COURT No.1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 2618/2022 WITH MA 3548/2022

Shanti Devi Wd/o ..... Applicant
Sep (MT/DVR) Ramesh Chandra
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Manoj Kr. Gupta, Advocate
For Respondents : Ms. Jyotsana Kaushik, Advocate

CORAM
HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 3548/2022

Keeping in view the averments made in the application and in the light of the decision in ***Union of India and others*** *Vs.* ***Tarsem Singh*** [(2008) 8 SCC 648), the delay in filing the OA is condoned.

2. MA stands disposed of.

OA 2618/2022

3. Vide the present OA, the applicant seeks directions to the respondents to quash and set aside the impugned order dated 11.06.2022 vide which the claim made by the applicant seeking grant of reservist pension/Pro-Rata pension/Special Pension was declined. *Inter alia*, the applicant seeks the grant of

reservist pension w.e.f. from the date of discharge in terms of Para 155 of the Pension Regulations for the Army, 1961 and subsequently, ordinary family pension and seeks directions to the respondents to pay the arrears to the applicant with interest @12% p.a.

4. During the course of submissions made on behalf of either side, the learned counsel for the applicant confined the prayer made in the present OA to seek the grant of special pension alone from the date of discharge from service, and subsequently, family pension to the applicant.

5. Reliance in this regard was placed on behalf of the applicant on the orders dated 12.05.2022 in OA 1049 of 2019 titled ***Cpl Kandasamy T(Retd)*** Vs ***Union of India & Ors.*** and order dated 15.09.2022 in OA 1926 of 2018 titled as ***Ex Cpl R.S. Sahgal*** Vs ***Union of India and Ors.*** of the Armed Forces Tribunal (PB), New Delhi. On behalf of the respondents, in reply to specific query, it was submitted that the said orders referred to herein in OA 1049/2019 and OA 1926/2018 of the Armed Forces Tribunal (PB), New Delhi have not been assailed and rather the respondents submitted that the PPO in terms of the directions in OA 1049/2019 – ***Cpl Kandasamy T(Retd)*** Vs ***Union of India & Ors.*** has already been issued.

6. The husband of the applicant in the instant case joined the service of the Indian Army on 21.02.1963 with the term of enrolment of 10 years of regular service and 10 years as reserve service and on successful completion of training was posted to various Army units, and subsequently, discharged from the Army after completion of 13 years 04 months and 01 day of qualifying service.

7. The aspect of entitlement of service pension of the Armed Forces personnel in the case of sailors in the Indian Navy appointed before 1973 though initially for 10 years of active service and followed by 10 years of reserve service was adjudicated vide verdict of the Hon'ble Supreme Court in Civil Appeal No. 2147 of 2011 and Civil Appeal No.8566 of 2014 in ***T.S. Dass & Ors*** Vs ***Union of India & Ors*** and the Sailors were nevertheless held entitled and eligible for 'Special Pension', however on fulfilling other requirements in terms of Regulation 95 of the Pension Regulations 95 of the Navy (Pension) Regulations, 1964, they were not held entitled to Reservist Pension in terms of Regulation 92 of the Naval(Pension) Regulations, 1964.

8. We find it pertinent to refer to the principles laid down by the Supreme Court in ***TS Dass & Ors*** Vs ***Union of India & Ors*** as

observed in paragraphs 20, 21, 22, 23 & 24 thereof which read to the effect:

> *"20. The quintessence for grant of Reservist Pension, as per Regulations 92, is completion of the prescribed Naval and Reserve qualifying service of 10 years "each", Merely upon completion of 10 years of active service as a Sailor or for that matter continued beyond that period, but falling short of 15 years or qualifying Reserve Service, the concerned Sailor cannot claim benefit under Regulations 92 for grant of Reservist Pension. For, to qualify for the Reservist Pension, he must be drafted to the Fleet Reserve Service for a period of 10 years. In terms of Regulations 6 of the Indian Fleet Reserve Regulations, there can be no claim to join the Fleet Reserve as a matter of right. None of the applicants were drafted to the Fleet Reserve Service after completion of their active service. Hence, the applicants before the Tribunal, could not have claimed the relief of Reservist Pension. The Tribunal (Regional Bench, Chennai) in OA No. 83 of 2013, however, granted that relief by invoking principle of equitable promissory estoppel and legitimate expectation in favour of the applicants. The Tribunal, in our opinion, committed manifest error in overlooking the statutory provisions in the Act of 1957 and the relevant Regulations framed thereunder, governing the conditions of service of Sailors. The fact that on completion of 10 years of active service, the Sailor could be taken on the Fleet Reserve Service for a further period of 10 years cannot be interpreted to mean that the concerned Sailor had acquired a legal right to join the Fleet Reserve Service or had* de jure *continued on Fleet Reserve Service for a further 10 years after expiration of the initial term of active service/engagement. There is no provision either in the Act of 1957 or the Regulations framed thereunder as pressed into service by the applicants, to suggest that drafting of such sailors on Fleet Reserve Service was "automatic" after expiration of their active service/enrolment period. Considering the above, it is not necessary to burden this judgment with the decisions considered by the Tribunal on the principle of equitable promissory estoppel and legitimate expectation, which have no application to the fact situation of the present case.*
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> *"21. The original applicants contend that if the Government Policy dated 3rd July,1976 is applied to the serving Sailors, inevitably, will result in retrospectively 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 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 Regulations 95 of the Pension Regulations, being a separate dispensation of 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 Regulations 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 Regulations 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 reorganisation, which results in paying off of any ships or establishment. In the present case, Clause(i) of Regulations 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 3rd 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 Duly, 1976, it has entailed reducing the strength of establishment of the Indian Navy to that extent.

"24. That takes us to the case of Appellant No.36(in CA No.2147 of 2011). The said appellant asserts that he was discharged from the Fleet Reserve unilaterally by the Department. By that time, he had completed combined 17 years 1 month and 26 days of service, for which reason was entitled to Reservist Pension under Regulation 92(2) of the Pension Regulations. The said appellant is relying on communication dated 8th May, 2014 in support of this contention. Since this appellant was not in active service when the Government Policy dated 3rd July, 1976 came into being and claims to have been discharged from the Fleet Service on 30th March, 1967, would be free to make representation to the competent Authority. It is for the competent Authority to examine the factum as to whether the discharge was unilateral and not at the request of the said appellant and including whether he would be entitled for Reservist Pension in terms of Regulation 92(2) of the Pension Regulations. We may not be understood to have expressed any opinion with regard to the questions that may require consideration by the competent Authority in that regard."

9. The Entitlements and Eligibility for grant of Special Pension are given in Para 164 of the Pension Regulations for the Army, 1961(Part-I), 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 Armed Forces;

or

b) of re-organisation, which results in disbandment of any units/formation."

10. The husband of the applicant herein thus who has completed 13 years, 4 months and 1 day of colour service beyond the initial period of 10 years for which he was enrolled is entitled to Special Pension w.e.f. the date of his discharge in terms of the order dated 15.09.2002 in OA 1926/2018 in ***Ex Cpl R S Sahgal*** (supra) and 12.05.2002 in OA 1049/2019 in ***Cpl Kandasamy T(Retd)*** (supra), and subsequently, applicant is held entitled to family pension.

11. However, in as much as the applicant has sought redressal of his grievances vide the present OA only on 09.11.2022, in terms of the verdict of the Hon'ble Supreme Court in ***Union of India & Ors*** Vs ***Tarsem Singh*** reported in 2008(8 SCC 648 and in ***T S Das & Ors*** Vs ***Union of India & Anr*** (supra), the arrears of the Family Pension is restricted for a period of three years prior to the date of filing of the present OA. Thus, the respondents are directed to grant Family Pension to the applicant w.e.f. three years prior to the date of the 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.

12. The amount of arrears shall be paid by the respondents within three months from the date of receipt of copy of this order, failing which the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

13. The OA No. 2618/2022 is disposed of accordingly.

14. Miscellaneous application, if any, pending stands closed.

Pronounced in the open Court on this 4 day of October, 2024.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN C.P. MOHANTY)
MEMBER (A)

Ps/Akc