

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

T.A. No. 349 of 2010

(Delhi High Court W.P (C) No. 9587 of 2009)

IN THE MATTER OF:

Naib Risaldar Rohtas Singh

.....Applicant

Through Maj (Retd) K Ramesh, counsel for the Applicant

Versus

Union of India and Others

.....Respondents

Through: Col (Retd) R Balasubramanian, counsel for the Respondents

CORAM:

**HON'BLE MR JUSTICE MANAK MOHTA, JUDICIAL MEMBER,
HON'BLE LT GEN Z.U.SHAH, ADMINISTRATIVE MEMBER**

JUDGMENT

Date: 07-01-2011

1. The applicant had filed WP(C) No 9587/2009 in the Hon'ble Delhi High Court praying that the order of intimating his discharge dated 11/07/2008 (Annexure P-1) be quashed and he be granted two years extension with all financial benefits. The case was transferred to this tribunal on 12/11/ 2009.

2. The applicant was enrolled in the army on 29/06/1983 and was subsequently promoted to the rank of Naib Risaldar. He contends that in October 2007 he had submitted an application for extension of service from 01/07/2009 to 30/06/2011. He completed his normal term of engagement on 30/06/2009 and not having been granted two years extension of service, by his commanding officer the order dated 11/07/2008 was passed and he was superannuated.

3. The applicant contends that he meets all the prerequisites for grant of extension namely willingness for extension, neither being low medical category nor any disciplinary record, and meets requisite physical fitness standards as laid down by Army HQ letter dated 21/09/1998 (Annexure P-4). The applicant states that because of his service record and the terminal illness of his wife his commanding officer had assured him that extension would be granted to him. However on 11/07/2008 he was informed that he would be discharged on 30/06/2009 (Annexure P-1). On 02/06/2009 he was served with a movement order (Annexure P-3) to proceed to Armoured Corps Centre for discharge with effect from 30/06/2009.

4. The respondents in their counter affidavit have stated that a screening board had not recommended grant of extension to the applicant and the orders of his discharge, with effect from 30/06/2009,

were issued on 30/06/2008. The applicant had adequate time but only represented after the orders for his move to Armoured Corps Centre were served on 30/06/2009. The application therefore should be rejected on grounds of delay and laches. The applicant has also not challenged the order of discharge dated 30/06/2008 and thus the application is not maintainable.

5. The respondents maintain that the applicant's term of engagement in the rank of Naib Risaldar was for 26 years, extendable by 2 years if approved by a screening board. The same was held on 29/09/ 2007 and the applicant was not granted extension because he did not meet the physical standards laid down for grant of extension. The order of his discharge was thus correctly issued as per Army Rule 13(3), **"on completion of normal terms of service"**. The respondents have recommended that the application be rejected.

6. We have heard the arguments and perused the records especially pertaining physical fitness concerning the conduct of BPET and PPT Tests. We note that the applicant had been graded "good" in two quarters and then subsequently not tested in the last two quarters. The respondents maintain that the applicant had failed to appear for the tests on the nominated dates. It is however the normal practice that persons who do not appear for the tests are tested on subsequent days. The

respondents authority failed to do so, for that applicant should not be made to suffer. The respondents could not explain why the applicant was not so subsequently tested. The applicant had applied for extension of service much earlier from 01/07/2009 to 30/06/2011. The same was not granted by the screening board on grounds that the applicant did not meet the physical standards. We have seen the record. His extension should not have been denied on this count. We consider that in the given circumstances that the requirement of BEPT & PPT tests be waived. The order of non grant of extension is struck down. His normal term of engagement expired on 30/06/2009. He has no any disciplinary record. Considering all facts and his service record we direct that the applicant be considered for grant of two years extension from 01/07/2009 to 30/06/2011. If granted, he would be eligible for all consequential benefits. In that case his discharge order will not come in the way. Since there are only 06 months left for completion of extension of service we direct that this exercise be done within two months. Application is allowed. No costs.

Z.U.SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

Announced in the open Court
on the day of 07th January, 2011