

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

**T.A. No. 560 of 2009**

**WP (C) No 8401 of 2009 of Delhi High Court**

**IN THE MATTER OF:**

**Ex Nk Avinesh Kumar** .....**Applicant**  
Through Col (Retd) S.R Kalkal, Counsel for the applicant.

Versus

**Union of India & Ors** .....**Respondents**  
Through: Mr Ankur Chhiber , Counsel for the respondents.

**CORAM:**

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

**JUDGMENT**

**Date: 28/10/2010**

1. The applicant had filed WP (C) 8401/2009 in the Hon'ble Delhi High Court and the same was transferred to this tribunal on 12/10/2009. The applicant has prayed that the order of his discharge dated 01/07/2008 be quashed and he be allowed to rejoin the service and then subsequently deposit the retirement benefits given to him on his discharge.

2. The applicant was enrolled in the Army on 12/04/1993. He was downgraded to S1H1A1P3E1 (temporary) on 10/02/2003 and subsequently made category P-2 (permanent) on 11/01/2004 for the ailment of "**Seizure Disorder**". The applicant was brought before release medical board and discharged from service without issue of a show cause notice or holding invaliding medical board.

3. Subsequent to the rulings of the Hon'ble Supreme Court and Hon'ble Delhi High Court on reinstatement of Low Medical Categories personnel discharged without holding invaliding medical board. The KUMAON Regimental Centre (KRC), Record Office issued recall letters to low medical categories personnel who had been discharged without holding invaliding medical boards. The applicant contends that he did not receive any such option letter but reported to KRC, Ranikhet on his own. The applicant contends that the KRC refused to accept him back in the service.

4. The applicant states that on 25/02/2009 he served a legal notice under Section 80 of CPC (Annexure P-2). Subsequent to this notice KRC vide their letter dated 17/03/2009 directed him to deposit his post retirement benefits (breakdown is at Annexure P-3) before he could be considered for reinstatement. The applicant states that on 31/03/2009 he reported to KRC, Ranikhet and waited 07 days. He was not allowed to rejoin and asked to deposit post retirement benefits before he could be reinstated.

5. The respondents in the counter affidavit have stated that the applicant was enrolled in the Army on 12/04/1993. He was initially downgraded to low medical category P-3 (temporary) on 10/02/2003 for "**Seizure Disorder**". This category was made P-2 (permanent) on 11/01/2004.

6. In view of the fact that the applicant was a permanent low medical category he was subjected to a release medical board on 12/02/2008 and discharged on 01/07/2008 under Army Rule 13 (3) item III(v) with pension and 20% disability. However, subsequent to Hon'ble Supreme Court Judgement dated 07/11/2008 and Hon'ble Delhi High Court Judgement on 20/11/2008 on

the matter of reinstatement of low medical category personnel discharged without invaliding medical board, the applicant was sent an option letter by registered post on 18/12/2008 to rejoin the service. The respondents contend that the same was received by the father of the applicant. This letter clearly mentioned the amount the applicant was to refund in accordance with Delhi High Court ruling dated 20/11/2008 (Annexure P-1). The relevant paras of which are as under:-

***“The respondents will inform such persons about the net amount which has to be refunded back by them and the amount be remitted by such persons within 30 days of intimation of the amount to be remitted back by them. If the balance amount is not remitted back to respondents, it will be deemed that such petitioners have accepted their discharge”.***

7. The respondents state that the applicant reported to the KRC on 30/01/2009 requesting for reinstatement. He was informed that reinstatement would only be done only after he had deposited the complete amount as specified.

8. The applicant served a legal notice to the KRC on 25/02/2009. KRC on 17/03/2009 (Annexure P-3) again intimated to the applicant to the specific amounts he was to deposit to separate govt departments. The applicant was also cautioned in the same letter that if he failed to deposit the amount it would be assumed that he had accepted his discharge. Relevant portion of Para 5 of KRC letter dated 17/03/2009 is quoted below:-

***“You are requested to advise your client to deposit the required amount as mentioned in Para 2 of above report to Adm Bn, The Kumaon Regiment Centre by 31 Mar 2009. Failure to do so will be assumed having been accepted his discharge”.***

9. We have heard the arguments and perused the record. The applicant was discharged from the Army on 01/07/2008 with pension and 20% disability. Subsequent to the Hon'ble Supreme Court judgement of 07/11/2008 and Hon'ble Delhi High Court ruling of 20/11/2008 the KRC sent the applicant an option letter on 18/12/2008 by registered post. The same was received by his father and the contention of the applicant that the same was not received is incorrect. In fact in Para 6 of the notice dated 25/09/2009 (Annexure P-2) served by the counsel of the applicant it is admitted that on the receipt of notice he reported for rejoining on 30/01/2009. Relevant Para is quoted below:-

**“That my client reported to your depot Bn of your Centre for rejoining his duty on 30 Jan 09 on receipt of your letter for option to rejoin dated 18 Dec 08.”**

10. The applicant served a legal notice to the KRC on 25/02/2009 after which the KRC vide letter dated 17/03/2009 again intimated the exact amount the applicant was to deposit prior to reinstatement as per Hon'ble Delhi High Court Judgement of 20/11/2008.

11. Hon'ble Delhi High Court ruling (Annexure P-1) clearly ruled that personnel who opted to be reinstated were to deposit their post retirement

benefits within 30 days of intimation of the same. However, if the amount was not deposited it would be deemed that such persons had accepted the discharge. Despite two option letters served on the applicant by KRC the applicant failed to deposit the money as specified. This implied that the applicant had “***accepted his discharge***”. KRC correctly turned down the plea of the applicant that he be reinstated first and subsequently deposit the money. In view of these observations the applicant is not entitled to any relief. No interference is needed. Application dismissed. No costs.

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

**MANAK MOHTA**  
**(Judicial Member)**

**Announced in the open Court**  
**on the day of 28<sup>th</sup> October, 2010**