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

OA 1130/2016

Ex CPL Kanwar Pal ..... Applicant  
VERSUS  
Union of India and Ors. .... Respondents

For Applicant : Mr. V.S. Kadian, Advocate  
For Respondents : Mr. Prabodh Kumar, Sr. CGSC

CORAM

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

ORDER

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant vide the present OA makes the following prayers:-

*"(a) Direct respondents to grant Reservist Pension to the applicant with effect from the date of his discharge under the provisions of para 136 of the Pension Regulation for the Air Force 1961 by counting of his 13 years 03 months and 14 days of colour regular plus 02 years as reserve service/liability period as per the initial terms of engagement.*

*(b) Direct respondents to pay due arrears with interest 12% per annum from the date of his discharge with all consequential benefits.*

*(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost against the respondents."*

However, during the course of submissions made on behalf of either side, the learned counsel for the applicant revised the prayer

made in the present OA and sought grant of Special Pension from the date of discharge from service instead of Reservist Pension.

### BRIEF FACTS

1. The applicant was enrolled as an Airmen in the Indian Air Force as an Equipment Assistant on 05 August 1994. His initial terms of engagement was for 20 years of regular service and two years of reserve liability. He sought premature retirement and was discharged at his own request on 20 November 2007.
2. At the time of his discharge, he had completed 13 years, 03 months, and 14 days of service. Upon his discharge, he was under a two-year "Reserve Liability," meaning thereby that he could be recalled for deployment in an emergency. The applicant contends that this retention under reserve liability entitles him to a reservist pension under Para 136 of the Pension Regulation for the Air Force, 1961.
3. The applicant sent a representation cum legal notice on 19/07/2016 requesting the reservist pension. The respondents rejected this request via a letter HQ/99798/3/SP/DAV(PC) dated 10/07/2016 stating that the applicant is not entitled to any

pension since he has only rendered 13 years and 107 days of service, which is less than the required minimum of 15 years of colour service qualifying him for pension.

#### **CONTENTIONS OF THE PARTIES**

4. The learned counsel for the applicant submits that the applicant was initially enrolled in the Indian Air Force for a term of 20 years, followed by 2 years of Reserve Service. This cumulative engagement, upon due reckoning, exceeds the prescribed qualifying service of 15 years required for the grant of pension under the applicable Pension Regulations. It is further urged that, in terms of the conditions of engagement, the applicant is entitled to the Reservist Pension as envisaged under Paragraphs 136(a) and 36(b) of the Pension Regulations for the Air Force.

5. It is the case of the applicant that he has rendered 13 years, 3 months, and 14 days of service, and in his discharge certificate, a clear annotation has been made to the effect that he was discharged from service at his own request and was retained under reserve liability. Therefore, the respondents are bound by their own recorded terms and representations, whereby the conditions of engagement stipulate a total tenure of 20 years of

service, inclusive of 2 years of reserve liability, for the purpose of grant of pension.

6. It is submitted by learned counsel for the applicant that though the applicant was not kept in reserve service but was retained under reserve liability to meet any exigency or emergency requirement of the Respondents and the Nation, in accordance with the provisions of Paragraph 12(b) of the Air Force Instructions. However, as per the said provision, upon completion of his regular service, the applicant was liable to serve in the Regular Air Force Reserve for a period of two years, commencing from the day following the date of expiry of his regular engagement, and therefore, he is entitled for the Reservist Pension.

7. The applicant has also placed reliance on several orders some of which are quoted below:

- (a) *Armed Forces Tribunal order dated 24.11.2015 in OA No. 416/2015 titled Ex Cpl Tej Ram Agarwal vs. Union of India and others.*
- (b) *Armed Forces Tribunal order dated 08.08.2014 in OA No. 224/2014 titled Ex Cpl Dinesh Kumar Rana vs. Union of India and others.*
- (c) *Supreme Court of India order in Inder Pal Yadav and other vs. Union of India and others.*

8. However, during oral submission the learned counsel of the applicant made a request for grant of Special Pension instead of

reservist pension from the date of discharge from service and thereby modified his prayer accordingly.

9. Per contra, learned counsel for the respondents submits that, as per Regulation 136 (a) of the Pension Regulations for the Air Force, 1961 (Part I), the prescribed qualifying service for earning Reservist Pension is a combined total of 15 years of color Service and actual Reserve Service. It is further clarified that, for the purpose of grant of Reservist Pension, only the period actually served in the Regular Air Force Reserve is reckonable, and not the period of mere Reserve Liability. Consequently, he was not entitled to Reservist Pension under Regulation 136. However, by virtue of his length of service against initial engagement of 20 years, the applicant was eligible only for *Service Gratuity (SG) and Death-cum-Retirement Gratuity (DCRG)*, both of which have already been duly paid to him. He is however, not entitled to pension as he had not completed the colorable service of 15 years required for grant of pension.

10. Furthermore, learned counsel for the respondents points out that the Reserve Scheme, without abrogating the provisions of the Reserve and Auxiliary Air Force Act, 1952, was suspended

pursuant to a decision taken in the Air Force Commanders' Conference held in 1972. In consequence thereof, the Chief of the Air Staff had ordered that "with immediate effect, no airman is to be inducted into the Regular Air Force Reserve", while clarifying that an airman shall remain liable to be inducted into any Air Force Reserve at any time during the stipulated period of Reserve Liability under the provisions of the Reserve and Auxiliary Air Force Act, 1952, if and when such a Reserve is constituted.

11. It is contended by the respondents that there existed no *Air Force Reserve* during the period of the applicant's period of engagement, nor was any such Reserve constituted by the Competent Authority. He only had a reserve liability post completion of his terms of engagement as he took Pre-mature retirement. Accordingly, the applicant's contention that his period of reserve liability should be treated as *actual reserve service* for the purpose of grant of *Reservist Pension* is contrary to the statutory provisions and Government of India's policy on the subject. The applicant, therefore, is not eligible for the grant of *Reservist Pension*.

12. Grant of special pension has not been commented upon by the respondents in their written arguments since the prayer was modified by the applicant only during the course of submissions. However, during oral submission reference was made to Hon'ble Supreme Court of India judgment of T.S. Das and others Vs. Union of India and Another pertaining to Reservists/Special Pension passed in 2017. Several documents were also handed over in this regard.

#### ANALYSIS

13. It is an admitted fact that the applicant joined the Indian Air Force as a regular airman(corporal) in 1994 with a terms of engagement of 20 years and thereafter took Pre-mature retirement on 20/11/2007, after completing 13 years, 107 days of qualifying service which was short of required service of 15 years in order to get Service Pension.

14. It is also not in dispute that the scheme for 'Reserve Service' which started in 1964 was suspended in 1972 by the Indian Air Force pursuant to the decision in the Air Force Commanders Conference held in 1972. Following this the order in this regard was issued on 3<sup>rd</sup> October 1972, wherein it was clearly stated by

the Air Chief that "with immediate effect, no airman is to be inducted into the regular Airforce reserve". Hence the applicant, who joined the Indian Airforce as a regular airman in 1994, was never in Reserve Service and is in no way eligible for Reservist Pension. The letter dated 3<sup>rd</sup> October 1972 is reproduced below:

370231/209  
Air HQ/31722/54/Per-4

Air Headquarters,  
New Delhi-11  
3 Oct 72

List 'B'

REGULAR AIR FORCE RESERVE – AIRMEN

*In the Air Force Commanders' Conference held on 21-23 Aug 72, it was decided that the 'Reserve Scheme' should be suspended without abrogating the Reserve and Auxiliary Air Forces Act, 1952.*

2. *In pursuance of this decision, CAS has approved the adoption of the following measures for progressive disbandment of the existing Reserves:-*

(a) *With immediate effect no airman is to be inducted into Regular Air Force Reserve.*

(b) *Airmen who are on the reserve list at present be called upon to indicate their option for continuance or absolvment from the Reserve.*

(c) *Those who elect for absolvment are to be released after obtaining the sanction of the competent authority. Those who opt to continue in the Reserve be permitted to complete their liability.*

3. *Detailed instructions for the implementation of para 2(a) are being issued separately by Air Force Record Office. Para 2(b) and (c) are being actioned by this Headquarters (Dte of Org/Aux & Res).*

4. *This is for your information.*

5. *Please acknowledge.*

Sd/-  
(UL DADHWAR)  
Group Captain  
Director of Organisation  
Air Officer i/c Administration

Copy to :

Air Force Record Office.  
DPA.

15. However, the fact the applicant has modified his prayer and is now claiming Special Pension, hence, the question before us is whether the applicant who joined the Indian Air Force in 1994, as a regular Airmen with terms of engagement of 20 years and was eligible for Service Pension after completion of 15 years service can be granted Special pension having completed 13 years, 3 months and 14 days of colour service at par with Reservists.

16. Since, alternate prayer for grant of 'Special Pension', has been made by the applicant we find it pertinent to refer to 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-*

*of reducing the strength of Establishment of the Air Force;  
or*

*of re-organisation, which results in disbandment of any units/formation.”*

17. From an analysis of the aforesaid provision under consideration, it can be safely extracted that this provision confers a discretionary power upon the President to grant *Special*

*Pension or Gratuity* to individuals who, not being transferred to the Reserve Service, are discharged in large numbers as a direct consequence of a governmental policy decision. The scope of this provision is meant for those who are not transferred to Reserve Service and is limited to circumstances falling within two specific contingencies: (a) a policy of reducing the strength of the establishment of the Air Force; or (b) re-organisation resulting in the disbandment of any units or formations. The legislative intent underlying this provision appears to be the creation of a compensatory measure for those not drafted into Reserve Service due to, overarching governmental or administrative restructuring.

18. This issue regarding Special Pension as mentioned in the above paragraphs has been dwelled in detail by Hon'ble Supreme Court in Civil Appeal No. 2147 of 2011 and Civil Appeal No. 8566 of 2014 in *T.S. Das and others Vs. Union of India and Another* while dealing with case of Reservist Pension/Special Pension of Indian Navy Sailors appointed prior to 1976.

19. Before granting Special Pension the Hon'ble Supreme Court of India in *T.S. Das* (supra), denied Reservist Pension to those

enrolled for Reserved Service in Indian Navy but not drafted into it by an executive order:

*“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.*

*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.*

20. However, T.S. Das (supra) vide para 23 of the order granted Special Pension to the sailors who were asking for Reservist Pension stating that:

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 re-organisation, 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 3<sup>rd</sup> 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<sup>rd</sup> 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 3<sup>rd</sup> July, 1976, it has entailed reducing the strength of establishment of the Indian Navy to that extent.*

21. From the aforesaid facts and observations made by the Hon'ble Supreme Court of India, it can be safely concluded that

the Hon'ble Supreme Court in T.S. Das (supra) vide Para 23 had occasion to interpret Clause (i) of Regulation 95 in the backdrop of a Government policy decision of the Indian Navy dated 3rd July 1976, whereby the Fleet Reserve Service of the Indian Navy was discontinued. The letter issued by the Indian Navy with respect to discontinuance of Reserve service/Reservist pension is as under :

*"No.AD/5374/2/76/2214/S/D (N.II),*

*Government of India,*

*Ministry of Defence,*

*New Delhi, the 3rd July, 1976.*

*To,*

*The chief of the Naval Staff (with 100 spare copies)*

*Sub.:- CONDITIONS OF SERVICE OF SAILORS.*

*Sir,*

*I am directed to state that the President is pleased to approve the following modifications in the conditions of Service of sailors:-*

- a) Initial Period of Engagement:- Be enrolled for 15 years.*
- b) Educational Qualification at Entry:- Be raised to Matriculation or equivalent in the case of Direct Entry sailors of Seaman and Marine Engineering branches and Bo Entry sailors of all branches.*
- c) Ages of Entry:- The age of entry for Boys be revised to 16-18 years and that for Direct Entry sailors to 18-20 years.*
- d) Compulsory Age of Retirement:- Subject to the prescribed rules, the age of compulsory retirement for sailors of all ranks upto and including CPO rank will be 50 years. The compulsory retirement age of MCPO I/II will remain 55 years.*
- e) Time Scale Promotion to Leading Rank:- Seaman First Class and equivalents will be promoted to the Leading rank on completing of 5 years service in man's rank subject to passing the prescribed examination. The date of implementation of this provision will be promulgated by Naval Headquarters.*

f) Transfer to Current Fleet Reserve:- Transfer of sailors into the Fleet Reserve to be discontinued. The Existing Fleet Reservists will not be required to undergo refresher training but will be paid the retaining free till they are wasted out.

g) Recall to Active Service:- (i) All new entrants with 15 years initial engagement and such of the existing sailors, who re-engage to complete time for minimum pension, to sign a declaration that they will be liable to recall to active service, after release upto two years in case of Non-Artificers and three years in case of Artificers. During this period they will not be required to undergo refresher trainings or be entitled to any retraining fee, but when recalled they will be entitled to normal pay and allowances. If recalled they would be liable to serve for so long as their services are required.

(ii) Sailors released prematurely from Service at their own request will also be liable to recall to active service upto the period stated above.

h) Regrouping and Remustering of sailors:- Future entrants (Both Boy and Direct Entry) in Seamen and ME Branches will be on Group 'B' Scale of Pay. Serving sailors in these branches including Regulating Branch, who are matriculate or equivalents will also be remustered to Group "B" scale pay with effect from 1st April, 1976. Those, who attain this qualification later, will also be remustered to Group 'B' scale of pay, as and when they so qualify. Remustering will invariably be effective from the first of the month in which it occurs.

2. Administrative instructions, if any, will be issued by the Naval Headquarters.

3. Appropriate Government Regulations/Orders will be amended in due course.

4. This issues with the concurrence of Ministry of Finance (Def) vide their u.o. No.452/NA/S of 1976.

Yours faithfully,

Sd/-

(P.S. Ahluwalia)

Under Secretary to the Gov. of India

22. This discontinuation necessarily resulted in the reduction of the strength of the Fleet Reserve establishment, with the consequence that no sailors who were in service on that crucial day of 3<sup>rd</sup> July 1976 could thereafter be drafted into the Fleet Reserve. Sailors appointed prior to that date, whose terms of engagement envisaged 10 years of active service was still not

complete found themselves unable to exercise that option at the expiry of their active service to be considered for 10 years in fleet Reservist Service, solely because the establishment had ceased to exist. They were, in such circumstances, discharged upon completion of their active tenure, and were held entitled to Special Pension within the ambit of Regulation 95 by the Honble Supreme court.

23. At this juncture, it is pertinent to mention that the scheme of reserve service in the Indian Navy was wound up with effect from 3rd July 1976 with respect to which the T.S. Das judgment granted Special pension to all the sailors who were in Reserve service on the crucial date of 3rd July 1976 . It was stated in the judgment *ibid*

*“Thus understood, all Sailors appointed prior to 3<sup>rd</sup> July, 1976 and whose tenure of initial active service/empanelment period expired on or after 3<sup>rd</sup> 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 discontinuing the Fleet Reserve Service with effect from 3<sup>rd</sup> 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”*

whereas in the Airforce the Reserve Service was suspended with effect from 3<sup>rd</sup> October 1972 itself. Hence, on lines with the *T.S. Das* (supra) judgment the crucial date for grant for Special pension in case of Indian Air Force will be 3<sup>rd</sup> October 1972.

24. In the present case, the factual matrix is entirely distinguishable. The applicant was enrolled as a regular Airmen in the IAF in 1994 (much after the crucial date for Special pension that is 3<sup>rd</sup> October 1976) with engagement conditions of 20 years and 2 years reserve liability which is different from 9 years engagement followed by 6 years of drafting in the “*Reserve Scheme*” (a concept/system of engagement which was prevalent between 1964-1972 in the IAF) and has been disbanded post 1972, long before the applicant joined service. The applicant was a regular Airman engaged for 20 years service with eligibility for service pension after 15 years. The applicants separation from Airforce Service on 20/11/2007 before completion of 15 years needed for pensionable service was the result of voluntary retirement, and not because of any policy induced reduction in establishment strength or re-organisation leading to disbandment

of a unit or formation. The causal nexus between discharge and a qualifying policy decision, which is the cornerstone for attracting Regulation 144 of the Pension Regulations for the Air Force, 1961, (comparative Regulation to Reg 92 of Pension Regulations for the Navy, 1964) is thus absent. Accordingly, the applicant's claim for Special Pension by applying the judgment in the civil suit of T.S. Das (supra) cannot be sustained, as the circumstances of his discharge do not fall within the statutory categories of Special Pension prescribed by the Regulations and he was enrolled as a regular airman long after the 'Reserve Service Scheme' was closed in the IAF.

25. With respect to the reliance placed by the applicant on the decisions in *Ex-AC1 R. Vasudevan v. Union of India & Ors.* [OA 17/2013; AFT RB Chennai], *Ex Cpl Dinesh Kumar Rana v. Union of India & Ors.* [OA 224/2014; AFT PB], and *Ex Cpl Tej Ram Agarwal v. Union of India & Ors.* [OA 416/2015; AFT PB], we note that each of these judgments pertain to Reservist Pension. Hence, we are of the considered opinion that the fact that the applicant has modified his prayer to Special Pension none of the aforesaid decisions advance the case of the applicant.

26. We note that the applicant has further placed reliance upon the order dated 02.03.2023 of this Tribunal in *Cpl George Emmanuel (Retd.) v. Union of India & Ors.* [OA 2105/2019; AFT PB]. In that case, the applicant was discharged on 31.10.1973 without being transferred to the Reserve, the discharge being directly attributable to the discontinuation of the Air Force Reserve - a circumstance satisfying the mandatory condition for the grant of *Special Pension*. In the present matter, it is reiterated that the applicant joined the regular Airforce Service in 1994, much after the reserve scheme was closed in 1972, with terms of engagement of 20 years with full eligibility of Service pension after 15 years. However, he denied himself this eligibility for Service pension by seeking premature/voluntary retirement on his own volition. Now to seek the benefit of other kinds of pensions like Special pension, when his discharge is not due to any event or nexus with any policy which caused mass reduction in strength in the Airforce (which is a prerequisite for special pension), is not in order.

27. In view of the aforesaid analysis, we are of the considered view that the aforesaid OA is devoid of merit and is liable to be dismissed.

28. Hence, the OA 1130/2016 is dismissed.

29. Pending applications, if any are disposed off.

Pronounced in the open Court on this 13<sup>th</sup> day of November, 2025.

(JUSTICE NANDITA DUBEY)  
MEMBER (J)

(RASIKA CHAUBE)  
MEMBER (A)