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COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
OA No.237/2011

IN THE MATTER OF:

Nk Desh Raj **.....Petitioner**

VERSUS

Union of India & Ors. **.....Respondents**

Dated: 22.11.2012

Present: Mr. K. Ramesh, counsel for the Applicant.
Dr. S.P. Sharma proxy for Dr. Ashwani Bhardwaj, counsel for the respondents.

Heard learned counsel for the parties. By this petition, the petitioner seeks to challenge his discharge. The discharge is as old as 01.04.2003 and the ground of challenge is, that he has been discharge on medical grounds without being subjected to Invalidating Medical Board. To support the challenge, reliance is place on the judgment of Hon'ble Supreme Court in Rajpal Singh's case, which also is as old as 07.11.2008. (copy produced at page 28 of the compilation)

Then, the petitioner has also relied upon the judgment of Delhi High Court dated 20.11.2008 passed in bunch of matters led by Puttan Lal & Others Vs Union of India, and from perusal thereof also , we find that in para 7, the High Court has issued the directions, and in sub para (iv) restricting those directions to be applicable only to such of the persons who have been discharge, or proposed to be discharged under policy

letter dated 12.04.2007, or those who may have been discharged earlier, but have already approached the competent court by filing a petition.

Obviously, since the petitioner was discharged in 2003, he does not fall in the category of "persons discharged or proposed to be discharged under the policy letter dated 12.04.2007" and admittedly, the petitioner had not approached the competent court by filing a petition earlier.

In that view of the matter, the petitioner cannot derive the benefit of judgment of Rajpal Singh's case or Puttan Lal's case, on its own force.

Then the question remains, as to the petitioner's entitlement to assail the discharge, on the basis of legal principles propounded by Hon'ble Supeme Court in Rajpal Singh's case. In that regard, it would suffice to observe, that even Puttan Lal's judgment was rendered in November 2008, and the petitioner has approached this Tribunal as late as 31.05.2011, while the Tribunal had been established much earlier in 2009.

In that view of the matter, the petition is clearly barred by time and is not required to be entertained.

Learned counsel for the petitioner, thereupon invited our attention to various previous orders passed by this Tribunal, to say that he had already filed statutory complaint on 18.12.2009. We find from the perusal of order-sheets that it appears that it was only by way of good gesture that Court wanted to know the outcome of the statutory complaint, said to have been filed by the petitioner. But then, learned

counsel for the respondent submits that no such statutory complaint is at all traceable, which fact was given out in the Court way back on 16.05.2012. Taking advantage of the situation, and bearing benevolence, the Court simply observed "without going into the controversy, the applicant is directed to submit a duly signed copy of statutory complaint filed on 18.12.2009 to the respondent authority directly against acknowledgement", and directed the respondents to dispose off the same as per law.

Suffice it to say that, so far the grievance ventilated in this OA is concerned, as observed above it is clearly barred by time. Therefore, OA is dismissed.

However, respecting the spirit of the observations made in the order dated 16.05.2012, the respondents are directed to decide the statutory complaint according to law, on its own merits, and without in any manner being obsessed by filation and disposal of the present OA. At the same time it is made clear, that if the petition is decided against the petitioner, that will not give him a fresh period of limitation for agitating the matter over again.

M.L. NAIDU
(Administrative Member)

N.P. GUPTA
(Judicial Member)

Dated: 22.11.2012
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