

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

T.A. No. 651/2009

[W.P. (C) No. 5570/1998 of Delhi High Court]

John Varghese

.....Petitioner

Versus

Union of India & Others

.....Respondents

For petitioner: Sh.Vinod Kumar, Advocate.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:

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

O R D E R

02.08.2010

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 the order of EME record dated 08.01.1998 may be set aside and he may be granted pension and other benefits including special pension entitled to him by counting his former service.

3. Petitioner was initially enrolled in the Indian Army in Armoured Corps on 13.07.1962 but he sought release from Armoured Corps and same was granted by the order dated 11.11.1964. Thereafter, he was again enrolled in the Corps of Electrical and Mechanical Engineers on 16.12.1964. He again sought voluntarily discharge and he was voluntarily discharged on 18.07.1977. Therefore, he had put in 12 years and 7 months service in EME and he had put in total 14 years and 11 months in the Army in two spells, first in Armoured Corps for 2 years, 3 months and 28 days and second in EME Corps in 12 years, 7 months and 3 days. Petitioner has filed this petition claiming that he has put in 14 years and 11 months service, therefore, he is entitled to pension by rounding up 11 months to full one year that will make 15 years qualifying service for pension. He made a request before the Authorities but same was rejected on the ground that he cannot be granted pension because he does not have 15 years of qualifying service and his previous service cannot be taken into consideration. Therefore, he was driven to file the present writ petition before the Hon'ble Delhi High Court in the year 1998 after exhausting all the remedies one after another.

4. In fact petitioner was discharged from service way back in 18th July, 1977 and he approached Hon'ble Delhi High Court by filing this petition in 1998. Learned counsel for the respondents has raised serious objections that this is extremely belated petition. It is true that petition is belated and we would not have ordinarily interfered. But in fact the petition was pending before Hon'ble Delhi High Court since 1998 till this date, it will not be proper to dismiss the petitioner now on account of being extremely belated. However, we can modulate relief to the petitioner on account of such belated petition.

5. A reply was filed by the respondents and respondents have taken the position that petitioner cannot be granted pension because he is short by one month and the period of one cannot be condoned under Rule 125. According to Rule 125, incumbent should not have sought release voluntarily. Therefore, in the present case, he cannot seek relief under Rule 125 for condonation of period of one month.

6. Learned counsel for the petitioner submits that incumbent has 14 years and 11 months and he is short by one

month. Therefore, he invited our attention to Rule 9 of the Pension Regulations for the Army, 1961 and Rule 9 reads as under :-

“9. In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service.”

7. According to this Rule 9 it appears that if there is more than three months, it may be rounded up to one half year. In the present case petitioner had put in 14 years and 11 months that means five months period can be rounded up to six months as per the Rule 9, that will make it 15 years qualifying service for pension. If this round up is done, petitioner will be qualified for 15 years of pensionable service. Accordingly, we round up these five months to six months that make it one year, he will make it 15 years service. Though the incumbent should have disclosed at the time of re-enrolment that he had served in Armoured Corps. However, the Sheet Roll was forwarded by the Armoured Corps Record Office to the Corps of EME Record Office giving detail of service in July, 1965, was considered. Therefore, there is no difficulty to accept his service in Armoured Corps. However,

petitioner has approached in Delhi High Court in 1998 after almost 21 years, therefore, we confine the relief to the petitioner to three years preceding the filing of the writ petition. His pension may be worked out and same may be paid to him along with arrears within three months from today. Petition is disposed of. No order as to costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
August 02, 2010.