

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
(Court No.2)**

**T.A NO. 504 of 2009
WP(C) No.8053 of 2009 of Delhi High Court**

IN THE MATTER OF:

Sub Ram Kumar**APPLICANT**
Through : Mr. K. Ramesh, counsel for the applicant

Vs.

UNION OF INDIA AND OTHERS ...**RESPONDENTS**
Through: Dr. S.P. Sharma proxy counsel for Mr. Ashwini Bhardwaj
counsel for the respondents

CORAM:

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

JUDGMENT

Date: 13.03.2012

1. This petition was originally filed before the Hon'ble High Court of Delhi as WP(C) No.8053 of 2009. Thereafter, it was transferred to the Armed Forces Tribunal on 04.12.2009 and was registered as TA No.504/2009.

2. Vide this petition, the applicant has sought quashing and setting aside of Army HQ Policy letter dated 21.09.2008 (Annexure P-7) being irrational without application of mind when read with Army HQ Policy letter dated 10.10.1997 (Annexure P-6). He has also challenged the Signal Records discharge letter dated 27.11.2007 by which he was discharged w.e.f. 31.03.2008 and 18.12.2008 by which

his claim for disability pension was rejected (Annexure P-3 and P-4 respectively). The applicant also sought a direction for the respondents to reinstate the applicant in military service and grant extension of two more years w.e.f. 31.03.2008 to 31.03.2010.

3. Brief facts of the case are that the applicant was enrolled in the Army on 30.09.1980. On 25.07.1984 the applicant met with an accident in which his right ring finger was amputated. His ailment was diagnosed as “partial amputation of right ring finger” (Annexure P-1). The Court of Inquiry opined that he sustained this injury while he was not on duty. The inquiry also states that the individual is not to be blamed for the injury (Annexure P-2).

4. Learned counsel for the applicant further argued that while the applicant sustained this injury in July 1984, despite his medical categorisation he was promoted through various ranks and become a Subedar. He was, however, discharged from service on 31.03.2008 having completed 27 years and 6 months of service, being LMC case without holding Invalidation Medical Board (IMB). As per the judgment given by Hon’ble Delhi High Court the case of **Sub (Skt) Puttan Lal & other connected petitioners on 20.11.2008** the applicant was entitled to be reinstated in service in the same rank up to the date of normal date of superannuation i.e. 30.09.2008. He also maintained that he was entitled for further extension in service w.e.f. 2008 upto 2010. He was a volunteer for extension of service which was not granted to him because of the policy stipulation contained in the letter

of 21.09.1998. He argued that it is a paradoxical case that the policy of 10.10.1997 permitted promotion of the applicant despite his LMC which he had sustained in 1984. It implies that he was eligible for promotion as per said policy, however, he was not eligible for extension because of the LMC.

5. Learned counsel for the applicant argued that that is why he has challenged the provisions of policy letter of 21.09.1998 which laid down parameters for extension of service against the provisions of law and principles of natural justice.

6. Learned counsel for the applicant further argued that having realised their mistake of having made an incorrect policy in terms of extension of service, the Army HQ has issued a fresh policy dated 28.09.2010 by which acceptable category of medical has been held entitled to extension, which has harmonised the criteria for extension and promotion. However, it is made effective from 01.04.2011. He argued that since it is a beneficial policy, this may be a factor for consideration that it should be applied retrospectively in the case of the applicant also. However, he stated that when he had filed the case in the Hon'ble High Court, this fresh policy of 28.09.2010 was not issued, therefore, it could not be made part of pleadings, but the contentions of the applicant are principally conceded by the respondents in their said fresh policy.

7. Learned counsel for the applicant also stated that had the applicant remained in extended service, he would have been considered for the post of Subedar Major and thus again he would have got an extended service of another four years.

8. Learned counsel for the respondents submitted that the applicant has challenged the vires of the extension policy, but there is no arbitrariness in the said policy. He confirmed that a screening board was held for consideration of extension in the case of applicant on 18-19 September 2006 as per the prevailing policy dated 21.09.1998. He further stated that the applicant was declared fit subject to upgradation of medical category at the time of commencement of extension period both in September 2006 and also in September 2008. When the extension period was to start, the applicant was not within the acceptable medical category for extended service. As such, he was superannuated. He further argued that the applicant had superannuated on completion of his terms of engagement and is in receipt of pension accordingly. The applicant has been discharged under Army rule 13(3)I(II)(c) in conjunction with Sub Rule 2A having been placed in medical category lower than 'AYE' and upto the prescribed military medical standard. By that time the applicant had rendered 27 years and 06 months of service in the Army.

9. Learned counsel for the respondents further submitted that the Hon'ble High Court of Delhi in the matter of **Puttan Lal** (supra)

directed the respondents to reinstate the personnel who were discharged under policy letter of 12.04.2007 and 27.06.2007. He further submitted that the Hon'ble High Court had specifically ordered that the individuals whose normal date of superannuation has already arrived or would arrive before issue of option letter for re-instatement, such persons would be entitled for the benefit arising for the premature discharge. Since the option letter for re-instatement into service were issued during December 2008 and January 2009 and by the time the applicant has already completed his term and conditions of his service i.e. 28 years, therefore, the applicant has not been issued option letter for re-instatement into service. But, he was only entitled for differential pay and allowance amount. Learned counsel further stated that policy letter dated 21.09.1998 is very clear and it stated that *"any person who is below the medical category standards so laid down is not eligible for extension."* He further contended that the issue of extension is not having any nexus with the issue of promotion. He further contended that fresh policy dated 28.09.2010 is made effective from 04.01.2011, thus, application is not entitled for any relief under that policy. He further contended that no legal justification is applicable to extend the provision of said policy to the applicant's case, retrospectively.

10. Having heard both the parties at length and having examined the documents, we are of this opinion that the applicant was governed by the extension policy issued by the respondents on 21.09.1998. The applicant clearly did not meet the medical criteria as laid down in the

policy itself. As such, he could not have been granted extension. We have also considered the contentions raised with regard to the said policy of 21.09.1998, but we do not find any arbitrariness or defect in the policy, this policy has been approved after evaluation of all aspects and the exigency of the service. The criterion for promotion are different and they cannot be compared with each other, therefore, the contentions are not maintainable.

11. We have noted that there is a dichotomy between the policy for extension (Annexure P-7) and the policy for promotion (Annexure P-6). The criteria laid down for discipline and medical vary in both the cases. Whatever be the case, in this particular case, the applicant was governed by the prevailing policy for extension and therefore, cannot claim for standards laid down for policy of promotion. We are conscious of the fact that this dichotomy has been resolved by the policy letter of 28.09.2010 which has now been issued to be made effective from 01.04.2011. However, since the new policy is effective from 01.04.2011 it cannot be invoked retrospectively. We also do not find an justifiable ground to make it effective retrospectively, merely as it has adversely affected the applicant.

12. We have noted that the applicant was discharged on medical grounds being a permanent LMC and having put in 27 years and 6 months of service as on 31.03.2008 under Army rule 13(3)I(II)(c) in conjunction with Sub Rule 2A without holding an IMB. We have also examined the judgments given in cases of **Nb Subedar Rajpal Singh**

and **Puttan Lal** (supra) wherein the Hon'ble Apex Court as well as the Hon'ble High court of Delhi has held that Army Rule 13 is sacrosanct and therefore, IMB is the pre-condition for being discharged medically. As per the normal tenure, the applicant was to retire on 30.09.2008 and as per direction given in the **Puttan Lal's** case (supra) decided on 20.11.2008, the option letter for reinstatement in service was to be issued within 30 days, but before that he got superannuated. This is not the case of the applicant that he himself tried earlier to report for rejoining, therefore, he was entitled for difference of pay and allowances upto the normal date of superannuation i.e. 30.09.2008. The respondents, in their counter, have also conceded that action for admitting pay and allowances upto 30.09.2008 is being taken by Signal Record, the applicant himself has not made any further contention in this respect during the course of arguments. Thus, it is held that he is entitled for differential pay and allowances for this period. No separate direction is necessary to be passed, as it has not been prayed. But his case for extension is not maintainable and is liable to be dismissed.

13. In view of the foregoing, we are not inclined to interfere in the matter. 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 13th day of March, 2011.**