

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

TA No.387/2010

[WP (Civil) No. 408/2003 of Delhi High Court]

Ex. Gnr. Jagir Singh .....Petitioner

Versus

Union of India & Others .....Respondents

For petitioner: Sh. S.M. Dalal, Advocate.

For respondents: Ex. Maj. Mohan Kumar, Advocate.

**CORAM:**

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

**ORDER**

02.02.2010

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

2. Petitioner by this petition has prayed that the impugned order dated 13.05.2002 Annexure-P1, order dated

21.05.2002 Annexure-P-2 and order dated 11.07.2002 Annexure-P-3 may be quashed and petitioner may be granted pro rata pension.

3. Brief facts which are necessary for disposal of the present petition are that petitioner was enrolled in Indian Army on 24.08.1957 and after completion of necessary initial military training he was inducted into the service. Petitioner was initially engaged for 15 years as per the existing rules and one has to be transferred to reserve service on completion of 7 years service. Petitioner was transferred to reserve establishment on 25.03.1965 and was kept in reserve establishment till the term of completion of engagement. Petitioner was declared deserter on 21.09.1965 and rejoined on 06.08.1966. Petitioner was under an impression that he will receive a call letter but he did not receive. However, petitioner was recalled from the reserve establishment during the Indo-Pak War in the year 1971 and he participated in the War along with other soldiers. Petitioner was again transferred to reserve establishment on 19.06.1972 after granting two months annual leave from 20.04.1972 to 12.06.1972. According to the petitioner, his 15 years engagement was over on 21.11.1972 and

it was told by the Authorities that he will get the retrial benefits in due course of time. Petitioner was discharged from service by way of Administrative Order on 21.11.1972 under Army Rules, 1955 after rendering more than 15 years service. Petitioner approached the Hon'ble High Court when he came to know that some similar situated defence personnel who has 10 years or more service, has been granted pro rata pension. Therefore, petitioner made a representation on 23.04.2002 for grant of his pension. The Record Office informed the petitioner by the communication dated 13.05.2002 that his application has been rejected. Petitioner again made a representation which was again rejected by the communication dated 11.07.2002. Consequently, petitioner approached the Hon'ble Delhi High Court again for grant of pro rata pension and this petition has been transferred from the High Court to this Tribunal after its formation.

4. Respondents in their reply have pointed out that petitioner after deducting non qualifying service of one year and 68 days, he has put in 14 years and 22 days of qualifying service. Learned counsel for the petitioner has drawn our attention to the Government Order dated 14<sup>th</sup> August, 2001 wherein the period

from six months to one year can be condoned by the Service Headquarters. The Clause (v) of the said Order reads as under :-

*“(v) Condonation of Shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months”*

Therefore, learned counsel for petitioner submits that without insisting for pro rata pension, petitioner may satisfy if this period short by 11 months and 8 days is condoned then he will be entitled for a full pension of 15 years period of engagement. This submission of learned counsel for petitioner appears to be justified. When there is an enabling provision then why this benefit should not be extended to the petitioner. In this view of the matter, we direct let this case may be taken up by the Authorities for sympathetic consideration as the respondents have full power to condone the period up to 12 months for qualifying service. Therefore, respondents may consider the matter sympathetically for condonation of this period of 11 months and 8 days so as to enable the petitioner to get the full pension i.e. 15 years of service. We hope and trust that Authorities will look into the matter as it is a social measure and take a proper decision in the case. Consequently, we set aside orders dated 13.05.2002,

21.05.2002 and 11.07.2002 and remit back the case to the respondents to reconsider the case in the light of the Government Order dated 14<sup>th</sup> August, 2001. In case matter is decided favourably in favour of the petitioner then arrears for the last three years preceding from the date of filing of the present petition i.e.14.01.2003 shall be worked out and shall be paid to petitioner with 12% interest. Petition is accordingly allowed. No order as costs.

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

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

**New Delhi**  
**February 2, 2010.**