

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

10.

O. A. No. 176 of 2011

Rifleman Ram Bahadur Thapa

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh and Ms. R. Archana, Advocates.

For respondents: Sh. Anil Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. S.S.DHILLON, MEMBER.

ORDER

19.10.2011

1. Petitioner by this petition has prayed that the order dated 1<sup>st</sup> January 2007 being contrary to the ratio decidendi as laid down by the Hon'ble Supreme Court in the case of **Union of India v. Naib Subedar Rajpal Singh** and by the Hon'ble Delhi High Court in the case of **Sub (SKT) Puttan Lal & Ors. v. Union of India & Ors. (decided on 20<sup>th</sup> November 2008)** may be quashed and Respondents may be reinstated back to military service with seniority and other consequential benefits.

2. Petitioner was enrolled in the Army on 1<sup>st</sup> November 2002 and he was discharged on 1<sup>st</sup> January 2007 from service. It is submitted that the matter was taken up in the case of **Union of India v. Naib Subedar Rajpal Singh** before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the discharge which has been made by the Release Medical Board cannot be sustained as discharge on medical ground can only be done by Invaliding Medical Board. Thereafter matter came before the Hon'ble Delhi High Court in the case of **Sub (SKT) Puttan Lal &**

**Ors. v. Union of India & Ors. (decided on 20<sup>th</sup> November 2008)** and the Hon'ble Delhi High Court has confined relief to those persons who have filed the petition in time. A similar question has come before us in the matters of **Nk Narendra Kumar v. Union of India & Ors. (O.A. No. 262 of 2010)**, **Hav. Hamman Singh v. Union of India & Ors. (T.A. No. 2 of 2010)** and **Risaldar Ram Karan Singh v. Union of India & Ors. (T.A. No. 229 of 2009)** and our attention was also invited to the decision given by the Hon'ble Allahabad High Court in **NK/OPR Rajeshwar Singh v. Union of India & Ors. (Special Appeal (Defective) No. 964 of 2009)** wherein all those cases with reference to **Sub (SKT) Puttan Lal & Ors. v. Union of India & Ors. (decided on 20<sup>th</sup> November 2008)** were considered and dismissed being belated.

3. In the present case the cause of action arisen to the Petitioner on 1<sup>st</sup> January 2007 when he was discharged from service. The Petitioner has approached this Tribunal by filing a petition in 2011. When Petitioner was confronted with this delay part, then Petitioner invited our attention to the provision of Section 22(1)(c) of the Armed Forces Act, 2007. Section 22(1)(c) reads as under:

“(c) in a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court.”

4. Learned counsel for the Petitioner has submitted that Petitioner could have come in time within three years from the date this Tribunal has started functioning.

According to Petitioner this Tribunal was notified on 6<sup>th</sup> August 2008 therefore cause of action has arisen to the incumbent within three years immediately preceding and he could come and file a petition before this Tribunal. Even according to the reckoning of the Petitioner, the cause of action has arisen to the Petitioner on 1<sup>st</sup> January 2007 and even taking three years then he should have filed the petition at best in January 2010 but the petition was filed in 2011. Learned counsel for the Petitioner has submitted that Petitioner made a representation on 24<sup>th</sup> April 2007 which was disposed on 2<sup>nd</sup> June 2007. Subsequently he has also made another application on 30<sup>th</sup> January 2009. He has also made an application on 18<sup>th</sup> January 2010 but that was not disposed of. Therefore learned counsel for the Petitioner submits that this period may be condoned. We regret that this cannot be done. Once cause of action has arisen to the Petitioner on 1<sup>st</sup> January 2007 and he has made an application in April 2007 which was disposed of in June 2007 then repeatedly making an application will not extend the time. The Petitioner could have come in time in 2010 within three years as contemplated in Section 22(1)(c) of the Act.

5. Hence, we do not find any reason to condone this delay and there is no merit in the petition, same is dismissed with no order as to costs.

**A.K. MATHUR**  
**(Chairperson)**

**S.S. DHILLON**  
**(Member)**

**New Delhi**  
**October 19, 2011**  
**dn**