

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

OA 1806/2022 WITH MA 2389/2022

LSA Vinod Kumar Sharma (Retd) Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Prashant Vaxish, Advocate

For Respondents : Mr. Niranjana Das, Advocate

CORAM

HON'BLE MS. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER

MA 2389/2022

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 1806/2022

3. Vide the present OA filed on 16.08.2022, the applicant seeks directions to the respondents to quash and set aside the impugned order dated 29.12.2017 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 95 of the Pension Regulations for the Navy, 1964 by counting 10 years and 8 days of colour regular service as per the initial terms of engagement 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.

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 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.

6. The applicant in the instant case joined the service of the Indian Navy on 22.04.1966 with the term of enrolment of 10 years of regular service and 10 years as fleet reserve service and on successful completion of training was posted to various Naval postings. On 30.04.1976, the applicant was discharged from the Naval service under Clause "*Not drafted to Fleet Reserve as not required*" after completion of 10 years and 8 days of qualifying regular 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 Navy (Pension) Regulations, 1964, they were not held entitled to Reservist Pension in terms of Regulation 92 of the Naval(Pension) Regulations, 1964.

8. Thus, it is apparent that the applicant herein has not been taken into the Fleet Reserve and having thus not completed 15 years of the combined colour service, qualifying service warranted for reservist pension in terms of Regulations 95 of Pension Regulations for the Navy 1964 (Part-I), 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 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 was any relief 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 July, 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 95 of the Pension Regulations for the Navy, 1964 (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 Indian Navy;
or
b) of re-organisation, which results in paying off of any ships or establishments.”*

10. We note that in the light of the directions issued by the Hon'ble Supreme Court in T.S. Das Vs Union of India (supra), Ministry of Defence, Department of Ex-Servicemen Welfare issued a Policy Letter no. No.4(10)/2017-D (Pen/Legal) dated 22.10.2018, extending the benefit of 'Special Pension' to such sailors and the same is reproduced herein:

*No.4(10)/2017-D(Pen/LegaD
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare
D (Pension/Legal)*

*Sena Bhawan, New Delhi
Dated 22.10.2018*

To
The Chief of Naval Staff

Subject: Implementation of Hon'ble Supreme Court Order dated 27.09.2018 in Contempt Petition (C)No. 1860/2017 and 924/2018 and MA No. 1067 /2018 in Civil Appeal No. 2147 /2011 with Contempt Petition (C) No. 04/2018 in SLP(C) No. 19790/2010 for grant of Special Pension under Regulation 95 of Navy (Pension) Regulations, 1964

Sir,

I am directed to refer to the above cited Hon'ble Supreme Court Order dated 27.09.2018 and convey sanction of the Competent Authority for grant of Special Pension under Regulation 95 of Navy (Pension) Regulations , 1964 to the ex-sailors appointed prior to 03.07.1976 and discharged on or after 03.07.1976 on expiry of 10 years of service.

2. The amount of pension payable is Rs. 9000/- (Rupees Nine thousand) per month to each of the ex-sailors under Regulation 95 of Navy (Pension) Regulations , 1964, payable from 01st September 2018 as per the Court Order under reference.

3. The amount of gratuity and DCRG paid, be adjusted against the amount payable. Necessary PPO may be issued immediately.
4. The expenditure incurred on this account will be paid under Charged Expenditure and be debited to the relevant Head of Account.
5. This issues with concurrence of Ministry of Defence (Fin/Pen) vide their U.O. No. 1023/Fin/Pen dated 17.10.2018.
6. Govt. of India, Ministry of Defence letter No. 4(10)/2017-D(Pen/Legal) dated 26th September, 2017 may be treated as cancelled.

Yours faithfully

Sd/-

Ajay Kumar Agrawal

(Under Secretary to the Government of India)

Copy to:-

1. FA(DS), South Block, New Delhi
2. AFA(Pension), Sena Bhawan, New D
3. MoD(Fin/Pen), Sena Bhawan, New Delhi
4. CGDA, Ulan Batar Road, Delhi Cantt, New Delhi
5. PCDA(P), Draupadi Ghat, Allahabad
6. MoD (Pension/Policy), Sena Bhawan, New Delhi
7. Director, POPA (Navy)

11. It has been brought to our notice that the applicant was discharged from service on 30.04.1976, and the benefit of 'Special Pension' has been granted to the personnels who have retired on 03.07.1976 or after 03.07.1976, since, he has retired prior to the cutoff date of 03.07.1976 prescribed the aforesaid policy, the applicant is not entitled to the benefit of the Policy Letter no. No.4(10)/2017-D (Pen/Legal) dated 22.10.2018.

12. On an examination, we find that the issue has been dealt by Regional Bench, Mumbai of this Tribunal in several identical matters. While examining the issue under

consideration, Regional Bench, Mumbai in Ex. POME Karnail

Singh Gill [OA 13 of 2021], observed as under:

6. *The Navy authorities, in light of the directives of the Hon'ble Supreme Court in T.S Das (Supra), decided to grant Pension to those Sailors with 10 years of Active Service but limited it to those who retired after 03.07.1976, under Regulation 95 of The Navy (Pension) Regulations, 1964.*

7. *It is evident that executive instructions cannot be issued in contravention of the rules framed under the proviso to Article 309 of the Constitution and statutory rules cannot be set at naught by the executive fiat. It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. In case of UoI v. Sri Somasundaram Vishwanath, the Hon'ble Apex Court observed that if there is a conflict between the executive instruction and the rules framed under the proviso to Article 309 of the constitution, the rules will prevail. Similarly, if there is a conflict in the rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.*

8. *In the instant case, applicant joined Navy as boy on 06.12.1963 and was discharged from service on 29.02.1976 due to change of policy without completing 15 years of service mandatory for grant of service pension. He participated in 1965 and 1971 Indo Pak War. As per policy criteria applicable at that time, applicant joined the Navy for 10 years of colour service and 10 years of reserve service. Later on by a circular dated 03 July 1976 Govt of India modified the service conditions, making it 15 years colour service and compulsory reserve liability for 2 to 3 years. Those who completed 10 years colour service prior to 3 July 1976 and transferred to Fleet Reserve were granted pension and other facilities. Govt changed the policy and stopped drafting sailors to the Fleet Reserve and therefore as a result, applicant was discharged from service before 03 July 1976 after rendering 12 years, 02 months and 23 days of colour service only. Neither the applicant was transferred to Reserve nor he was granted special pension as per Regulation 95 of Indian Navy Act 1957. Govt of India, Ministry of Defence vide letter dated 22.10.2018 granted pension to ex-sailors appointed or discharged on or after 03.07.1976 on expiry of 10 years of service and not to those like the applicant who discharged before 03.07.1976. This policy is against fundamental rights. The applicant retired very close to the datum on which the Reserve Fleet was*

winding up. Regulation 95 of The Navy (Pension) Regulations, 1964 allows Special Pension and gratuity to Sailors who are not transferred to reserve and are discharged in large number in pursuance of Govt policy. Any policy of deprivation of or restriction on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done. The policy should be issued in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. Policy should be in a manner which is patently impartial and meets the requirements of natural justice. The policy decision without regard to the principles of natural justice is void. The said policy is discriminatory and arbitrary, thereby offending Articles 14 and 16 of the Constitution of India. If special pension to an ex- sailor having 10 years of colour service and who retired on or after 03 July 1976 can be granted, then it can also be granted to an ex- sailor having 10 years of colour service and who retired prior to 03 July 1976.”

13. We note that an identical conclusion has been given by Regional Bench, Mumbai in similar cases of EX. POME Fateh Singh Johal Vs UoI & Ors. (OA 11/2021), Ex. LME Krushnarao Patil Vs UoI & Ors. (OA 12/2021), Ex. LME Prakash G. Choudhary Vs UoI & Ors. (OA 18/2021) and Ex. LS Sadanand Singh Thakur Vs UoI & Ors. (OA 19/2021)

14. In view of the aforesaid analysis, we see no reason to disagree with the *ratio* laid down by the Regional Bench, Mumbai in a catena of case enshrined above. Hence, the applicant, herein thus, who has completed 10 years and 8 days 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 judgement of Hon'ble Supreme Court in T.S. Das v Union of India [(2017)

4SCC 218], and judgements of Principal Bench of this Tribunal in OA 1926/2018 in Ex Cpl R S Sahgal (supra), and OA 1049/2019 in Cpl Kandasamy T(Retd) (supra), coupled with the judgements of Regional Bench, Mumbai of this Tribunal in EX. POME Fateh Singh Johal Vs UoI & Ors. (supra), Ex. LME Krushnarao Patil Vs UoI & Ors. (supra), Ex. LME Prakash G. Choudhary Vs UoI & Ors. (supra) and Ex. LS Sadanand Singh Thakur Vs UoI & Ors. (supra).

15. However, in as much as the applicant has sought redressal of his grievances vide the present OA only on 16.08.2022, 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 Special 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 Special 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.

16. 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 the copy of the order by the respondents.

17. The OA is disposed of accordingly.

18. Pending Miscellaneous applications, if any, are closed.

Pronounced in the open Court on ^{R H} 24 day of February, 2025.

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

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

Akc/