons were given the special pension. So far as the policy which has been placed before us is concerned, the interpretation of that policy makes it clear beyond doubt that the petitioner is not covered by this policy of 03.02.1998.

11. Learned counsel for the petitioner also submits that since he has put in more than 10 years of service, he should be given the status of ex-servicemen. He has also invited our attention to the letter No.36034/85/SCT dated 14.04.1987 issued by the respondents. No such prayer has been made by the petitioner in his petition. However, petitioner may make a representation to the respondents in pursuance to the above letter and if he is entitled to such benefit, the same may be considered by the respondents for grant of status of ex-servicemen to the petitioner.

12. Petition stands disposed off accordingly. No order as to cost.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
September 03, 2012
Ns