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

OA 4022/2024 with
MA 4223/2024 and 3225/2025

Smt Brij Kumari w/o Late Ex LAM Vijay Kumar ..... **Applicant**
Versus
Union of India and Ors. .... **Respondents**

For Applicant : Mr. Ajit Kakkar & Associates, Advocate,
For Respondents : Ms. Jyotsna Kaushik, Advocate

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

MA 4223/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 22481 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of ***UoI & Ors Vs Tarsem Singh*** 2009(1)AISLJ 371 and in ***Ex Sep Chain Singh Vs Union of India & Ors*** (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 4223/2024 is allowed despite opposition on behalf of the respondents and the delay of 22481 days in filing the OA 4022/2024 is thus condoned. The MA is disposed of accordingly.

OA 4022/2024

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

(a) *The applicant be granted special pension to which her late husband was duly entitled to 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) *The Applicant should be granted a special pension to which her late husband was duly entitled to after being released after having served for 10 years and not considered for fleet Reserve service.*

(c) *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. The Applicant's spouse was enrolled in the Indian Navy on 13.12.1960 and was discharged from service on 23.05.1972, after rendering 11 years, 5 months, and 11 days of active service upon expiry of his initial engagement terms. Prior to his discharge, the applicant possessed the statutory option to get his service extended to become eligible for service pension. However, the applicant has not renedered 15 years of qualifying service. 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 service pension.

SUBMISSIONS ON BEHALF OF THE APPLICANTS

3. 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 Reserve Service but never drafted to fleet reserve and that this statutory certificate constitutes incontrovertible documentary evidence of the contract between the applicants and the respondents, therefore 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).

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

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 LS 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 applicant is 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, 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 applicant and respondents, it emerges that since the applicant was never drafted into reserve hence the Reservist pension cannot be given and thereby the prayer with regards to reservist pension stands redundant. Furthermore, 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 Duly, 1976, it has entailed reducing the strength of establishment of the Indian Navy to that extent.***
>
> ***xxx xxx xxx xxx xxx***
>
> ***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 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 the applicant was not in service on the crucial date of 3rd July 1976 and had given his unwillingness for further service. 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.

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.

26. Thus, the fact that the applicant got discharged from their Naval service in 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(s), if any, also stands disposed of.

29. No order as to costs.

Pronounced in the open court on this 26th day of February, 2026.

(JUSTICE NANDITA DUBEY)
MEMBER (J)

(Ms. RASIKA CHAUBE)
MEMBER (A)