

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

O.A.No. 375 of 2010

Major (Retd.) Rajesh Arora

...Petitioner

Versus

Union of India & Others

...Respondent

For the Petitioner : Shri S.S.Pandey, Advocate

For the Respondents: Shri A.K. Srivastava, Advocate

C O R A M:

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

HON'BLE LT.GEN. S.S.DHILLON, MEMBER (A)

**ORDERS
10.02.2011**

1. Petitioner by this petition has prayed that the respondent may be directed to refund the amount of Rs.3,08,560/- recovered from the applicant and further prayed that respondent may also be directed to grant disability pension consisting of service element as well as disability element to the Applicant by extending the benefit of

modified policy instructions issued by the Respondents on 29.09.2009 taking applicant to be eligible for grant of disability pension.

2. Petitioner was commissioned in Army Service in the Regiment of Artillery on 05.12.1997. But unfortunately, while in service, he met with an accident on 25.02.2001 at high altitude area in J&K and received an injury in left knee and that demobilized him. Therefore, he sought a premature retirement which was granted to him on 22.12.2008. He had also undergone Long Gunnery Staff Course and there was a stipulation that a person who has already undergone a training of this course will serve for a minimum period of 5 years and in case he seeks a premature retirement then he will have to bear the service liability proportionately.
3. Therefore, grievance of the petitioner by this petition is that he has been protesting right from beginning that he should not be sent to this Long Gunnery Staff Course as

he has already moved for premature retirement and in case he undergoes this training and his premature retirement comes then he will have to incur a service liability. Petitioner has also invoked the Army Order 17 of 1995 which says that "*Obligation of Officers Selected to Undergo Courses of Instruction to Continue to Service in the Army for a Specified Period and he has to give undertaking in the form as laid down in Appendix 'B' to this Army Order.*" Petitioner submitted that he did not give any undertaking as required under this Army order, therefore, the service liability which is sought to be recovered from him should not be recovered.

4. A reply has been filed by the respondent and respondent has contested the petition and submitted that petitioner when sent to this Long Gunnery Staff Course, it was not a optional and it was a compulsory course to be undergone by all service officers at relevant point of time though subsequently it has been made optional. During

the time when petitioner was sent to the training, it was a compulsory course and in case the incumbent wants to leave after this course, he has to pay the proportionate cost to the respondent. In the present case petitioner has served for more than three and half years and this amount which is being sought to be recovered is for shortfall of that period.

5. Learned Counsel for the petitioner submitted that since he has not given any undertaking, he is not under obligation to pay this amount.
6. Fact remains that petitioner had been trained at the expense of the government and the final discharge order which has been passed on petitioner's request, there is a stipulation that he will have to make the deficiency of the amount good and on that condition only his premature retirement request was acceded by the respondent. The order dated 24.9.2008 (*Annexure-A4*) clearly stipulates that officer has to refund proportionate cost of training to the

Government before he is relieved of his duties. This was part of the order of premature release to the petitioner. His release was conditional that he has to refund the amount. Therefore, petitioner cannot turn back after taking advantage of 24.9.2008 order of premature retirement.

7. Learned counsel for the petitioner's submission that since he has not given undertaking, therefore he is not obliged to refund the money is irrelevant in the present context because he has sought premature retirement and premature retirement has been given on a condition that he will have to make deficiency good and he has already given in writing and that this amount be recovered from other retirement dues. Therefore, it is not open for petitioner now to protest since he has given in writing to recover the amount from ^{his} ~~his~~ account. Therefore, this argument is totally inequitable and unacceptable.
8. Next question learned counsel submitted is with regard to the payment of the disability pension as the petitioner has

already been discharged from service on 22.12.2008 but his disability pension has not been released to him though he has been found to have been disability of 30%.

9. Learned Counsel for the Respondent submitted that sanction has already been issued 4.8.02010 and disability pension will be released to the petitioner shortly. Respondents are directed to take immediate steps to see that disability pension is released to the petitioner as early as possible so that he could get extra emoluments for the disability. The petition is accordingly disposed of. No order as to costs.

[Justice A.K. Mathur]
Chairperson

[Lt. Genl. SS DHILLON]
Member (A)

New Delhi
10th February, 2011