

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 14<sup>th</sup> January, 2008

+ **WP(C) No.8860/2007 & CM No.16758/2007**

Naib Subedar Brijesh Kumar Sharma .... Petitioner

Versus

1. Union of India
2. Chief of the Army Staff
3. Adjutant General's Branch
4. Record Officer ... Respondents

Advocates who appeared in this case :

For the petitioner : Petitioner in person

For the respondents : Ms.Barkha Babbar, Advocate

CORAM :

**HON'BLE MR. JUSTICE A.K. SIKRI**  
**HON'BLE MR. JUSTICE J.M. MALIK**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

**A.K. SIKRI, J.(ORAL)**

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1. The petitioner was enrolled in the Army as a Clerk(GD) on 30.03.1982. He got promotion from time to time and at present

he holds the rank of Naib Subedar. The question with which we are concerned in this writ petition is regarding the extension of service by two years, which the petitioner would normally be entitled to on attaining the rank of Naib Subedar. This extension of two years is due w.e.f. 01.04.2008 and if the petitioner is given this extension he would continue in service till 31.03.2010.

2. The respondents have the policy for giving such extensions which is contained in policy letter no. B/33098/AG/PS 2(C) dt. 21.09.1998 which has been amended from time to time. In the policy letter dated 21.09.1998 as it originally stood, procedure and criteria for screening of the officers in the Army for extension is laid down. It enumerates certain offences and stipulates that if an officer is convicted of any of those offences then he would be debarred for extension. The petitioner overstayed one day's leave, about 26 years ago, when he was working as recruit and was undergoing training. He was given red ink entry for that. Taking that red ink entry into consideration, the respondents chose not to grant two years extension of service to the petitioner. The discharge order dated 08.03.2007 was accordingly issued stating that the petitioner shall be discharged from service on 31.03.2008. However, much before the said

order could be effectuated which has not been effected till date as 31.03.2008 is yet to approach. The respondents themselves clarified their policy dated 21.09.1998 by issuing letter dated 13.06.2007. The relevant paras of this letter read as under :-

“2. As per the existing policy, a JCO who has been convicted any time during his entire service for an offence under AA Sec 39(a), (b) and AA Sec 45 is permanently debarred for two years extn of service. The same was clarified vide letter of even No dated 22<sup>nd</sup> Nov 2005. The aspect has been reviewed and details are explained in succeeding paragraphs.

3. As per the revised policy, JCOs who are convicted under these offences during service as JCOs only will be debarred for extn. Thus any conviction in the lower rank under the above mentioned offences will not debar an extn in the rank of the JCO provided other requisite criteria are met. In view of this change note under Ser No 8 (a), (b) and Ser No. 14 of Annexure to Appendix 'A' of the letter dt. 21 Sep 98 is amended as under :-

|       |           |              |                                          |
|-------|-----------|--------------|------------------------------------------|
| For : | Ser 8 (a) | Sec 39 (a) - | Absence without leave<br>(for JCOs only) |
|-------|-----------|--------------|------------------------------------------|

|       |          |              |                                                                 |
|-------|----------|--------------|-----------------------------------------------------------------|
|       | Ser 8(b) | Sec 39 (b) - | Overstayal of leave (for JCOs only)                             |
|       | Ser 14   | Sec 45 -     | Unbecoming conduct (for JCOs only)                              |
| Read: | Ser 8(a) | Sec 39 (a) - | Absence without leave (offence committed during service at JCO) |
|       | Ser 8(b) | Sec 39 (b) - | Overstayal of leave (offence committed during service at JCO)   |
|       | Ser 14   | Sec 45 -     | Unbecoming conduct (offence committed during service at JCO)    |

4. The revised policy will be effective from the date of issue of this letter. It is also clarified that no past cases will be reopened. You are requested to disseminate the revised policy down to the unit level.”

3. Perusal of the aforesaid clarification would clearly demonstrate that if red entry was given on account of absence without leave during the service as JCOs, only in that eventuality the incumbent could be debarred for extension. It is common case of the parties that since petitioner was given this entry while he was a recruit and he has not been punished for any such offence as JCO, he would, as per the aforesaid clarification dated 13.06.2007 be entitled to extension. However, the respondents rely upon para 4 of the said letter as extracted above as per

which the past cases are not to be reopened. According to the respondents since in the case of the petitioner discharge order dated 08.03.2007 has already been passed, the petitioner shall not be entitled to the benefit of the aforesaid clarification.

4. We are unable to accept this submission of the respondents. The purpose and objective behind this letter dated 13.06.2007 is more than obvious. It is to erase and wipe out the harshness which the original policy dated 21.09.1998 would entail in those cases where the conduct for which a particular officer was punished was not very serious and the act was committed long time ago. Applying this criteria in the case of the petitioner itself the purpose stands truly demonstrated. As pointed above, the petitioner was given red entry more than 26 years ago when he was only a recruit. The misconduct was overstaying leave by one day. This act thereafter did not hinder the career progression of the petitioner who kept on getting further promotions from time to time and at present he is working as JCO. It is for this reason the clarification given vide letter dated 13.06.2007 explains that only if such a conduct is in the post as JCO, it would debar the concerned official for extension. Once this is the objective of the clarification given and the provision is of beneficial nature, the

true interpretation of para no. 4 would be to restrict the applicability to only those cases where the discharge order has already come into effect and the official is eased out from the service. It would not apply to cases where the discharge order is merely passed which is to take effect from a future date and that date happens to be after 13.06.2007. It is a matter of common knowledge that such discharge orders are generally passed in advance so that the necessary formalities for computation of pension and other retirement benefits are completed in time and the incumbent is given those benefits on the date of retirement. That would not mean that the discharge order became effective on the date when it was issued. We are therefore of the opinion that the case of the petitioner was not governed by para no. 4 and cannot be treated as a past case which required to be reopened as the petitioner was yet to retire from service. Since otherwise, the petitioner would be entitled to extension as he does not suffer from any debarment, we allow this writ petition and direct the respondents to consider the case of the petitioner in terms of aforesaid policy dated 21.09.1998 read with the clarification dated 13.06.2007. This exercise shall be done within one month from today.

5. Copy of the order be given dasti to counsel for the respondents.

**A.K.SIKRI, J.**

**J.M. MALIK, J.**

**January 14, 2008**  
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