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COURT NO.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 1225/2020 with MA 1411/2020 & 510/2022

Bhagwan Dass Saini POWTR (Retd) Applicant
Versus
Union of India and Ors. Respondents

For Applicant : Mr. Ajit Kakkar & Associates, Advocate,
For Respondents : Mr. Anil Gautam, Sr CGSC

CORAM

HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE RASIKA CHAUBE, MEMBER (A)

ORDER

MA 1411/2020

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others Vs. Tarsem Singh [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

OA 1225/2020

This application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, seeking following reliefs:-

(a) The applicants be granted special pension in terms of Regulation 95 of Navy Regulations (Pension), 1964 or reservist pension, by declaring Regulation 269, Regs Navy Part-III (Statutory) nullity or void to the extent of its

arbitrariness/ illegality as well as its unintelligibility with 8% interest;

(b) Any other relief(s) which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice, equity and fair play and in the facts and circumstances of the case may also be granted to the applicants.

BRIEF FACTS OF THE CASE

2. Applicant No. 1 was enrolled in the Indian Navy on 05.11.1963, for 10 years active service and 10 years Reserve Service and was discharged from service on 19.02.1974, after rendering 10 years, 4 months, and 15 days of active service upon expiry of his initial engagement terms. At the time of his discharge, the applicant possessed the statutory option to get his service extended to become eligible for Reservist pension. However, the applicant expressed unwillingness to continue in service, as evidenced by his 'Unwillingness Certificate' dated January 15, 1973. Consequently, the applicant was discharged as a non-pensioner, having not completed the mandatory 15 years of qualifying service required under Regulation 78 of the Navy (Pension) Regulations, 1964, for grant of Reservist / service pension.

3. Applicant No. 2 was enrolled in the Indian Navy on 14.03.1961, for 10 years active service and 10 years Reserve Service and was discharged from service on 31.12.1972, after rendering 11 years, 9 months, and 17 days of active service, upon expiry of his initial engagement terms. At the

time of his discharge, the applicant possessed the statutory option to get his service extended to become eligible for Reservist pension. However, the applicant expressed unwillingness to continue in service, as evidenced by his Unwillingness Certificate dated 28.01.1972. Consequently, the applicant was discharged as a non-pensioner, having not completed the mandatory 15 years of qualifying service required under Regulation 78 of the Navy (Pension) Regulations, 1964, for grant of Reservist / service pension.

SUBMISSIONS ON BEHALF OF THE APPLICANTS

4. It is the case of the applicant that service certificates issued to them state that they were engaged for 10 years of active service followed by 10 years in the Fleet Reserve and that this statutory certificate constitutes incontrovertible documentary evidence of the contract between the applicants and the respondents, therefore the respondents cannot now claim that the applicants were not engaged for Fleet Reserve service when the very certificate issued by the Navy clearly records this engagement.

5. The Ld. Counsel for the applicants submits that Regulation 269 of the Navy (Pension) Regulations, 1964, as applied to their case, violates Article 14 of the Constitution by vesting arbitrary, uncontrolled discretion in unnamed authority. Moreover, the regulation fails to specify as to which official or authority possesses competence to induct sailors into Fleet

Reserve, what selection criteria govern Fleet Reserve induction, what quantum or percentage of sailors must be inducted, how sailors are to be screened or evaluated, at which point in a sailor's service tenure induction decisions are to be made, what conditions sailors must fulfill for induction, which authority holds the powers and what was the Navy's actual requirement for Fleet Reserve complement. This complete absence of defined limits, criteria, procedures, or competent authority designation renders Regulation 269 an instrument of unbridled, uncontrolled discretion.

6. Furthermore, the Ld. Counsel for applicants submit that Regulation 95 of the Navy (Pension) Regulations, 1964, permits grant of Special Pension to sailors not transferred to Fleet Reserve but discharged due to government policy reducing naval establishment or reorganizing establishment and that in the instant case, the applicants satisfy this regulation as they were not drafted to Fleet Reserve. The applicants' circumstances fall squarely within Regulation 95's contemplation and the liberal interpretation mandates granting Special Pension to applicants. Moreover, recent government policy demonstrates this magnanimous approach: the government has liberalized invalid pension availability (MoD Letter dated July 16, 2020) and extended ex-gratia awards to ECOs/SSCOs who participated in wars but were discharged without pensionary benefits (MoD Letter dated March 5, 2020). The applicants participated in three wars and two wars respectively, earning gallantry

medals comparable to ECOs/SSCOs. If the government liberalizes pension for that cohort, consistency and beneficial interpretation mandate similar treatment for applicants.

7. Elaborating, it is submitted by the applicants that their exceptional war service and gallantry medals merit magnanimous judicial consideration. Applicant No. 1 participated in two wars (1965 and 1971) and earned Raksha Medal, Sangram Medal, Samar Seva Medal, and Long Service Medal, while Applicant No. 2 participated in three wars (1962, 1965, and 1971) and earned Sangram Medal, Samar Seva Medal, Poorvi Star, and War Medal of 1962 and these decorations represent uncommon valor, extraordinary service, and significant sacrifice in national defence. The applicants' two wars and three wars respectively, coupled with gallantry decorations, establish they were among the finest defence personnel and such distinguished service deserves recognition and protection, not abandonment in old age.

8. Invoking Section 184-A of the Navy Act, 1957, it is submitted by the applicants that no regulation can be given retrospective effect in a manner prejudicially affecting service personnel interests and in the present case the applicants were engaged in 1963 and 1961 respectively under Regulation 269, which permitted continued service in Fleet Reserve for 10 years after active service expiry. At the time of their engagement, this was the applicable law and the July 3, 1976 order of the Indian Navy regarding discontinuation of Fleet Reserve constitutes retrospective alteration of

conditions applicable to service already rendered. The respondents cannot unilaterally eliminate this promised service and simultaneously deny compensatory pension without violating Section 184-A.

9. The applicants further contend that even accepting the respondents interpretation that Regulation 269 permits discretionary non-drafting, a fundamental principle of administrative law requires that discretionary powers be exercised with procedural fairness and objective criteria and while applicants cannot claim Fleet Reserve placement as an absolute right, they possess a fundamental right to meaningful, effective, transparent consideration by the respondents before denial, whereas the applicants received no such consideration and no opportunity was afforded to applicants to present their case.

10. Through written submissions dated 27/8/2025 and 19/11/2025 made by the Applicants, certain arguments/ judgements have also been put forth which are placed in para 11, 12 and 13 below. It has been argued that despite identical service conditions sailors retiring on or after 3/7/1976 have been granted Special pension, while those like the applicants who retired just before this cut-off date have been unjustly excluded. This arbitrary distinction violates the principles of equality, non-discrimination and parity under article 16 and 16 of the constitution

11. The applicants have stated that in response to their RTI query, the reply issued by IHQ (MoD/Navy)(pg 71 A-13) confirms that no sailors

were drafted to the Fleet Reserve between 1968 and 1978, which shows that the Fleet Reserve had, in effect, ceased to function even before 1969, and that the malafide of the respondents is evident from Petitioner No. 36's service record in ***T.S. Das v. Union of India (CA No. 2147/2011)***, wherein Hon'ble Supreme Court, in its judgement dated 27.10.2016 (Para 9, Pg. 11, (2017) 4 SCC 648), noted that Petitioner No. 36, recruited as a direct entry sailor on 07.02.1950, completed 10 years of active service and was drafted into the Fleet Reserve for the second 10-year term. He was unilaterally discharged on 30.03.1967 after a combined service of 17 years, 1 month, and 26 days, yet was denied Reservist Pension, unlike similarly situated sailors.

12. Further reliance is placed on the judgements of AFT RB Mumbai 28.07.2022 in ***O.A. Nos 13/2021 & 19/2021 (Ex IS Sadanand T. Mulatkar v. Uol & Ors*** and ***Ex POME Karnail Singh Gill v. Uol & Ors***), wherein it held that an ex-sailor with 10 years of colour service is equally entitled to Special Pension irrespective of whether retirement occurred before or after 03.07.1976. This view has been affirmed by the Hon'ble Supreme Court in Civil Appeal No. 5251 of 2023.

13. Another reliance is placed on Page 3 of ***T.S. Das v. Union of India (supra)*** [pg 165 C.A] held that: "*Having heard learned counsel for the parties for some time, we think it is a fit case where jurisdiction under Article 142 of the Constitution of India should be exercised. Accordingly,*

we direct the respondent-Union of India to grant Special Pension under Regulation 95 of the above-mentioned Regulations, commencing from 01 September 2018. It is hereby made clear that when we say 'Special Pension has to be granted' no further technical issues shall be raised." And that the present applicants are also covered by this order as per the list of Not Eligible Sailors.

14. The applicants also placed additional reliance on AFT principal Bench judgement dated 24/02/2025 in **LSA Vinod Kumar Sharma (Retd) Vs. Union of India and Ors** (OA No 1806/2022 with MA 2389/2022) wherein Special pension was awarded based on AFT Mumbai bench judgements mentioned in para 12 above .

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

15. Per contra, it is submitted on behalf of the respondents that under Regulation 78 of the Navy (Pension) Regulations, 1964, the mandatory minimum qualifying service required to earn a service pension is 15 years, whereas in the present applicants were enrolled for an initial engagement of 10 years to be followed by 10 years of Reserve service. They were discharged upon the expiry of said engagement as they were not drafted into Reserve. Records confirm that prior to their discharge, both applicants were offered the option to re-engage for further service to complete the pensionable period, however, Applicant No. 1 on 15 Jan 1973 and Applicant No. 2 on 28 Jan 1972 willfully signed the 'Unwillingness

Certificates explicitly choosing to opt out of service, therefore having voluntarily chosen to retire as Non-Pensioners without completing the mandatory 15 years of qualifying service, they cannot now claim entitlement to Pension of any kind.

16. With regard to the claim for Reservist Pension, it is contended by the respondents that Regulation 92 of the Navy (Pension) Regulations, 1964, prescribes that a sailor must render 10 years of active naval service and 10 years of reserve service and the Applicants' contention that they should have been automatically drafted into the Fleet Reserve is legally unsustainable as entry into the reserve is not a matter of right but is subject to the requirements of the service and the suitability of the individual. Moreover, in the case of the Applicants, they were not drafted into the Fleet Reserve as they were excess to complement and their Service Certificates (IN 271) bear the specific endorsement, '*Not drafted to fleet reserve as not required.*' Moreover, they had also given the unwillingness to continue. Therefore, the fact that the Applicants never got drafted to Reserve service and 15 years condition for grant of pension remains unfulfilled hence they are not entitled to Reservist pension or any other pension for that matter.

17. The Respondents while countering the AFT judgements quoted by the applicants stated that when confronted with a Supreme Court Judgement in ***TS Das vs UOI (supra)*** and with AFT judgements passed by AFT (RB) Mumbai Bench and AFT (PB), the order passed by the Apex court and the law established therein will prevail.

ANALYSIS

18. After careful consideration of the arguments of applicants and respondents, it emerges that - the Hon'ble Supreme Court, in its judgement dated 27.10.2016 in *T.S. Das Vs. Union of India (supra)*, established the criteria for granting special pension. In para 23 and 25 of the judgement *ibid* it is stated:

"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 3d July, 1976, it has entailed reducing the strength of establishment of the Indian Navy to that extent.

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25. Thus understood, all Sailors appointed prior to 3rd 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 because of the policy of

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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.

19. From the aforesaid para of the judgement in ***T.S. Dass (supra)***, it has been made amply clear that all Sailors appointed prior to July 3rd, 1976, whose tenure of initial active service expired on or after July 3rd, 1976, may be considered eligible for a Special Pension under Regulation 95, subject to the fulfilment of all other stipulated requirements viz they had not exercised the option to take discharge on expiry of the engagement as per section 16 of the Act of 1957 and yet could not be considered for being drafted into the Reserve Service. Based on this judgement, the Ministry of Defence in compliance to the Apex order, vide their letter No 4(10)/2017-D(Pen /Legal) dated 22/10/2018 stated that ex sailors appointed prior to 3rd July 1976 and discharged on or after 3rd July 1976 on expiry of 10 years service are to be paid Special pension.

20. However, as pointed out by the Applicants and in the light of the judgements quoted by them - AFT (RB) Mumbai order in ***Ex LS Sadanand T. Mulatkar v. Uol & Ors***, ***Ex POME Karnail Singh Gill v. Uol & Ors*** and AFT (PB) order in ***LSA Vinod Kumar Sharma (Retd) Vs. Union of India and Ors.*** (OA No 1806/2022 with MA 2389/2022) have been passed in 2022 and 2025 respectively granting special pension to those discharged prior to 3rd July, 1976 despite the Apex court judgement of ***T.S. Das (supra)*** in 2016.

21. On going through these orders, it emerges that the AFT (RB) Mumbai orders viz ***Ex LS Sadanand T. Mulatkar v. Uol & Ors (supra)*** and ***Ex POME Karnail Singh Gill v. Uol & Ors (supra)***, are clearly distinguishable ; especially in view of the fact that the issue whether option to continue in service was exercised by the individuals was not at all discussed in these orders. Whereas in the present case both the applicants were not in service on the crucial date of 3rd July 1976 and they had wilfully signed the 'unwillingness certificate' on 15/01/1973 and 28/01/1972 respectively. In case of AFT (PB) order dated 24/02/2025 in ***LSA Vinod Kumar Sharma (Retd) Vs. Union of India and Ors.*** (OA No 1806/2022 with MA 2389/2022), we find that the judgement has primarily relied on the orders passed by the AFT Mumbai bench while granting Special pension to those discharged prior to the crucial date of 3rd July, 1976. Hence stands automatically distinguished.

22. Moreover, it has been rightly pointed out by the Respondents that when confronted with a Supreme Court Judgement in this case ***T.S. Dass vs UOI (supra)*** and with orders passed by AFT (RB) Mumbai Bench and AFT (PB); the judgement passed by the Apex court and the law established therein will prevail. We find absolute merit in this reasoning.

23. Thus, having wilfully signed the 'Unwillingness Certificate' and explicitly choosing to opt out of Naval service, the Applicants have voluntarily chosen to retire as Non-Pensioners (without completing the

mandatory 15 years of qualifying service) thereby forfeiting their right to any kind of pension including Special Pension.

24. Further, the statement made by the applicants that the judgment passed by the AFT (RB) Mumbai in ***Ex POME Karnail Singh Gill v. Uol & Ors.*** (*supra*) was upheld by the Apex Court in Civil Appeal Diary No.5251/2023 vide order dated 13.04.2023 is factually incorrect since the decision in the Civil Appeal was with respect to the limited aspect of Leave to Appeal on the grounds of delay. Thus it has no impact the merit of the instant case.

25. The other facts placed before us by the applicant in support of their case were also looked at. It was stated by the applicant that RTI reply issued by IHQ (MoD/Navy)(A-13) confirms that sailors were not drafted to the Fleet Reserve between 1968 and 1978 which showed that in effect, the fleet reserve ceased to function even before 1969. However, it has been verified from the RTI response *ibid* that there is no such averment made by the respondents nor such conclusion can be drawn from the reply given therein. Moreover, no benefit can be drawn by the applicants by putting forth these arguments. On the other hand the Respondents have placed the unwillingness certificates of both the applicants which make it amply clear that the intent of the applicant was to get discharged from Naval Service without waiting to seek further re-engagement which would have entitled them to pensionary awards.

26. Thus, the fact that the applicant no.1 and applicant no.2 wilfully got discharged from their Naval service in 1973 and 1972 without completing the mandatory 15 years of qualifying service, hence they have voluntarily chosen to retire as Non-Pensioners and now cannot claim their entitlement to Pension of any kind including Special pension . Moreover , the fact that the applicants were discharged prior to the critical cut-off date of 3rd December 1976, when the scheme for Reserve Service was formally dispensed with in the Indian Navy, they do not fulfil one of the condition required as per Regulation 95 of the Pension Regulations to be eligible for special pension and which was relied upon in TS Das vs UOI (supra) . As per Regulation 95 those sailors are eligible for Special pension who have been discharged from their duties in pursuance of the Government policy of reducing the strength of establishment of the Indian Navy. The fact that the Government Policy of reducing the strength of the establishment of the Indian Navy by dispensing with the Reserve Service came in 1976 (3rd December) by which time the Applicants had already been discharged hence their interest were not harmed by the policy ibid thus making no case for granting Special Pension to the applicants.

27. In view of the above analysis, we find that the case for Special; Pension to the applicants ex facie does not exist. Thus the O.A. deserves to be dismissed being devoid of merit and is accordingly dismissed.

28. Consequently, the connected and pending miscellaneous application MA 510/2022 also stands disposed of.

29. No order as to costs.

Pronounced in the open court on this 23rd day of December, 2025.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(Ms. RASIKA CHAUBE)
MEMBER (A)

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