

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

T.A. No. 641/2009

[W.P. (C) No. 6467/2000 of Delhi High Court]

Ex Hav Madan Singh ShekhawatPetitioner

Versus

Union of India & Ors.Respondents

For petitioner: Sh.S.S. Tiwari, Advocate.

For respondents: Sh.Gaurav Liberhan, Advocate with Capt
Alifa Akbar.

CORAM:

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

**ORDER
22.04.2010**

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 that he may be
granted full pension at par with those who have completed 24

years service and re-fix his pension and also to directed the respondents to give him all consequential benefits including arrears of pension due to revision of pension as well as interest on delayed payment.

3. Brief facts which are necessary for the disposal of present petition are that petitioner joined as a Combatant Army personnel with effect from 18.02.1976 under Rajputana Rifles. He was promoted as Lance Naik in 1985 and subsequently, he was promoted as Havildar in 1990. On 13.12.1998, he was sent to Sri Lanka for operation against LTTE and was injured during action and another colleague namely Subedar Kartar Singh who was similarly situated alongwith him, was also injured during said action. Subsequently, Medical Board was conducted and he was declared as permanent CEE category and he was discharged from service with effect from 31.05.1991 on medical grounds even though he was to be retained in service till completion of 24 years as he was a war casualty. Same was the case of Subedar Kartar Singh who was also in Medical Category CEE(Permanent) like the petitioner, was kept in service till he completed 28 years of service

but he was discharged on 31.05.1991 after completing 15 years, 3 months and 14 days of service. Petitioner made a representation on 24.10.1994 to recall him in service till completion of 24 years of service. Respondents gave a reply on 30.01.1995 stating that as per terms of engagement a Havildar can serve upto 22 years and he can be retained in service for further 2 years by a Screening Board on fulfilment of prescribed condition. However, he again made a representation but of no avail. Ultimately, he was driven to file the present writ petition before the Hon'ble Delhi High Court which was transferred to this Tribunal on its formation.

4. Respondents filed the reply wherein they pointed out petitioner was discharged from service on 01.06.1991 after serving 15 years, 3 months and 14 days and he has been given service pension @ Rs.458/- per month and disability pension @ Rs.135/- per month. It is also pointed out that petitioner was in low medical category and the employment of permanent low medical personnel, is subject to the availability of suitable alternative appointments and that their retention will not exceed the sanctioned strength of the Regiment. It is further pointed out that

due to surplus of manpower in the Regiment, the petitioner was discharged from service after serving 15 years, 3 months and 14 days. Therefore, petitioner is not eligible for grant of pension at par with those who completed 24 years service, as he served only 15 years, 3 months and 14 days. It is also pointed out that so far as case of Subedar Kartar Singh is concerned, though he was similarly situated, his case for retention in service was considered by the Officer In-charge Records on 06.04.1991 and keeping in view satisfactory strength of Regiment, he was retained in service whereas in the case of petitioner, his case was considered on 19.10.1990 and on that date manpower of Regiment was surplus, therefore, petitioner was discharged from service with effect from 01.06.1991.

5. Our attention invited to Annexure-R-1 dated 01st September, 1990 and especially the endorsement on it that petitioner was willing to serve in the Army in case sheltered/ suitable employment is available for him. The Commanding Officer of the Battalion has clearly said in the recommendation that *individual is fit for active service and suitable alternative*

appointment commensurate with that medical category is available in this Battalion and his case was recommended as it is justified in public interest and his retention is against the authorised strength of the Battalion/Unit. It shows that at relevant time, there was vacancy available in the Battalion itself as per the recommendation of the Commanding Officer of the Battalion given on 01st September, 1990.

6. Our attention was also invited to Annexure-R-5 dated 21st December, 1995 by the Record Officer which clearly says that *in case of discharge from service on medical grounds, as per terms of engagement a Havildar can serve upto 22 years and he can be retained in service for further two years by a screening board on fulfilment of prescribed conditions. As per condition one if individual is placed under low medical category in enhanced service, he cannot be retained and has to be discharged.*

7. Therefore, learned counsel for the petitioner submitted that objection raised by learned counsel for the respondents that since there was no vacancy available but the person like Subedar Kartar Singh was retained on 14th February, 1991 and petitioner

was discharged on 31st May, 1991 whereas there is an endorsement given by the Commanding Officer in the order dated 01st September, 1990 (Annexure-R-1) that suitable vacancy is available in the Battalion then nothing more was required in the matter.

8. When a person who is Incharge of the Battalion himself writes that there is a vacancy in the Battalion where he can be retained in service, we fail to understand what was the reason to disallow the petitioner when he was a war injured soldier of Operation in Sri Lanka.

9. It is pointed out that Havildar can serve normally upto 22 years extendable to 24 years subject to Selection Board. But so far as the continuation up to 22 years is concerned, there is no difficulty. The incumbent is certified to be war injured person and suitable vacancy was available as recommended by the Col. Commandant of the Battalion/Unit then there was no reason why he should not have been allowed to continue upto 22 years either in sheltered appointment or suitable appointment. But

unfortunately the service of poor man has been cut short whereas he could have been continued upto 22 years at least.

10. However, Subedar Kartar Singh is concerned, he was retained in service as vacancy was available. Be that as it may we do not want to comment on the retention of Subedar Kartar Singh. However, so far as the petitioner is concerned as per the endorsement of Col. Commandant, one vacancy was available in the Regiment itself for retaining this person who was war injured person. Authorities should have taken a sympathetic view rather than cutting short person's career after having received injury in Operation at Sri Lanka, he should have been allowed to continue in the service.

11. Consequently, we direct that petitioner should been continued upto 22 years of service but since he was discharged after completing 15 years, therefore, he is entitled to benefits of these 7 years of service and these 7 years should be added to his qualifying service of pension and his pension should be re-fixed accordingly. However, we are not inclined to grant him other benefits of 7 years of service but he is entitled to be given 7 years

benefit of qualifying service for pension purposes. Accordingly, we direct the respondents to refix the pension of petitioner after taking into consideration seven years of service. This should be done within three months.

12. Petition is allowed in part. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
April 22, 2010.