

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

TA No.601/2009

[WP (Civil) No.39/2008 of Delhi High Court]

Sub. Jagtar Singh

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: None.

For respondents: Ms. Swatee Singh Sachan, proxy for Dr.
Ashwani Bharadwaj, Advocate.

CORAM:

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

**ORDER
06.01.2010**

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

2. Petitioner by this writ petition has prayed to issue a
writ of certiorari to quash the orders dated 20.05.2006 and
03.10.2006 passed by respondents No. 2 and 3 and release the

entire sum of arrears of salary, other pensionary benefits including the service gratuity to be sanctioned w.e.f. 30.09.2006 by deeming petitioner's discharge w.e.f. 30.09.2006 in the light of initial discharge order dated 19.04.2006 declaring the petitioner is entitled to receive and draw service pension as applicable to the petitioner in the rank of Subedar which was actually held by the petitioner at the time of passing the said impugned orders by the respondents.

3. Brief facts which are necessary for the convenient disposal of present petition are that petitioner was enrolled in the Army as a Soldier/General Duty on 20th June, 1978 in the Bengal Engineer Group and after having rendered almost 28 years service, the petitioner was elevated to the next higher ranks of Havildar w.e.f. 27.07.1994, Naib Subedar w.e.f. 01.08.2003 and Subedar w.e.f. 21.02.2006 and the petitioner was actually holding the rank of Subedar till he retired. The petitioner's services were extended by two years till 30.06.2008 but due to cancellation of extension, petitioner was further ordered to be discharged w.e.f. 30.09.2006 vide BEG Records letter dated 19.04.2006. It is further alleged that as per order dated 15th April, 2006, petitioner

was required to be discharged from 30.09.2006 but again respondent no. 2 passed an impugned order dated 20.05.2006 stating that petitioner shall be discharged from 30.06.2006 without indicating any reason or reasonable grounds for amending the date of retirement of petitioner. Finally petitioner was discharged from regiment strength by the order dated 30.06.2006. Petitioner was not granted pension of Subedar but granted pension of Naib Subedar. The grievance of the petitioner is that since he has retired as Subedar, he should have been given the pension of Subedar and not of Naib Subedar which causes him great monetary hardships. Therefore, petitioner approached Hon'ble Delhi High Court by filing present writ petition which has been transferred to this Tribunal on its formation.

4. A reply was filed by the respondents and respondents have taken the position that since petitioner did not complete more than 10 months mandatory service on the rank of Subedar and he has only completed four months and eight days which disentitles him to draw the pension on the rank of Subedar.

5. We have considered the submissions made on behalf of parties and perused the record.

6. Normally the principle which now emanates from the various decisions of Hon'ble Supreme Court as well as High Courts and the Government's orders bearing on the subject that incumbent shall be given pension benefits on the basis of last pay drawn. In this case, petitioner was holding the rank of Subedar when he superannuated. The qualification of having minimum period passed has no relevance. Since the incumbent has retired as a Subedar, therefore, he is entitled to a pension on the basis of last pay drawn and no qualification can be put on the period to be spent on the last rank held by him. We don't think it proper or rational principle to qualify the period or holding the post for grant of pension as the principle which has been accepted is the last pay drawn basis for grant of pension. Therefore, we are of the opinion that the qualification put up by the respondents in denying the pension on the last rank held by him is not justified and accordingly same is set aside by these aforesaid orders and direct that let the pension of the petitioner may be determined on the

basis of last rank held by him irrespective of period held by him. Arrears on the rank of Subedar shall also be released. Arrears will carry interest @ 12% p.a. The whole exercised shall be conducted within three months from today as incumbent has already been retired. Consequently petition is allowed and orders dated 20.05.2006 and 03.10.2006 are set aside. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi.
January 06, 2010.