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**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

T.A. No.628 of 2009

W.P.(C) No.4134 of 2000 of Delhi High Court

IN THE MATTER OF:

Ex. Sepoy (Barber) Suraj Bhan

.....Petitioner

VERSUS

Union of India & Ors.

.....Respondents

Dated: 12.09.2012

Present: Mr. S.R. Kalkal, counsel for the petitioner.
Mr. Ankur Chibber, counsel for the respondents.

1. This is a writ petition filed by the petitioner before the Hon'ble High Court of Delhi on 26.07.2000, which has come to be transferred to this Tribunal on its establishment, and is taken up for hearing.
2. The prayer made in the petition is to challenge the final orders of the respondents, being dated 03.11.1997, 14.03.1998, 07.09.1997 and 03.05.1987. The other prayer made is to treat the petitioner in service till the date of passing of the order of dismissal, and for grant of service pension.
3. So far as the letters of 1997 and 1998 are concerned they are letters declining the grant of pension, and pension has been declined on

the ground of his having been dismissed. Therefore, in substance the order under challenge is the order of dismissal, dated 03.05.1987.

4. Just to complete the sequence of facts, we may recapitulate, that according to the petitioner, he was dismissed by the Brigade Commander vide order dated 03.05.1987, without notice, treating him as deserter, while he appeared before the Commandant on 27.04.1985, along with the certified copy of the judgment of Hon'ble High Court, releasing him on probation. According to the petitioner, he was convicted and sentenced for one year's R.I. and fine of Rs.500/- by the Court of Chief Judicial Magistrate, Sangrur under Section 9(1) of The Opium Act, 1978 and this sentence was reduced by the Sessions Judge in appeal to a period of six months. Then the revision filed by him in the Hon'ble High Court was partly allowed. Maintaining conviction he was released on probation, with further clarification, that this conviction will not suffer disqualification attached to the conviction. It is alleged that the petitioner regularly informed the Commanding officer regarding the case, but they were predetermined to dismiss, and accordingly, he was dismissed.

5. Arguing the petition, it was sought to be submitted that when the case was pending, may be that the C.J.M. intimated the authorities about the pendency of the case, but then according to Regulation 417 of the DSR, it was the duty of the authorities (Officer Commanding) to arrange to send an officer, detailing him from the unit to attend the court

and furnish information with regard to the progress of the case from time to time, which the respondents have failed to, with the result that the petitioner could not be declared deserter. It was also submitted that at one stage an action under contemplation to discharge him. but by then the Hon'ble High Court had already passed the order setting aside the punishments, and releasing him on probation. In such circumstances, the petitioner could not be declared deserter and the order of dismissal is bad.

6. We do not feel advised to go into the details of sequence of dates as to when the petitioner initially went on leave, and overstayed for which he was already punished, when he was arrested, bailed out, convicted, again taken in custody and bailed out and then finally conviction had not been upheld, for the simple reason that all said and done, after the final judgment of the Hon'ble High Court dated 20.03.1985. The petitioner is said to have been submitted statutory complaint, which was rejected vide Annexure P-3 dated 14/25 August, 1986 and thereafter, he was dismissed from service on the ground of desertion on 03.05.1987.

7. In our view irrespective to the question as to whether the petitioner has good grounds to assail that dismissal or not, the fact remains, that the said dismissal had come to be assailed for the first time by way of this writ petition only filed in the year 2000. In that view of the matter, on the ground of delay and laches alone, the dismissal of

1987 cannot be allowed to be decried in the petition filed in the year 2000. The petition is, therefore, dismissed.

M.L. NAIDU
(Administrative Member)

N.P. GUPTA
(Judicial Member)

Dated: 12.09.2012
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