

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

**T.A. No.552 of 2009**

**WP(C) No.8767 of 2009 of Delhi High Court**

**IN THE MATTER OF:**

**HAV (CLK) MOKHA RAM .....APPLICANT**

Through: Mr. D.S. Kauntae, counsel for the applicant

**VERSUS**

**UNION OF INDIA AND OTHERS .....RESPONDENTS**

Through: Mr. Anil Gautam, counsel for the respondents

**CORAM:**

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

**JUDGMENT**

**Date: 18.05.2012**

1. The case was initially filed before the Hon'ble High Court of Delhi on 01.05.2009 as WP (C) No.8767 of 2009 and was subsequently transferred to the Armed Forces Tribunal on 02.05.2009.

2. Vide this petition the applicant has prayed for quashing and setting aside of the impugned order dated 10.07.1993 (Annexure P-2) by which he was discharged with effect from 01.01.1994 (Annexure P-5) and the orders passed on his representations dated 24.07.1995 and 16.11.2001 on 13.08.2001 and 03.12.2001 respectively and also order of rejection on his last representation dated 13.02.2009 on 09.03.2009

(**Annexure P-16**). He has also challenged the review medical board report dated 28.08.2006 (**Annexure P-15**). The applicant has prayed that he be granted entire arrears of pay and allowances and other monetary benefits as deemed appropriate and be treated his discharge w.e.f. 31.05.2004 when he would have attained 24 years of colour service as a Havildar. The applicant has also sought directions for the respondents to issue fresh PPO in addition to the disability element that is being paid by the respondents (Annexure P-7).

3. The applicant was enrolled in the Indian Army on 23.05.1980. During his service, he rose to the rank of Havildar. It is submitted that the applicant was downgraded to low medical category "BEE" permanent being a case of 'Non Ulcer Dyspepsia' w.e.f. 09.01.1993. It was contended that the respondent No.4 invoked the provisions of Army Order 46/80 against the applicant and denied the applicant sheltered appointment despite the fact that the applicant had given his willingness to continue in service in the permanent Low Medical Category (Annexure P-1). Accordingly, being denied the sheltered appointment, respondent No.4 i.e. OIC, Arty Records passed the impugned discharge order dated 10.07.1993 (Annexure P-2) ordering the applicant to be discharged from service w.e.f. 01.01.1994 (Annexure P-5). The reason for the discharge of the applicant was given as under:-

*"Further retention in service is not recommended by OC unit  
and the individual is willing/unwilling to continue in service."*

4. The respondent No.4 further stated the cause of discharge of the applicant as “*Discharged being placed in medical category lower than ‘AYE’ and not upto the prescribed military standards under item III(v) of the table annexed to Army Rule 13(3)*”.

5. The applicant was thus discharged w.e.f. 01.01.1994 having put in almost 13 years and 7 months of service. He applied for disability pension which was subsequently granted to him alongwith service element.

6. Thereafter, the applicant agitated his discharge and for reinstatement by representation dated 24.07.1995 (**Annexure P-8**). He received a reply on 26.10.1995 regarding rejecting his claim for disability pension. His representation of 24.07.1995 was finally disposed off by letter of 13.08.2001 (impugned order at page 67). The Applicant also received a response from the Directorate General of Artillery (Arty-3) vide letter dated 13.08.2001 intimating that the case of the applicant for reinstatement into service cannot be accepted due to lack of substance. Again he filed a representation on 16.11.2001 which was also disposed off vide impugned order on 03.12.2001. Consequently, the applicant was reassessed and his disability was assessed at 1-5% for life w.e.f. 11.08.2006 by the review medical board held at Army Hospital (R&R), Delhi Cantt. He also agitated the review medical board's report dated 28.08.2006 (Annexure P-15). He was not given any disability pension and his prayer for reinstatement was rejected vide

said order dated 03.12.2001. The applicant again filed a representation on 13.02.2009 which was responded by the Arty Records on 09.03.2009 rejecting his representation (Annexure P-16).

7. Learned counsel for the applicant argued that the applicant was not put through the Invaliding Medical Board which was a pre-requisite condition as held by the judgment given by the Hon'ble Apex Court in Union of India Versus Nb. Sub. Rajpal Singh bearing Civil Appeal No. 6587/2008 decided on 07.11.2008 (2009 (1) SCC (L&S) 92).

8. Learned counsel for the applicant argued that no show cause notice was given to the applicant which was also agitated by the applicant in his representation to the respondents on 24.07.1995. He had agitated in his representation that there were several other JCOs/NCOs who were also low medical category (P) but they were retained in the service being given sheltered appointment. He further argued that his character was exemplary as assessed by the respondents, therefore, there is no reason why he should not have been given a sheltered appointment.

9. Learned counsel for the applicant argued that he was released from service as his medical disability was at 40%. However, during review it was reduced to 1-5% which is not logical. He also pointed out the principles of giving sheltered appointment as laid down in AO46/80, which reads as under:-

*(a) The employment of permanent low medical category personnel, at all times, is subject to the availability of suitable alternative appointments commensurate with their medical category and also to the proviso that this can be justified in the public interest, and that their retention will not exceed the sanctioned strength of the regiment/corps. When such an appointment is not available or when their retention is either not considered necessary in the interest of service or it exceeds the sanctioned strength of the regiment/corps, they will be discharged irrespective of the service put in by them.*

*(b) Ordinarily, permanent low medical category personnel will be retained in service till completion of 15 years service in the case of JCOs and 10 years in the case of OR (including NCOs). However, such personnel may continue to be retained in service beyond the above period until they become due for discharge in the normal manner subject to their willingness and the fulfilment of the stipulation laid in Sub Para (a) above.*

10. Learned counsel for the applicant also brought to our notice that AO-3/2001 which gives out the procedure for down-grading an individual for his disease. He stated that the said Army Order was also not followed in letter and spirit by the respondents. He further argued that this is a case for pension as also of disability pension, the delay and latches would not come in way. In support of his contentions,

learned counsel for the applicant relied upon the judgment of Hon'ble Apex Court in **Vijender Kumar Singh Vs Union of India and others AIR 1981 SC 947.**

11. Learned counsel for the respondents submitted that the case suffers from delay and latches. The applicant was discharged way back on 31.12.1993 and he has approached after a period of near about 16 years to the court for the first time on 01.05.2009. He further submitted that by filing representation one after another will not save him from the delay and latches. In support of his contentions, learned counsel for the applicant relied on the judgment given by the Hon'ble Apex Court in **(2010)2 SCC 59 Union of India and others Vs M.K. Sarkar.** He also contended that matter of pension and disability pension are different than the order of discharge. The impugned discharge order is of 1993, which he has challenged by this petition.

12. Learned counsel for the respondents further submitted that show cause notice was issued which was also replied by the applicant as the case is pertaining to 1993-94 concerned record is not available, but this fact has been stated in counter on oath. The decision to discharge the applicant was taken by the Competent Authority after due consideration of all material.

13. It is further contended by learned counsel for the respondents that this Hon'ble Tribunal in the similar situated cases i.e. **TA No.229/09 and OA No.262/2010 Nk Narendra Kumar Vs Union of India** wherein

person was discharged in 2005 as LMC(P) case and petition was filed by him on 21.04.2010. The petition was dismissed by the Hon'ble Tribunal on 08.11.2010. In another case of Risaldar Ram Karan Singh where the person was discharged on LMC (P) on 31.01.2006 and he filed the petition on 24.02.2009. The Hon'ble Tribunal dismissed the petition on delay and laches and holding that judgments given in **Nb. Sub. Rajpal Singh's** case (supra) and in the case of **Sub. (SKT) Puttan Lal Vs. Union of India & Ors.** W.P.(C) No.5946/2007 decided by Hon'ble Delhi High Court on 20.11.2008 would not help his case and the decision of the Hon'ble Tribunal is upheld by the Hon'ble High Court of Delhi in WP(C) No.548/12 in the case of **Risaldar Ram Karan Singh Vs. Union of India** vide order of 25.01.2012.

14. Learned counsel for the respondents further contended that the present case does not come under the ambit of judgment given in the case of **Sub. (SKT) Puttan Lal** (supra) and judgment given in case of **Nb. Sub. Rajpal Singh** (supra) also do not help as the applicant was discharged long back in 1993.

15. Having heard both the parties at length and having examined the records, we are of the opinion that the applicant has approached the Court for the first time on 01.05.2009. Although the applicant has been agitating for reinstatement/disability pension, he has not approached any of the Court which is a guiding factor so far as Puttan Lal's (Supra) case is concerned. Otherwise also, we feel that the applicant has been

discharged from service under the policies that were existing at that point of time in 1993. His representations have been examined and rejected as aforesaid. His first representation dated 24.07.1995 was rejected on 13.08.2001 (Page 67 of the paper book). Likewise, second representation was rejected on 03.12.2001. But thereafter, the applicant has not challenged the discharge before any court of law. Again he filed another representation on 13.02.2009 after the decision of Rajpal Singh case (supra) but he was discharged in 1993. The Hon'ble Apex Court in case of **Union of India and others Vs M.K. Sarkar** (supra) has observed that by mere filing of representation limitation will not be saved. The discharge act was complete act and the cause of action arose in 1993, but the applicant again filed representations only. The claim against disability pension is also not established. Thus, claim was suffering from delay and laches.

16. We have also noted the averments and arguments advanced on behalf of the learned counsel for the applicant that no show cause notice was served, therefore, the same was not replied. However, we have noted that vide letter of 03.01.1997, in the para-wise comments given by the Unit, it was submitted that the applicant was served with a show cause notice vide letter No.323801/x/A dated 24.07.1993. Therefore, it appears that proper procedure as laid down in AO 46/80 was followed, but the case being very old, the records were not available with the respondents.



17. We have ascertained the facts that the applicant was enrolled on 23.05.1980. He was declared LMC (P) w.e.f. 09.01.1993. He was discharged w.e.f. 01.01.1994 vide order of 10.07.1993 issued by the Record Office. Therefore, the contention of the applicant that the decision to discharge him was already taken by the OIC Records is incorrect. The OIC Record's letter merely brought out the facts of the case to the notice of the CO and sought the acceptance of applicant in the unit in a sheltered appointment.

18. In several similar cases decided by this Tribunal, we have seen the applicability of **Puttan Lal's** case (supra), which was passed after the judgment of **Nb. Sub. Rajpal Singh's** case (supra), but the applicant's case is excluded as per para 7(iv) of the judgment passed in **Puttan Lal's** case (supra). Therefore, he was not entitled for any relief.

19. Our view is also supported from the Judgment of Hon'ble Apex Court in the matter of Bharat Sanchar Nigam Ltd Vs Ghanshyam Dass & Ors., dated 17.02.2011 wherein the Hon'ble Apex Court has held as under:-

*"On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which had accrued to others. [In Jagdish Lal and others v. State of Haryana and others](#) [(1997) 6 SCC 538], the appellants who were general candidates belatedly challenged the promotion of Scheduled Caste and Scheduled Tribe candidates on the basis*

of the decisions in [Ajit Singh Januja v. State of Punjab](#) [(1996) 2 SCC 715], [Union of India v. Virpal Singh Chauhan](#) [(1995) 6 SCC 684] and [R.K. Sabharwal v. State of Punjab](#) [(1995) 2 SCC 745] and this Court refused to grant the relief saying: &quot;....this Court has repeatedly held, the delay disentitles the party to the discretionary relief under Article 226 or Article 32 of the Constitution. It is not necessary to reiterate all the catena of precedents in this behalf. Suffice it to state that the appellants kept sleeping over their rights for long and elected to wake up when they had the impetus from Virpal Chauhan and Ajit Singh ratios. But Virpal Chauhan and Sabharwal cases, kept at rest the promotion already made by that date, and declared them as valid; they were limited to the question of future promotions given by applying the rule of reservation to all the persons prior to the date of judgment in Sabharwal case which required to be examined in the light of the law laid in Sabharwal case. Thus earlier promotions cannot be reopened. Only those cases arising after that date would be examined in the light of the law laid down in Sabharwal case and Virpal Chauhan case and equally Ajit Singh case. If the candidate has already been further promoted to the higher echelons of service, his seniority is not open to be reviewed. In A.B.S. Karamchari Sangh case a Bench of two Judges to which two of us, K. Ramaswamy and G.B. Pattanaik, JJ. were members, had reiterated the above view and it was also held that all the prior promotions are not open to judicial review. [In Chander Pal v. State of Haryana](#) a Bench of two Judges consisting of S.C. Agrawal and G.T. Nanavati, JJ. considered the effect of Virpal Chauhan, Ajit Singh, Sabharwal and A.B.S. Karamchari Sangh cases and held that the seniority of those respondents who had already retired or had been promoted to higher posts could not be disturbed. The seniority of the petitioner therein and the respondents who were holding the post in the

*same level or in the same cadre would be adjusted keeping in view the ratio in Virpal Chauhan and Ajit Singh; but promotion, if any, had been given to any of them during the pendency of this writ petition was directed not to be disturbed.*

*Since the respondents preferred to sleep over their rights and approached the Central Administrative Tribunal only in 1997, they cannot get the benefit of the order dated 07.07.1992 of the Tribunal in O.A. No.1455 of 1991 and will only be entitled to the benefit of the circular dated 13.12.1995 which was in force in 1997.”*

20. In view of the foregoing, we are of the opinion that the case suffers from delay and latches and he is not entitled to be reinstated nor any other relief on the basis of **Nb. Sub. Rajpal Singh's** case (supra) and **Puttan Lal's** case (supra). Since the applicant is already in receipt of the disability pension and it includes the service element, there is no reason for us to interfere in the matter. The TA is hereby dismissed. No order as to costs.

**(M.L. NAIDU)**  
**(Administrative Member)**

**(MANAK MOHTA)**  
**(Judicial Member)**

**Announced in the open Court  
on this 18<sup>th</sup> day of May, 2012.**