

**COURT NO. 3, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

T.A. No. 226 of 2010

W.P.(C) No. 24010 of 2005 of Delhi High Court

IN THE MATTER OF:

Hav Sukhwant Singh**Applicant**
Through : Mr. S.K. Sanan, counsel for the Applicant

Versus

Union of India and Others**Respondents**
Through: Mr. Anil Gautam, counsel for the Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN M.L. NAIDU, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 02.06.2011

1. The petition was filed in the Delhi High Court on 16.12.2005 and subsequently it was transferred to the Armed Forces Tribunal on 13.01.2010.

2. The applicant vide this petition has prayed for quashing of the orders of Record Office dated 12.12.2001 (**Annexure P-13**) and the decision taken by the Chief of the Army Staff (COAS) and communicated by the Record Office vide letter of 18.09.2005 (**Annexure P-15**). He has also prayed that respondents be directed to notionally reinstate the applicant into service in the promoted rank of Nb Sub with all consequential benefits.

3. The brief facts of the case are that applicant was born on 25.02.1952. He was enrolled on 06.01.1977 as a Clerk in the Indian Army. He was granted the rank of Hav in due course. He became fully eligible and was due for being promoted to the rank of Nb Sub. However on 25.02.1996, he became over age. A vacancy for a JCO arose on 01.10.1997. The case was taken up by the Unit granting the applicant waiver in terms of age which was rejected.

4. The applicant filed a case before the Hon'ble Delhi High Court bearing WP(C) No. 8059/2003 which was disposed off on 01.11.2004 and their Lordships directed that "*the matter shall be reconsidered by the competent authority within a period of four weeks from the date of receipt of this order and in case petitioner is found to have made out a case, the benefit for his promotion to the rank of Nb Sub Clerk shall be given with all benefits attached thereof*". The Court further held that "*the counsel for the petitioner has clearly stated that the petitioner would not claim any further benefit beyond the benefit of grant of rank of Naib Sub. Therefore, the claim of the petitioner in that regard shall be restricted to the aforesaid extent and his claim for further benefit of promotion to any other or further higher rank/post shall not be entertained*".

5. The petitioner in that case before the Hon'ble Delhi High Court had pleaded that the reasons given by respondents for rejecting the case of relaxation of age limit are arbitrary and unreasonable.

Therefore, the Hon'ble Court had set aside the same and remitted back the matter to the competent authority for reconsideration in accordance with law by giving due weightage to the observations and the directions made therein. While considering the same, the competent authority shall also consider the requirement as envisaged under Rule 149 of the Defence Services Regulations as also requirement laid down in circular dated 8/14.09.1962.

6. Consequent to the orders of the Hon'ble Delhi High Court dated 01.10.2004, the COAS reconsidered the matter and gave a reasoned order which was communicated to the applicant vide letter of 18.09.2005 (**Annexure P-15**). The respondent authorities had rejected the claim of the applicant. Thus in consequence, the applicant approached the Hon'ble Delhi High Court once again on 16.12.2005 by way of filing present writ.

7. Learned counsel for the applicant argued that vide the Hon'ble Delhi High Court order dated 01.11.2004, the Hon'ble Court had observed that "*reasons given by the respondents for rejecting the case of the petitioner are arbitrary and unreasonable*". This observation in itself conveys the gist of the case. It may be noted that case for waiving of this requirement was initiated by the Unit which was recommended by each officer in the chain of command including the GOC-in-C command. Therefore, there was no reason for the reviewing

authority not to accept the positive recommendations of each and every officer in the chain of command.

8. Learned counsel for the applicant argued that the order given by the COAS is not in consonance with the orders and policies which have been enshrined in the Army HQ Policy of 09.01.1962 in which relaxation of age and service limit is permissible in exceptional cases.

9. Learned counsel for the applicant further stated that applicant was promoted to the rank of Honorary Nb Sub on retirement. Therefore, there is no conceivable reason for him to be not approved for Nb Sub while in service just because of his age.

10. Learned counsel for the respondents stated that in sum and substance the Hon'ble Delhi High Court order was to *"reconsider by the competent authority"*. This has been done and a detailed reasoned order was passed by the COAS who was the competent authority. The earlier order was perhaps had not given out detailed reasons for not granting the waiver for age to the applicant. It is clear from Para 10 of the judgment given by the Hon'ble Delhi High Court which clearly stated that *"the aforesaid stand, which is taken now at the time of hearing the arguments of the counsel was, however, not reflected from the counter affidavit inasmuch as it is not pointed out in the counter affidavit that the case of the petitioner was rejected on any other grounds. The ground for rejection of the case of the petitioner is said in*

the counter affidavit to be based only on rejection of recommendation for relaxation of age limit. The records are also not available and placed today. The counsel for respondents has also submitted that petitioner has received special consideration from the respondents not only at the time of his entry but even subsequently, for he was given extension of service from 1999 to 2001".

11. Learned counsel, therefore, argued that no reasoned order was given by the competent authority to reject the proposal of waiver for relaxation of age in this case. The case was suitably reconsidered by the competent authority after the Hon'ble High Court passed the order on 01.11.2004.

12. Learned counsel for the respondents also stated that the applicant had joined the Army at the age of 24 years 11 months which in itself a rather late consideration though most of the recruits join at the age of 19 or 20. The age criteria, therefore, came in the way of the applicant as he was a late entry. Learned counsel further argued that policy of age relaxation should be seen in the overall context and the existing rules and procedures which are in harmony with Para 149 of the DSR, Army HQ policy of 09.01.1962 and letter of 8/14.09.1962. These guidelines are merely indicative to the competent authority. Para 2 A of the Policy letter dated 8/14.09.1962 lays down the following criteria :

"(a) Special reasons for the grant of relaxation of the individual for whom the relaxation is sought is well decorated and/or has achieved some singular distinction like service championship in some event and/or has been earning outstanding/above average reports for several years."

13. Having heard both the parties at length and having examined the documents, we are of this opinion that the Policy letter of 09.01.1962 clearly lays down the following :

"(A) Exceptional merit. This has been further implied as under :

(a) A case which is based on common, routine or ordinary features of the service is not naturally and "exceptionally merited" case.

(b) Higher educational qualifications than minimum educational standards laid down for entry and for subsequent orders in a service will not be considered as exceptional merit.

(c) An "above average" grading in an ACR is not a grading of "exceptional merit". This grading is a normal one for promotion of an individual by selection amongst the average graded persons.

(d) A required degree of proficiency in a common trade or stenography, does not constitute an "exceptional merit".

14. Para 2 of the same lines defines outstanding merit for the purpose of consideration of waiving of age limit and service which is stated as below :

(a) A case based on an "outstanding achievement" by an individual which brings credit to the Army.

(b) A most peculiar case normally rarely to happen and cannot be used as a precedent later to seek for a similar treatment to another case.

(c) A rare qualification provided that the retention of an individual by virtue of that qualification is an inescapable requirement of the service.

15. Analysing the detailed reasoned order of the COAS of 29.06.2005, it is evident that the performance of the individual was of "above average" standing but was certainly "not exceptional" since he had "never been recommended for an award for service rendered beyond the call of duty" or any action which could inspire all the members of the armed forces. The authority concerned has taken decision as per direction of the Hon'ble Delhi High Court dated 01.11.2004 keeping in view the guidelines given in the concerned policies. The order of COAS dated 29.06.2005 is produced as under:

"1. In compliance with Hon'ble Delhi High Court order dated 01 Nov 2004 in WP(C) No 8059/2003 filed by No9082197Y Hav (Clk) Sukhwant Singh vs UOI and others, I have carefully considered his case for relaxation of age limit for promotion to the rank of Nb Sub.

2. WHEREAS, Para 149 of Regulations for the Army 1987 provides for relaxation of age limit for promotion to JCO's rank in very exceptional circumstances. In accordance with Army HQ letters No 92209/AG/PS 2(c) dated 08/14 Sep 1962 and 92209/AG/PS-2(c) dated 09 Jan 1962, relaxation is

permissible only in very exceptional circumstances based on an outstanding achievement by an individual bringing credit to the Army; most peculiar case rarely to happen or rare qualification that is inescapable requirement of the Army.

3. WHEREAS, it is noted that the individual has participated in Ops MEGHDOOT, RAKSHAK and VIJAY and performed his duties as a clerk with his outfit. Through out his service he has performed in a befitting manner as is expected from a personnel of his rank and service. He has never been recommended for any gallantry or distinguished award. He does not meet criteria of very exceptional circumstances as laid down in Army HQ policy letter quoted above warranting relaxation of age for promotion. He has retired in normal manner on completion of laid down age as per his rank.

4. AND IN PURSUANCE WHEREOF considering the facts and circumstances of the case, I do not consider relaxation of age feasible in his case."

16. We have also considered the contentions raised by the applicant that he was awarded honorary commission for higher rank after retirement, but we are clear that the criteria for honorary awards are different than the criteria for granting relaxation in age. Likewise, the contention that he was awarded various medals during his service period, they have been taken while discussing the issue of granting relaxation of age, but they are not fulfilling the criteria in "exceptional service" as per the requirement of the policy for granting relaxation. Thus, we do not find case for relaxation of age as per the guidelines given in the policy. The contentions raised by the applicant are not sustainable.

17. In view of the foregoing, we are of the opinion that the order given by the competent authority dated 29.06.2005 is reasoned and not suffering from any infirmity. Hence, the impugned orders dated 12.02.2001 and of 18.09.2005 require no interference. Accordingly, the T.A. is dismissed. No orders as to costs.

M.L. NAIDU
(Administrative Member)

MANAK MOHTA
(Judicial Member)

**Announced in the open Court
on this 02nd day of June, 2011**