

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

**T.A. No. 379 of 2010
(Delhi High Court W.P (C) No. 17164 of 2005)**

IN THE MATTER OF:

Arun Prakash Tiwari**Applicant**
Through Mr. Keshav Kaushik and Ms. Kanika bakhroo, counsel for the
applicant

Versus

Union of India and Others**Respondents**
Through: Dr. Ashwani Bhardwaj, counsel for respondents

CORAM :

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

Order

Date: 15-4-2010

1. The applicant filed a writ petition (civil) No. 17164 of 2005 in the Hon'ble Delhi High Court requesting that the orders of his discharge and

for cancellation of his earlier request for premature retirement be quashed. The same was transferred to the Armed Forces Tribunal.

2. The applicant was enrolled in the Indian Air Force (IAF) on 3.7.1987 with a fixed term of twenty years. He was promoted to the rank of Sergeant (Sgt). The applicant suffered from hyper tension and neurosis and was periodically hospitalised. The applicant contends that he was compelled to submit an application on 29.6.2005 requesting for immediate discharge. The application was expeditiously dealt with and his application was forwarded on 2.7.2005 to Directorate of Signal Intelligence, New Delhi.

3. On 18.7.2005 the applicant requested the respondents not to discharge him. He was hospitalised from 19.8.2005 to 29.8.2005. While he was in hospital an order dated 19.8.2005 for discharge with effect from 8.9.2005 were served on him on 26.8.2005 (**Annexure P-6**). The applicant requested for cancellation of his discharge order on 31.8.2005 (**Annexure P-7**).

4. The applicant has prayed that his order of discharge dated 19.8.2005 be quashed and he be allowed to continue in service till his age of superannuation.

5. The respondents in their counter affidavit have stated that the applicant while applying for discharge on 29.6.2005 had given an undertaking that he would not apply for cancellation of his discharge order under any circumstance, once the discharge order had been issued. The applicant had several medical problems including hypertension and neurosis and was downgraded as BEE (permanent). The applicant on 29.6.2005 sought immediate discharge on compassionate grounds. The applicant was interviewed by the commanding officer and his application was expeditiously dealt with and discharge under Air Force Rule 15(2)(a) "at own request" was sanctioned by Air Headquarter on 11.8.2005 (Annexure R-1). Subsequently the applicant on 31.8.2005 requested for cancellation of his discharge order. This was not accepted as no policy exists to revoke discharge granted to an individual on compassionate grounds. The respondent further states that the applicant became absent without leave (AWL) from 1.9.2005 during which time he filed a petition to restrain IAF authorities from giving effect to the

discharge order. On preliminary hearing the Hon'ble Delhi High Court did not grant any stay on the discharge order. The applicant was discharged in absentia with effect from 7.9.2005 and struck of strength with effect from 8.9.2005 as there is no provision of change of option after issuance of discharge order. The respondents have recommended that the application be dismissed as it lacks merit.

6. The applicant in his rejoinder affidavit has reiterated the points projected earlier. The applicant has also cited the judgment of the Hon'ble Supreme Court in Balram Gupta vs. UOI (1987 (Supp) SCC 228).

7. We have heard the arguments and perused the records. The applicant had applied for premature release on 29.6.2005 and he requested not to be discharged on 18.7.2005 and he submitted an application for the same on 31.8.2005. Despite this request his discharge orders dated 19.8.2005 were issued with effect from 8.9.2005. The Supreme Court judgment in Balaram Gupta Vs UOI (Supra) had ruled that **“notice of voluntary retirement can be withdrawn at any time before retirement becomes effective”**. The applicant was thus entitled

to withdraw his application requesting for premature retirement. The contention of the respondents that an application for premature retirement once submitted cannot be withdrawn is not having legal force. This contention is not sustainable in the light of above mentioned judgment. Hon'ble Delhi High Court on his interim order dated 8.9.2005 ruled **“if the petitioner's discharge is accepted that will not come in the way of the Court in reinstating the petitioner in case he succeeds”**. Thus the order of his discharge dated 19.8.2005 which was made effective from 8.9.2005 is quashed. The applicant is entitled consequential benefits. He will be deemed to be in service till his superannuation. The applicant is to be reinstated in service and superannuate as per his normal terms of service. The application is allowed accordingly. No costs.

MANAK MOHTA
(Judicial Member)

Z.U. SHAH
(Administrative Member)

Announced in the open court
Dated: 15-4-2010