

**(2007) 04 DEL CK 0176**  
**In the Delhi High Court**  
**Case No : Writ Petition (C) 5234 of 2006**

G.S. Rathore

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 30-04-2007

**Acts Referred:**

**Citation :** (2007) 04 DEL CK 0176

**Hon'ble Judges :** T.S. Thakur, J;S.N. Aggarwal, J

**Bench :** Division Bench

**Advocate :** Non, for the Appellant; Barkha Babbar and T. Prashad, Dy. JAG, for the Respondent

**Final Decision :** Disposed Off

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## Judgement

T.S. Thakur, J.—The petitioner was working as a Signaller in the Indian Army. He was supposed to superannuate in the ordinary course on 31st July, 2002. He could subject to his fulfilling the requisite criteria, continue in service for an extended period of two years ending 31st July, 2004. He was upon consideration by the competent authority granted that extension ending 31st July, 2004. During the extended period, the petitioner was promoted to the next higher rank of Subedar Major in ignorance of the fact that the petitioner was not as per the policy formulated by the Army eligible for the extension on account of the red ink entries recorded in his service record. As a Subedar Major, the petitioner's case was considered for grant of extension beyond 32 years of service which he was completing on 23rd July, 2006. According to the respondents, the petitioner was upon consideration erroneously granted an extension up to 9th April, 2007 so that he could complete four years of tenure as a Subedar Major. This extension was subsequently withdrawn on an interpretation of the prevalent policy according to which those who had red ink entries in their records were not eligible for such extension. Aggrieved by the said order of withdrawal of extension, the petitioner filed the present writ petition in which this Court had by an order dated 9th May, 2006 stayed the operation of the impugned letter dated

18th January, 2006 releasing the petitioner from service. The petitioner has, pursuant to the said order, continued in service as Subedar Major and completed the extended period of four years in that rank.

2. Learned Counsel for the respondents submitted that the writ petition has become infructuous on account of the passage of time inasmuch as the petitioner has already served for the extended period and received emoluments for the same. She urged that the petition could now be disposed of vacating the interim orders so that he could be discharged from service. She submitted that the respondents have no intention of recovering the emoluments received by the petitioner as the same were paid for work done by him.

3. There is, in our opinion, considerable merit in the submission made on behalf of the respondents. The writ petition does appear to have become infructuous on account of the passage of time. The only question that arose for consideration in the petition was whether the petitioner could be discharged from service in anticipation of his completing four years in the rank of Subedar Major. That period he has already served as on date and is Therefore due for discharge once again. What would then survive for consideration is whether the respondents could claim recovery of the emoluments received by the petitioner over the extended period under the orders of the Court. That question does not require any adjudication by us in view of the statement made by Ms. Barkha Babbar that respondents do not in the peculiar circumstances of the case intend to recover the emoluments received by the petitioner over the extended period. Even otherwise, since the emoluments have been paid for the work done by the petitioner, we see no equity in directing the recovery of the same from the petitioner. Suffice it to say that the writ petition no longer survives for consideration, for the reasons stated above. The petitioner having already served the requisite period of four years of Subedar Major is now due for discharge and can, Therefore, be discharged by the respondents. The petition is, accordingly, disposed of with the above observations leaving the parties to bear their own costs.