

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

10.

T.A. No. 464 of 2009

Writ Petition (Civil) No. 8126 of 2009

Havildar (Retd.) Satyanarain

.....Petitioner

Versus

Union of India & Ors.

.....Respondents

For petitioner: Mr. S.S. Pandey, Advocate.

For respondents: Mr. Mohan Kumar, Advocate.

CORAM:

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

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

ORDER

01.06.2012

1. Petitioner by this petition has prayed that the order of discharge issued by Artillery Records, Nasik Road Camp letter dated 1<sup>st</sup> July 2002 is contrary to Army Rule 13 and Regulations for the Medical Services of the Armed Forces 1983 and it may be quashed and Petitioner may be reinstated with all consequential benefits.

2. Petitioner was enrolled in Indian Army as a Sepoy (Clerk) in Artillery Corps on 21<sup>st</sup> November 1981 and he was promoted to the rank of Naik on 16<sup>th</sup> June 1985. Petitioner while posted in Field Area at Rakhmuthi in Jammu & Kashmir in 1987 due to climatic condition developed the ailment of Bronchial Asthma which was held attributable to military service by the Respondents and since the medical category of Petitioner was downgraded to P2. Then he was promoted to the rank of Havildar on 1<sup>st</sup> April 1988 despite

that medical category and in 1994 Petitioner was detailed to undergo the promotion cadre course which is mandatory for promotion to the rank of Naib Subedar which he completed successfully. In the year 1996 Petitioner was detailed to undergo the NCOs Clerks course which is mandatory for promotion of Clerks to the rank of Naib Subedar. On 1<sup>st</sup> July 2002 while Petitioner was serving with 40 Medium Regiment (SP), a discharge order was issued by Artillery Records, Nasik Road Camp for discharging him from service from 1<sup>st</sup> December 2002 on the ground of being a low medical category in terms of Army Order 46/80 and Army Rule 13 (2A) contrary to Army Rule 13 (3) (iii) which governs the discharge on medical grounds. The Petitioner did not take any step and kept on waiting till the judgment was given by the Hon'ble Supreme Court in the case of Union of India & Ors. v. Rajpal Singh (Civil Appeal No. 6587 of 2008 decided on 7<sup>th</sup> November 2008) and thereafter he filed a petition in 2009.

3. Learned counsel for the Respondents has raised a serious objection of delay that since the Petitioner was discharged way back in 2002 and he is now challenging the order of discharge after seven years invoking the decision of the Hon'ble Supreme Court in Rajpal's case and it is extremely belated to entertain this petition at this distant point of time. The objection raised by learned counsel for the Respondents appears to be justified. The Petitioner if has any grievance of his discharge in 2002 should have filed a petition in a reasonable time but he waited and when the decision was given by the Hon'ble Supreme Court in Rajpal's case he woke up to file the present petition. This petition is extremely belated and hence we are not inclined to interfere.

4. The petition is dismissed with no order as to costs.

**A.K. MATHUR**  
(Chairperson)

**S.S. DHILLON**  
(Member)

**New Delhi**  
**June 01, 2012**  
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