

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

23.

O.A. No. 180 of 2011

Dafedar Vijay Pal Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Ms. R. Archana, Advocate.

For respondents: Sh. Ankur Chhibber, Advocate.

CORAM:

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

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

ORDER  
11.11.2011

1. Petitioner by this petition has prayed that directions may be issued to the Respondents to quash and set aside the Armoured Corps Letter dated 5<sup>th</sup> February 2008 being contrary to the ratio decidendi as laid down by the Hon'ble Supreme Court in **Re Naib Subedar Rajpal v. Union of India (2009) 1 SCC (L&S) 92**.

2. Petitioner was enrolled in the Indian Army on 28<sup>th</sup> December 1992 and he was discharged on the ground of Low Medical Category on 30<sup>th</sup> June 2008. This was not a single case but there was a batch of petitions which was filed in the Hon'ble Delhi High Court and which ultimately reached to the Hon'ble Supreme Court and the Hon'ble Supreme Court in **Re Naib Subedar Rajpal v. Union of India (2009) 1 SCC (L&S) 92** held that all those persons who have been discharged from service by the Release Medical Board should not have been released as they can only be discharged by the Invaliding Medical Board and accordingly the orders were set aside. Then the Hon'ble Delhi High Court

passed the orders to this effect in para 5 in the case of **Subedar (SKT) Puttan Lal & Ors. v. Union Of India** which reads as under:

"5. We have heard the counsel for the parties for purposes of concluding as to what directions are required to be passed in the present petitions. The following directions are accordingly issued:

i) The order passed by the Chief of Army Staff dated 12.04.2007 directing discharge of all the personnel in Low Medical Category without holding the IMB is quashed.

ii) The petitioners who stand discharged as a consequence of the aforesaid order are entitled to be reinstated with all consequential benefits including continuity of service, pay and allowances and seniority as per the rules.

iii) The petitioners would report to their respective Regimental Centre from where they have been discharged within a period of 30 days from today for joining. The pay and allowances and other benefits to such of the petitioners who have not been paid the pension and retiral benefits including by AGIF arising from the discharge order will be remitted within a maximum period of three months from today. Naturally, this would be applicable only to such of the petitioners who join within the aforesaid time.

iv) There are certain petitioners who have been paid pension, retiral benefits and amount by AGIF and if they seek to re-join naturally they have to refund the amount. However, they are also entitled to be paid the pay and allowances. Thus only the net amount has to be refunded by them. The respondents will inform such persons about the net amount which has to be refunded back by them and the amount be

remitted by such persons within 30 days of intimation of the amount to be remitted back by them.

v) In respect of aforesaid direction (iv), if the balance amount is not remitted back to the respondents, it will be deemed that such petitioners have accepted their discharge.

vi) In case of the petitioners who have not been discharged, naturally the occasion to discharge them now would not arise without holding the IMB.

vii) The respondents are not precluded from holding the IMBs after such joining in accordance with law as per the Army Act, 1950, The Army Rules, 1954 and Army Instructions.

viii) In view of the passage of time from the date of discharge till the date of rejoining, it will be open to the respondents to carry out any police verification as may be deemed appropriate by the respondents."

3. The aforesaid directions were given and in pursuance of the aforesaid directions, letters were sent to all the persons who were affected on 22<sup>nd</sup> December 2008 asking them to join and deposit the amounts which have been drawn by them. Petitioner did not join the service in pursuance of the aforesaid order dated 20<sup>th</sup> November 2008 and waited till he filed a petition before this Tribunal in 2011. Notice was issued to the Respondents and the Respondents in their reply contested the matter that Petitioner did not join back. Then the question arose whether any intimation was sent to the petitioner in pursuance of the directions given by the Hon'ble Delhi High Court in the case of **Subedar (SKT) Puttan Lal & Ors. v. Union Of India.**

4. Learned counsel for the Respondents has invited our attention to the postal receipts showing the original dispatch register that the letter was sent to the Petitioner at two places on 26<sup>th</sup> December 2008 and submitted that intimation was sent to the Petitioner but the Petitioner did not report the matter till this date and only filed a petition before this Tribunal now at this belated stage which shows that Petitioner was either not interested to join back or he had some financial difficulty. Be that as it may, the fact remains that intimation was sent to the Petitioner and Petitioner did not join back. Therefore in view of the decision given by the Hon'ble Delhi High Court in **Subedar (SKT) Puttan Lal & Ors. v. Union Of India**, this petition filed by the Petitioner is belated and we cannot entertain this belated petition and same is dismissed with no order as to costs.

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

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

New Delhi  
November 11, 2011  
dn