COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

F.

OA 441/2020 WITH MA 544/2020

Smt Shanti wd/o Ex Aricraftsman 2 Shyam Lal (Deceased) ..... Applicant
Versus
Union of India & Ors. ..... Respondents

For Applicant : Ms. Archana Ramesh, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM

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

ORDER
02.04.2024

Vide our orders of even date, we have allowed the OA. Faced with the situation, learned counsel for the respondents makes an oral prayer for grant of leave to appeal under Section 31 of the Armed Forces Tribunal Act, 2007, to the Hon'ble Supreme Court. We find no question of law much less any question of law of general public importance involved in the matter to grant leave to appeal. Hence, the prayer for grant of leave to appeal is declined.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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O R D E R

MA 544/2020

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*** [2009(1) ISLJ 371], the delay in filing the OA I condoned. MA stands disposed of.

OA 441/2020

2. Vide the present OA filed on 24.02.2020, the Airman (deceased) sought issuance of directions to the respondents to verify factual data of him having put in 9 years of service from 18.03.1964 to 17.04.1973 from the date of discharge and if proved to be correct then grant reservist pension.

9

3. 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 ***Ex Cpl R S Sahgal*** Vs ***Union of India and Ors.*** of the Armed Forces Tribunal(PB). 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) 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.

4. Meanwhile during the pendency of the present OA, the Airman expired on 18.07.2023, post which an application for substitution of Legal Representative of the deceased soldier, which was allowed vide our order dated 29.02.2024, and the wife Smt Shanti was substituted as applicant in this case.

5. The Airman in the instant case joined the service of the Indian Air Force on 18.03.1964 and was discharged from service w.e.f. 17.04.1973 under the clause "on discharge with gratuity otherwise than at his own request". The Airman before discharge from service had rendered 09 years and 31

days of qualifying regular service and was not transferred to any Air Force Reserve.

6. 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.

7. Thus, it is apparent that the applicant herein has not been taken into the Regular Air Force Reserve and having thus not completed 15 years of the combined colour service, qualifying service warranted for reservist pension in terms of Regulations 136(a) of Pension Regulations for the Air Force 1964(Part-I) which provides as under:

"7. Entitlement and Eligibility for grant of Reservist Pension are given in Para 136 of Pension Regulations for the Air Force, 1961(Part-I), which reads as under:

> *"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 service and six years Reserve Qualifying Service, a Reservist Pension for Rs.10.50p.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 less than the total period of engagement but not less than 15 years may, on completion of the period of engagement or on their 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 be 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, "*

8. In consonance with the above provision, the airman is clearly not entitled to grant of reservist pension in terms of the verdict of **T S Das and Ors** Vs **Union of India & Ors** (Supra). However, in view of 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.*

"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 144 of the Pension Regulations for the Air Force, 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 Air Force;

or

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

10. The airman herein thus who has completed 09 years and 31 days of colour service beyond the initial period of 09 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)***.

11. However, in as much as the airman has sought redressal of his grievances vide the present OA only on 24.02.2020, 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 Special Pension shall be restricted for a period of three years prior to the date of filing of the present OA. Thus, the respondents are directed to grant Special Pension to the airman 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 airman to be adjusted against the amount of arrears.

12. The amount of arrears shall be paid by the respondents to the substituted Legal Representative of the Airman i.e. Applicant 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 is disposed of accordingly.

14. Pending applications, if any are disposed of.

Pronounced in the open Court on this 2nd day of April, 2024.

(JUSTICE RAJENDRA MEMON)
CHAIRPERSON

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

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