

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

24.

O. A. No. 468 of 2010
With M.A. No. 310 of 2010

Sepoy Ravinder Singh

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Sh. K. Ramesh, 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

13.07.2011

1. Petitioner by this petition has prayed that directions may be issued to the respondents to reinstate the petitioner with immediate effect in the light of the judgments of Hon'ble Delhi High Court as also laid down principles of estoppels, with all inherent consequential benefits of service, seniority, pay and allowances, and promotions, if any, at par with his batch mates having been promoted in the interregnum period.

2. Petitioner was inducted in Indian Army on 6th March 1995 and was discharged on medical grounds after 7 years on 24th March 2002. He filed a writ petition in Patna High Court on 3rd March 2002 and thereafter he moved an application to withdraw the petition with liberty to file a petition before this Tribunal. That liberty

was granted by the Patna High Court by the order dated 2nd May 2010. Thereafter the petitioner filed the present petition before us.

3. The grievance of the petitioner is that petitioner was in service for last 7 years and now he has been thrown out for having deformity in his thumb. A notice was given to respondents and respondents in their reply pointed out that a complaint was received alleging certain irregularities in the enrolment of 1995. A station Court of Inquiry was ordered to investigate the matter. The investigations revealed that some candidates were fraudulently enrolled therefore disciplinary action was taken against the individuals who were blamed in the Court of Inquiry. Thereafter government was moved for sanction for fresh enrolment in respect of all the candidates who have been inducted because of the malafide of that enrolment officer and after that a fresh medical examination was done and in that it was found that the petitioner was having a deformity and in ordinary course of nature he could not have been enrolled in the Army. However he continued for good 7 years. Since it was found that his enrolment was initially bad on account of the malafide in the enrolment therefore his services were subsequently discharged. Learned counsel for the petitioner has strenuously argued before us that the petitioner has been serving for 7 years and deformity has been pointed out now therefore he should not be discharged and no notice whatsoever has been given to him for being discharged.

4. It is true that in ordinary course of nature petitioner would have certainly been given a show cause notice and appropriate actions would have been taken for illegal recruitment which has been undertaken. The respondents have already court martialled the persons responsible and we have been informed that some persons

have been punished on account of Court of Inquiry after the court martial has taken place. The question is could the petitioner be enrolled with deformity in ordinary course of nature i.e. the Army. The answer is no because of the deformity he could not have been inducted in service. As such it appears that some malafide is involved in the matter and a complete medical re-examination was done and in that re-examination some people were found to be suffering from medical disability which would have disentitled them to be inducted in service. Petitioner is one of those persons. He is suffering from deformity joint laxity right thumb. An illegal action is illegal right from the inception. The Court cannot protect such illegal action. Petitioner's selection was actuated with a malafide and the personnel responsible have already been punished. We cannot protect such illegal action and petitioner is the beneficiary of this action therefore his services have rightly been terminated.

5. Consequently, we do not find any merit in this petition and the same is dismissed with no order as to costs.

A.K. MATHUR
(Chairperson)

S.S. DHILLON
(Member)

New Delhi
July 13, 2011