

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).36195/2009

(From the judgement and order dated 25/03/2009 in WPC No. 7753/2009
of The HIGH COURT OF DELHI AT N. DELHI)

SEPOY HARIOM SINGH Petitioner(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(With appln(s) for c/delay in filing SLP and prayer for interim relief and office report)

Date: 23/02/2011 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V.S. SIRPURKAR
HON'BLE MR. JUSTICE T.S. THAKUR

For Petitioner(s) Mr. Nikilesh Ramachandran,Adv.
Mr. D.S.Kaunte, Adv.
Mr. Shantanu Singh, Adv.

For Respondent(s) Mr. A.Mariarputham, Sr. Adv.
Mr. Abhinav Mukherji, Adv.
Mr. Balaji Subramaniam, adv.
Mrs Anil Katiyar,Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.
Leave granted.
The appeal is disposed of in terms of the signed order.

(Shashi Sareen) (Shashi Bala Vij)
Court Master Court Master
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 2122 OF 2011
(Arising out of SLP(C) No. 36195 of 2009)

SEPOY HARIOM SINGH ... Appellant(s)

Versus

UNION OF INDIA AND ORS. ... Respondent(s)

O R D E R

1. Leave granted.

2 Challenge in this appeal is to the judgment dated 25.03.2009 passed by the High Court of Delhi in Writ Petition (C) NO. 7753 of 2009 whereby the High court dismissed the writ petition of the appellant.

3. The appellant joined the Indian Army on 24.6.1997 as "Infantry Soldier" and on the successful completion of his basic military training, he was posted in Mahar Regiment. Eventually, on account of low medical category, the appellant was downgraded for a period of two years by the competent Medical Board.

4. On 20th November, 2003, the appellant was posted at Saugar (Regimental Centre) on account of his being of Low Medical Category. On 30th April, 2006, the appellant was ordered to be discharged from the service on account of permanent low medical category under Army Rule 13(3) III (v) read with Rule 13 (2A) and by virtue of circular dated 15.3.2000.

5. Feeling aggrieved by the same, the appellant filed a Writ Petition (C) No. 8213 of 2008 before the High Court of Delhi which was dismissed as withdrawn.

6. Thereafter, on 18.12.2008, the appellant made a representation seeking reinstatement which, according to the appellant, is still pending. Being dissatisfied with the inaction on the aforesaid representation, the appellant filed a second Writ Petition (C) No. 7753 of 2009 which was dismissed by order dated 25.3.2009 which is in challenge before us.

7. We have heard learned counsel appearing for the parties and gone through the appeal.

8. At the outset, it must be said that while entertaining this appeal, it was inquired from the respondents as to whether the appellant could be examined again by the Invalidating Medical Board to determine his physical fitness. Accordingly, the appellant was examined

by the Invalidating Medical Board and by report dated 24.12.2010, he has been found medically fit to perform his duties in the Army.

9. There is no doubt that the appellant is medically fit to perform his duties in the Army. Accordingly, the appellant claims to be re-instated. However, Mr. A.

Mariarputham, learned senior counsel appearing for the respondents states that there would be difficulties if the appellant is ordered to be re-instated. Mr. A. Mariarputham

suggests that the appellant, instead of being re-instated, be allowed to be re-enrolled as he has now been medically found fit to perform his duties and there is a provision of such re-enrollment in para 143 of the Regulations for the Army (1987). He points out that a cut off date was fixed for similarly circumstanced soldiers for their re-instatement but in the present case that date is also over.

10. According to learned counsel for appellant, it was not the fault of the appellant that he was discharged from the service in an incorrect manner.

11. We have considered the matter in detail and are of the opinion that if the appellant is ordered to be re-instated then it would create number of difficulties namely; that there would be likelihood of hundreds of such soldiers coming back and seeking their re-employment with the Army.

Mr. Mariarputham points out that this will cause financial as well as management implications in the Army. He further points out that the stipulated cut-off date should not be disturbed. We find force in his argument since the appellant herein has wasted time in approaching the court.

12. We, therefore, direct that the appellant be re-enrolled in the Army subject to the police verification,

physical tests etc. etc. It is brought to our notice by Mr.

Mariarputham that the appellant has received retiral benefits. Such retiral benefits shall be returned by the appellant within three months from the date of his re-enrollment failing which this appeal would be treated as dismissed. We make it clear that the appellant shall not be entitled to any back-wages from the date of his discharge from the service till his re-enrollment. However his service of nine years shall be considered only for the purposes of calculation of gratuity and pension.

13. The appeal is disposed of accordingly. However, this order shall not be treated as a precedent.

.....J.
(V.S.SIRPURKAR)

.....J.
(T.S.THAKUR)

New Delhi,
February 23,2011.