

October 17, 2011

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW  
DELHI

6.

O.A NO. 154 OF 2011

Sep Bijendra Singh Kushwah

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh & Ms. R. Archana, Advocates.  
For respondents: Sh. J.S Yadav, Advocate

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.  
HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER  
17.10.2011

Justice Mathur, Chairperson:

1. The petitioner has prayed for quashing the order dated 30<sup>th</sup> April 2006 issued by the third respondent being contradictory to the *ratio decidendi* as laid down in the decision of the Supreme Court reported in **Nb Sub Rajpal v. Union of India** (2009(1) SCC (L&S) 92) and for

directing the respondents to reinstate the petitioner in service with inherent pay and allowances, ante date seniority and service and promotions at par with his batch-mates who were promoted during the interregnum period.

2. The petitioner was enrolled in the Army on 28.10.1995. But due to "Palmoplantar Hyperhydrosis" from 1999, he became a permanent Low Medical Category implying his next medical board would be after two years i.e. on 6.6.2007. But on 30.4.2006 itself, he was prematurely discharged from military service being a Low Medical Category and that too without holding an Invalidation Medical Board, which is a mandatory pre-requisite for discharging a military personal on medical grounds, in terms of Army Rule 13. He filed a statutory complaint on 2.5.2006, without any result.

3. The petitioner has moved this petition for quashing the order passed on 30.4.2006 in the light of Rajpal's case (supra). It may be mentioned that the petitioner was not one of the petitioners in the above petition filed by Rajpal. He waited for the result in that case and did not seek legal redress. Now in 2011, the petitioner has filed this petition seeking the same relief as given by the Supreme Court in Rajpal's case (supra).

4. Learned counsel for the respondents has raised objection and pointed out that the present petition is barred by limitation under Section 22 of the Armed Forces Tribunal Act 2007. In this connection, learned counsel for the petitioner has invited our attention to the judgments in T.A No. 229 of 2009 (**Risaldar Ram Karan Singh v. Union of India and others**), T.A No. 2 of 2010 (**Hav Hamman Singh v. Union of India and others**) and O.A No. 262 of 2010 (**Nk Narendra Kumar v. Union of India and others**) and submitted that in aforesaid cases, the Tribunal has not granted any relief because of limitation.

5. We have heard learned counsel for the parties and perused the records. Section 22 of the AFT Act prescribes the period of limitation. No doubt, the Tribunal has the power to condone the delay. But, in the present case, the petitioner challenged the order dated 30.4.2006 in 2011 only. The fact is that it is beyond the period of limitation and there is no justification to condone the inordinate delay in filing the present case. In **Union of India and others v. M.K Sarkar** (2010(2) SCC 59), the Supreme Court has held that the Courts/Tribunals should adhere to the original date of the cause of action as a decisive factor to decide whether the case is within limitation or not. In this connection, reference

may be made to the observations made by the apex Court, which read as under:

25. .... This Court in a series of decisions has held that guarantee of equality before law under Article 14 is a positive concept and cannot be enforced in a negative manner; and that if any illegality or irregularity is committed in favour of any individual or group of individuals, others cannot invoke the jurisdiction of courts for perpetuating the same irregularity or illegality in their favour also on the reasoning that they have been denied the benefits which have been illegally extended to others (see *Chandigarh Admn. v. Jagjit Singh* – 1995(1) SCC 745; *Gursharan Singh v. NDMC* – 1996(2) SCC 459; *Faridabad CT Scan Centre v. D.G Health Services* – 1997(7) SCC 752; *State of Haryana v. Ram Kumar Mann* – 1997(3) SCC 321; *State of Bihar v. Kameshwar Prasad Singh* – 2000(9) SCC 94; and *Union of India v. International Trading Co.* – 2003(5) SCC 437.

In view of the above, the present petition is belated and it cannot be entertained at this stage. The petition is dismissed.

**A.K MATHUR**  
(Chairperson)

**S.S DHILLON**  
(Member)