

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

**OA 2180/2019 WITH MA 3041/2019**

**Cpl Thankachen Chacko (Retd.)**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Manoj Kr Gupta, Advocate**  
**For Respondents : Mr. Y P Singh, Advocate**

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**MA 3041/2019**

MA 3041/2024 has been filed by the applicant seeking 16294 days delay in institution of the OA, which for reasons mentioned therein and in view of the verdicts of the Hon'ble Apex Court in *UoI & Ors Vs. Tarsem Singh 2009(1)AISLJ 371* is allowed, and the delay condoned.

**OA 2180/2019**

2. The applicant vide the present OA makes the following prayers:-

*“(a) To quash and set aside the Impugned order which is against the Law settled on the subject;*

*(b) To direct the respondent to grant Reservist Pension wef from the date of discharge under the provisions of Para 136 of the Pension Regs for the AF 1961 by counting of his 09 years and 28 days of regular plus 06 years as reserve service as per the initial terms of engagement, And/or*

*(c) To direct the respondent that arrears shall be paid to the applicant with 12% interest.*

*(d) Any other just and equitable order in the interest of justice may kindly be passed. ”*

3. During course of submissions made on behalf of the applicant it was submitted on 25.10.2024 that the prayers made through the present OA are confined to seeking the grant of Special Pension alone.
4. Learned counsel for the respondents however, submitted to the effect that in as much as the prayer made by the applicant vide prayer clause ‘b’ referred to hereinabove was for the grant of Reservist Pension, the applicant cannot make the prayer seeking grant of Special Pension now.
5. The said submission of the respondents is rejected in as much as prayer clause ‘d’ made by the applicant referred to hereinabove in Para 2 categorically reads to the effect that the applicant had prayed

for 'any other just and equitable order in the interest of justice that may be passed'. In view thereof, it is considered appropriate to take up the present OA 2180/2019 for consideration of the prayer made on behalf of the applicant to the extent that the prayer made through the present OA is confined to seeking the grant of Special Pension alone.

6. The applicant was enrolled in the Indian Air Force on 03.09.1965 and was discharged from service with effect from 30.09.1974 "on fulfilling the conditions of his enrolment" after completion of 09 years and 28 days of qualifying regular service as averred in the counter affidavit of the respondents dated 14.08.2020.

The applicant was however, not transferred to any Air Force Reserve service as has been submitted by the respondents.

7. Vide averments made in Para 7 of the counter affidavit of the respondents it is stated to the effect that the initial period of engagement of the applicant who was enrolled in the IAF on 03.09.1965 was 09 years of regular service and six years of reserve liability. It is apparent thus from the submissions made by the respondents themselves through their counter affidavit that the applicant apart from his terms of initial period of engagement of 09 years of regular service, had also performed duties of 28 days of

qualifying regular service, though he was not transferred to the Air Force Reserve.

8. Though the applicant's contentions raised through the OA seeking the grant of Reservist Pension in view of the factum that the applicant was not transferred to the Air Force Reserve cannot be granted and are now not pressed too, the verdict of the Hon'ble Supreme Court in *T. S Das & Ors. vs. UOI & Another* (2017) 4SCC 218 Civil Appeal No. 2147/2011 decided on 27.10.2016 makes it apparent that the applicant is entitled to the grant of Special Pension with effect from the date of his discharge from service.

9. The observations of the Hon'ble Supreme Court in *T. S Das & Ors.* (Supra) in Para 21, 22, 23 and 25 are to the effect :-

*"21. The original applicants contend that if the Government Policy dated 3rd July, 1976 is applied to the serving Sailors, inevitably, will result in retrospective application thereof to their detriment. That is forbidden by Section 184-A of the Act. This argument does not commend to us. In that, the effect of the Government Policy is to disband the establishment of the Reserve Fleet Service with effect from 3rd July, 1976. As found earlier, drafting of Sailors to the Reserve Fleet Service was not automatic; but dependent on an express order to be passed by the competent Authority in that behalf on case-to-case basis. The Sailors did not have a vested or accrued right for being placed in the Reserve Fleet Service. Hence, no right of the Sailors in active service was affected or taken away because of the Policy dated 3rd July, 1976. Even the argument of the original applicants that the interpretation of expression "if required" occurring in Regulation 269(1) bestows unequal bargaining power on the Government is devoid of merits. The*

validity of Regulation 269(1) was not questioned before the Tribunal nor any relief was claimed in that behalf. Therefore, this argument is unavailable to the original applicants. In any case, on a conjoint reading of the Regulations governing the Service Conditions of the Sailors and more particularly having noticed that it is the prerogative of the Government to place the Sailors to the Fleet Reserve Service; and at the same time option was given to the Sailors to opt for discharge in terms of Section 16 of the Act, we fail to understand as to how such dispensation can be termed as unequal bargaining power. The consequence of not placing the concerned Sailor to the Fleet Reserve Service may result in deprivation of Reservist Pension. However, original applicants may be entitled to get a Special Pension under Regulation 95 of the Pension Regulations, being a separate dispensation for such Sailors, unless discharged by way of punishment under Regulation 279.

22. Accordingly, we hold that none of the applicants before the Tribunal are entitled for Reservist Pension in terms of Regulation 92 of the Naval (Pension) Regulations, 1964. The Tribunal has relied on other decisions of other Benches of the same Tribunal, which for the same reason cannot be countenanced.

**Re: Special Pension**

23. The next question is whether the Sailors appointed before 1973 were entitled for a Special Pension, in terms of Regulation 95 of the Pension Regulations. Indeed, this is a special provision and carves out a category of Sailors, to whom it must apply. Discretion is vested in the Central Government to grant Special Pension to such Sailors, who fall within the excepted category. Two broad excepted categories have been noted in Regulation 95. Firstly, Sailors who have been discharged from their duties in pursuance of the Government policy of reducing the strength of establishment of the Indian Navy; or Secondly, of reorganization, which results in paying off of any ships or establishment. In the present case, Clause (i) of Regulation 95 must come into play, in the backdrop of the policy decision taken by the Government as enunciated in the notification dated 3rd July, 1976. On and from that date, concededly, the Fleet Reserve Service has been discontinued. That, inevitably results in reducing the strength of the establishment of the Fleet Reserve of the Indian Navy to that extent, after coming into force of the said policy. None of the Sailors have been or could be drafted to the Fleet Reserve after

coming into force of the said Policy - as that establishment did not exist anymore and the strength of establishment of the Indian Navy stood reduced to that extent. Indisputably, the Sailors appointed prior to 3 rd July, 1976, had the option of continuing on the Fleet Reserve Service after expiration of their active service/empanelment period. As noted earlier, in respect of each applicants the appointment letter mentions the period of appointment as 10 years of initial active service and 10 years thereafter as Fleet Reserve Service, if required. The option to continue on the Fleet Reserve Service could not be offered to these applicants and similarly placed Sailors, by the Department, after expiration of their empanelment period of 10 years or less than 15 years as the case may be. It is for that reason, such Sailors were simply discharged on expiration of their active service/empanelment period. In other words, on account of discontinuation of the Fleet Reserve establishment of the Indian Navy, in terms of policy dated 3rd July, 1976 it has entailed in reducing the strength of establishment of the Indian Navy to that extent.

24. ....

25. Thus understood, all Sailors appointed prior to 3 rd July, 1976 and whose tenure of initial active service/empanelment period expired on or after 3rd July, 1976 may be eligible for a Special Pension under Regulation 95, subject, however, to fulfilling other requirements. In that, they had not exercised the option to take discharge on expiry of engagement (as per Section 16 of the Act of 1957) and yet were not and could not be drafted by the competent Authority to the Fleet Reserve Service because of the policy of discontinuing the Fleet Reserve Service w.e.f. 3rd July, 1976. The cases of such Sailors (not limited to the original applicants before the Tribunal) must be considered by the Competent Authority within three months for grant of a "Special Pension" from three years prior to the date of application made by the respective Sailor and release payment after giving adjustment of Gratuity and Death-cum-Retirement-Gratuity (DCRG) already paid to them from arrears. They shall be entitled for interest @ 9% P.A. on the arrears, till the date of payment."

10. Vide orders dated 12.05.2022 in OA 1049/209 Cpl Kandasamy T (Retd.) vs. UOI & Ors., in OA 1926/2018 titled as Ex Cpl R S

*Sahgal vs. UOI & Ors.* decided on 15.09.2022, order dated 25.07.2023 in OA 194/2019 in *Ex LAC Somprakash (Retd.) vs. UOI & Ors.* and vide order dated 18.10.2024 in OA 1730/2021 in *Cpl Harpal Singh Yadav (Retd.) vs. UOI & Ors.*, this Tribunal has taken into account the observations of the Hon'ble Supreme Court in *T S Das & Ors.* (Supra) and in each of the cases referred to hereinabove, the applicants thereof have been held to the grant of Special Pension from the date of discharge.

11. Regulation 136 of the Pension Regulations for the Air Force, 1961 Part-I provides to the effect :-

*"136. (a) A reservist who is not in receipt of a service pension may be granted, on completion of the prescribed period of nine years regular and six years reserve qualifying service, a reservist pension of Rs. 10.50 p.m or a gratuity of Rs. 800 in lieu.*

*(b) A reservist who is not in receipt of a service pension and whose period of engagement for regular service was extended, and whose qualifying service is less than the total period of engagement but not less than 15 years may, on completion of the period of engagement or on earlier discharge from the reserve for any cause other than at his own request, be granted a reservist pension at the above rate or the gratuity in lieu.*

*(c) Where a reservist elects to receive a gratuity in lieu of pension under the above clauses, its amount shall, in no case, be less than the service gratuity that would have accrued to him under regulation 128 based on the qualifying regular service, had he been discharged from regular service.*

*Note: The option to draw a gratuity in lieu of pension shall be exercised on discharge from the reserve and once exercised shall be final. No pension/gratuity shall be paid until the option has been exercised."*

12. As observed by this Tribunal in OA 1730/2021 in *Cpl Harpal Singh Yadav* (Supra) though the verdict of the Hon'be Supreme Court in *T S Das & Ors.* (Supra) relates to a personnel discharged from the Indian Navy with less than a period of 15 years of qualifying service, but more than the period in terms of engagement and who had not been drafted into the reserve service and had been discharged otherwise than at his own request, it has been categorically observed to the effect that the stipulations provided vide Regulation 92(2) of the Pension Regulations for the Navy 1964 are in substance similar to Regulation 136(b) of the Pension Regulation for the Air Force 1961 Part -I which has been reproduced hereinabove in Para 10.

13. The entitlement and eligibility condition for grant of Special Pension are stipulated in Para 144 of the Pension Regulations for the Air Force, 1961 Part-I which reads as under :-

*"Special Pension or Gratuity may be granted at the discretion of the President, to individuals who are not transferred to the Reserve and are discharged in large number in pursuance of government policy-*

- a) of reducing the strength of Establishment of the Air Force;*
- or*
- b) of re-organisation, which results in disbandment of any units/formation."*

14. The issue thus in the instant case now, in view of the prayers made on behalf of the applicant being confined to seeking the grant of

Special Pension is thus no more *res integra*. The applicant is thus held entitled to the grant of Special Pension with effect from the date of his discharge which the respondents are directed to grant to the applicant with effect from a period of three years prior to the date of filing of the present OA minus the amount of gratuity already paid, if any, to the applicant to be adjusted against the amount of arrears. The amount of arrears as directed hereinabove of the grant of Special Pension shall be paid by the respondents within three months from the date of receipt of the copy of this order failing which, the applicant will be entitled to interest @6% p.a. from the date of receipt of copy of the order by the respondents.

15. The OA 2180/2019 is thus disposed of accordingly.

Pronounced in the Open Court on the .....day of December,

2024.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

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