

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

T.A. No. 425/2009

[W.P. (C) No. 771/09 of Delhi High Court]

Ex. Nb. Sub. Ramji Lal

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh.Prakash Chandra, Advocate.

For respondents: Sh.Ankur Chibber, Advocate.

CORAM:

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

**ORDER
16.04.2010**

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 to pass an order directing the respondents to grant him the service pension from

the date of his discharge from the Army with effect from 01.09.1987 along with the arrears of pension after declaration to the effect that he is entitled for his service pension.

3. Petitioner earlier filed a petition in the Hon'ble Delhi High Court bearing no.161/1995 challenging the vires of Rule 113 of the Pension Regulation of the Army, 1961. This petition was dismissed by the Hon'ble Delhi High Court vide order dated 16.05.1997. Now again petitioner has filed the present petition with aforesaid prayers. The issue is that in the dismissal order passed by court martial, the order of forfeiture of pension could not be passed, therefore, petitioner is entitled to pensionary benefits and the gratuity.

4. This issue has come before the Hon'ble Supreme Court in case of Union of India and another vs. P.D. Yadav (2002) 1 Supreme Court Cases 405. The Larger Bench consisting of Hon'ble Chief Justice has considered all the positions on the subject and taken the view that even if no order of dismissal is passed in court martial order, the President has

enough power in case of Officer as per Regulation 16 of the Army Pension Regulation and in case of PBOR under Regulation 113 to take decision to forfeit the pension as well as power to pass the order of removal from service.

5. Consequently, in view of decision of Larger Bench of Hon'ble Supreme Court, nothing survives in the present petition. Same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
April 16, 2010.