

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

**T.A. No.476 of 2010 & M.A. No.106 of 2010
W.P.(C) No.7173 of 2009 of Delhi High Court**

IN THE MATTER OF:

Naib Risaldar Vijay Pal**Applicant**
Through: Mr. K. Ramesh, Counsel for the applicant

Versus

Union of India & Ors.**Respondents**
Through: Dr. Ashwani Bhardwaj, Counsel for the
respondents

CORAM:

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

JUDGMENT

Date: 31/01/2011

1. The applicant had filed W.P.(C) No.7173/2009 in the Hon'ble Delhi High Court. The same was transferred to this tribunal on 02.12.2009. The applicant has prayed that the order of his discharge dated 23.01.2009 (Annexure P-5) be quashed and he be promoted with ante date seniority as held

in Hon'ble Delhi High Court Judgment dated 30.01.2009 given in Kalu Ram case.

2. The applicant was enrolled on 29.01.1983 and rose to the rank of Naib Risaldar. During his service the applicant was medically downgraded to H 2 (P) and as a result was discharged for the first time on 29.02.2008. He was, however, reinstated on 19.01.2009 as a sequel to Hon'ble Delhi High Court order dated 20.11.2008 given in Putan Lal case. A few days after rejoining, the applicant was discharged for the second time on 31.01.2009 on attaining the age of superannuation in the rank of Naib Subedar vide letter dated 23.01.2009.

3. The applicant contends that during the period of his absence on discharge between 29.02.2008 to 19.01.2009, juniors to him were promoted. The applicant places reliance on the judgment in the matter of Naib Subedar Kalu Ram, W.P.(C) No.579/2009 which ruled that *"had the petitioner been in service he would also have been promoted to the post of Risaldar before his date of*

discharge....., which in turn would have entailed the benefit of an extension of service of two years besides other monetary benefits."

4. The respondents, in their counter affidavit, have stated that the applicant was enrolled on 29.01.1983. His first discharge, effective from 29.02.2008, was ordered by Army Headquarter letter dated 12.04.2007, after the applicant had completed 25 years service. The applicant was downgraded medically to H 2 (P) and was provided a sheltered appointment from 13.10.1992 to 13.10.2006. Subsequent to the High Court order, the applicant was reinstated in service on 20.01.2009 and was discharged for the second time on 31.01.2009, after completing 26 years of service.

5. The respondents state that the applicant could not be promoted since promotions are ordered against clear vacancies and when the applicant reported for duty, after his reinstatement, on 20.01.2009, there were no vacancies

available in his unit (62 Cavalry). The respondents have, therefore, recommended that the application be rejected.

6. We have heard the arguments and perused the records. The applicant was enrolled on 29.01.1983 and being LMC H2(P) he was discharged for the first time on 29.02.2008. As a sequel to the Hon'ble Delhi High Court order dated 20.11.2008 (supra), the applicant was reinstated in service on 19.01.2009. He was again discharged for the second time on 30.01.2009. During the period of this absence, persons junior to the applicant were promoted Subedar. This fact was admitted by respondents side during course of arguments. The applicant has correctly claimed that he should have been promoted when he was reinstated in service on 19.01.2009. Judgment of the Hon' ble Delhi High Court in the matter of Naib Risaldar Kalu Ram, W.P.(C) No.579/2009 supports the contention of the applicant. In view of this observation, we direct that the applicant be considered for promotion to the rank of Subedar and, if approved for promotion, the order of his discharge w.e.f.

31.01.2009 will not come in his way. The applicant will be entitled to all consequential benefits.

7. Application allowed. No costs.

Z.U. SHAH
(Administrative Member)

MANAK MOHTA
(Judicial Member)

**Announced in the open Court
on this 31st day of January, 2010**