

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

**13.**

**O.A NO. 95 OF 2010**

**Ex Rakshak Daulat Ram**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**With**

**O.A No. 211 of 2010**

**For petitioner: Sh. S.S Pandey, Advocate.**

**For respondents: Sh., Advocate**

**CORAM:**

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

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

**ORDER**

**14.10.2011**

**Justice Mathur, Chairperson**

1. The brief facts that are necessary for the disposal of this petition are that the petitioner was enrolled in the Army, Regiment of Artillery, in September 1984 and was released from service with pension on 30.9.2001. In order to encourage discharged Army personnel, the Government formulated a policy giving such persons re-employment in

Defence Security Corps (DSC), which is also a part of the Indian Army. As per the policy, the gap between date of discharge from former service and the date of re-enrolment in DSC should not exceed five years. The petitioner, in pursuance of this policy, applied for re-enrolment on 23.8.2005, before the expiry of five years. He was re-enrolled in DSC on 28.2.2007. Subsequently, when it came to notice that the petitioner was re-enrolled after the period of five years, the respondents termed his re-enrolment as illegal and he was discharged in accordance with Army Rule 13(3). A show cause notice was issued to him on 30.7.2008 and thereafter his services were terminated. Subsequently, the petitioner filed a representation unsuccessfully and the present petition challenging the order of discharge.

2. Learned counsel for the respondents contested the position and pointed out that in fact the re-enrolment of the petitioner in the DSC was much after the period of five years. In order to appreciate the controversy, it may be relevant to re-produce the policy decision for recruitment of such persons in the DSC. The first policy letter, which had been placed before us for consideration, is dated 15<sup>th</sup> December 1985. It reads as under:

"I am directed to refer to this Ministry's letter No. 65730/3/GS/DSC-2/144-C/D (GS-IV) dated 08 May 1970 regarding terms and conditions of service for re-enrolment and superannuation in respect of DISCHARGED personnel and to say that henceforth only these personnel who fulfil the following

service requirements will be eligible for re-enrolment to DISCHARGED:-

- (a) Character should be very good
- (b) Should have rendered minimum five years colour service in the Army/Navy/Air Force or five years embodied service in case of ex-TA personnel.

**\*\*03 years embodied service minimum attendance of seven Annual Trg Camps – amended vide MCD No. 65730/DISCHARGED-2/295/D (Mov)/94 dated 03 Feb 94.**

- (c) Should be Medical Category 'AYE'.

2. Further all personnel joining DISCHARGED should do so within five years of their retirement/discharge from previous service or before attaining the following prescribed maximum ages for various ranks whichever is earlier:-

Rank	Maximum age for re-employment/re-enrolment (yrs)	Age of superannuation (yrs)
Sepoys	45	55
<b>Naiks</b>	<b>45</b>	<b>55</b>
Havildars	47	55
Nb Sub/Sub	50	55
Sub Majors	52	55 yrs or completion of 4 yrs tenure whichever is earlier

3. This Ministry's Corrigendum No 65730/3/discharged-2/332-C/D (GS-IV) dated 22 Jun 83 is hereby cancelled.

4. This will have effect from 01 Feb 84.

5. This issues with the concurrence of Ministry of Defence in AG vide their u.e. No 2460/PD dated 18<sup>th</sup> Nov 1985."

As per this policy letter, two conditions are required to be adhered to viz. (i) the personnel joining DSC should do so within five years of their retirement/discharge from previous service; and (ii) they should not have exceeded the prescribed maximum ages. Thereafter on 14<sup>th</sup> August 1987, a corrigendum was issued by the Ministry of Defence, which reads as under:

1. The following amendment is made to this Ministry's letter No 65730/DISCHARGED-2/390-C/D (GS IV) dated 15 Dec 85 regarding revised standard for re-employment in DISCHARGED:-

Add New Para 3 after existing para 2 as under:-

3. The period of five years mentioned in line 2 of para 2 above will be counted till to the date the date ex-servicemen reports to Recruiting Office for re-employment in DISCHARGED. Similarly, the age given in column (b) of table appended below para 2 above will counted to the date ex-servicemen reports to Recruiting office for re-employment in the DSC.
2. This issues with the concurrence of the Finance Division of this Ministry vide their ID No 1732/PD of 1987.

As per this corrigendum, the period of five years will be counted till the date the ex-serviceman reports to the recruiting officer for re-employment in DSC, meaning thereby that the incumbent should report to the recruitment officer for re-employment. To further clarify the matter, Army HQ issued another letter dated 27.10.2006, which reads as under:

1. Reference:-



XX XX  
XX XX

XX XX  
XX XX

2. Certain Rtg Agencies have raised query with regards to the cut off date for determination of age for re-enrolment into DISCHARGED.

3. The following is clarified. All ex-serviceman undergoes following stages with the Rtg Org/Regtl Centres before enrolment.

(a) Stage-I: This is the stage where the candidate registers himself for re-enrolment into DISCHARGED at ZRO/ARO/Regtl Centres. The act of registering the name indicates his willingness/availability for enrolment into DISCHARGED as and when vacancies are made available to the Rtg Org/Regtl Centres.

(b) Stage-II Depending on the vacancies allotted to ZRO/ARO/Regtl Centres, the candidates as per the seniority maintained in the register during stage-I are intimated to report to the Rtg Agencies for physical and medical tests. Therefore, it is the day the ex-servicemen reports to the Rtg Org based on the call letter is the day he is considered to have reported for enrolment.

4. Para 2(b) is very evident in this HQ letter No 62502/Rtg5(OR)(A) dt 09 Apr 02, note 3 under para 7 of Appx B.

5. The Rtg Agencies are once again requested to go through the policies in detail prior to raising of any queries.

6. The contents of this letter may please be disseminated to all concerned under your jurisdiction.

Finally, in this letter of 27<sup>th</sup> October 2006, the authorities have clarified that there are two stages, one in which the candidate reports for re-enrolment in DSC and then second when the recruitment is made depending upon

availability of vacancies in the DSC. After a candidate registers himself for re-enrolment at the Recruiting Centre, according to seniority and availability of the vacancy a call letter is sent to the applicant intimating date for reporting for enrolment. A perusal of these three letters makes it clear that (i) there should be availability of vacancy; (ii) the incumbent should join the DSC within five years of discharge from the Army; (iii) he should not exceed the maximum age limit according to rank; (iv) the incumbent should have been issued a letter for re-enrolment. In the present case, though the incumbent applied for re-enrolment on 23.8.2005 i.e. within five years of his discharge from service on 30.9.2001, he was called for the interview only on 24.2.2007, by this time he had crossed the period of five years. Therefore, in the present case, the illegality is writ large that the incumbent should not have been called for the interview at all as he had already crossed the period of five years from the date of his discharge from service. This was clearly a mistake committed by the recruiting officer who called him for interview though five years had already elapsed from the date of his discharge. Be that as it may, he was given a job. Subsequently, a show cause notice was issued and he was discharged. Learned counsel for the petitioner, therefore, submitted that equity is in his favour and estoppel should be against them as they have issued appointment to the petitioner and he expected to continue in the DSC service till superannuation as he has set his life in that manner and

suddenly it has been cut short. Therefore, great injustice has been caused to him. It was also submitted that no fraud had been committed by the petitioner. All the facts were placed by the petitioner before the respondents and the respondents knowing fully well the position of the various circulars and the facts of the petitioner, gave him re-enrolment. By the action of the respondents, the petitioner is deprived of his future prospects and livelihood otherwise he would have sought some other avenues in life. Learned counsel for the petitioner brought to our notice Army Act Section 15. We have gone through the relevant provisions of the Army Act and we are of the opinion that AA Sec. 15 would not come to the rescue of the petitioner.

3. Supporting the decision of the respondents, learned counsel for the respondents submitted that despite the clear orders bearing on the subject, an illegality had been committed by the recruitment officer and no benefit can be given to the petitioner for such illegality committed by the recruiting officer.

4. We have considered the submission of both the parties and we are of the opinion that in fact, in the present case, the recruiting officer has definitely committed a grave mistake in recruiting the petitioner. He was in full knowledge of the order dated 27.10.2006, in which it was clearly delineated that there are two stages defining how the recruitment has to be made. It was fully known to him that the petitioner was discharged from



service in the year 2001 and he was called for the interview only on 24.2.2007, after the expiry of the prescribed five years period from the date of discharge. Despite that, the recruiting officer has called him. The recruiting officer has committed a mistake. The respondents should initiate disciplinary action against the concerned officer, who in defiance of the clear order, gave re-enrolment to the petitioner in DSC service. It is for the respondents to take appropriate disciplinary action for such defiance of the order.

5. So far as the petitioner is concerned, the appointment given to him in the DSC is in clear violation of the mandate that re-enrolment should not be given after the expiry of the prescribed period of five years after discharge. Therefore, no benefit can be extended to the petitioner and he has been rightly discharged from the DSC as illegality committed is writ large. As regards the equity and estoppel against the respondents raised by learned counsel for the petitioner, there is no estoppel against the statute. So far as equity is concerned, the petitioner might have organised his life in such a manner that he would continue in service till he attains the age of superannuation in DSC. He has not committed any fraud. The mistake was committed by the recruiting officer. Therefore, he has to be compensated for short cutting the tenure of his service. In the facts and circumstances of the case, though we are not inclined to interfere with the matter by setting aside the order of discharge, it would be in the fitness of



things to adequately compensate the petitioner for the fault committed by the respondents in giving him service. We direct the respondents to pay the petitioner an amount of Rs.50,000/- as compensation for sudden termination of his services. With this, the petition is disposed of. No order as to costs.

**A.K MATHUR**  
(Chairperson)

**S.S DHILLON**  
(Member)