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

OA 499/2017 with MA 438/2017

Ex Cfn T Sivanandam thru LR Smt. T Saraswathi ... Applicant

VERSUS

Union of India & Others .... Respondents

For Applicant : Ms. Archana Ramesh, Advocate

For Respondents : Mr. Avdhesh Kumar Singh, Advocate

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

ORDER

MA 438/2017

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 v. Tarsem Singh* [(2008) 8 SCC 648], the MA is allowed condoning the delay in filing the OA.

OA 499/2017

2. Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 ("AFT Act"), the applicant has filed the OA and the reliefs claimed in Para 8 read as under respectively:

> *"(a) Issue directions to firstly quash and set aside the EME Records Letter dated 06 Nov 2015 read with Army Headquarters Letter dated 10 April 2015 and ADGPS, Army HQ Letter dated 03 June 2016 placed as Annexure A*

- 1 (Colly) and grant to Service Pension/Reservist Pension from the date of discharge of the Applicant till date and for life in the light of the Hon'ble Armed Forces Tribunal Judgments in TA No 564/2010 in Re Shri Sadashiv Haribabu Nargund and Others Vs UOI dt 12 Jan 2011 placed as Annexure A-4 in OA No 462/2014 in Re AC1 BD Sharma Vs UOI dt 20 Nov 2014 placed as Annexure A-5 to meet the ends of equity, justice and fairplay;

B. Pass such other and further orders/ directions to the Respondents for adequate compensation as may be deemed just and proper by the Hon'ble Armed Forces Tribunal in the attendant genuine circumstances of the case."

BRIEF FACTS

3. The applicant was enrolled in the Indian Army (Corps of EME) on 04.08.1963 and was discharged from service, at his own request on extreme compassionate grounds, w.e.f. 03.07.1975 after rendering a total of 11 years and 329 days of qualifying service.

4. The applicant at the time of discharge was short of 03 years and 36 days of service in completing the minimum qualifying service criterion, i.e., 15 years, for the grant of service pension.

5. The applicant applied for grant of service pension on 11.12.2014, after 39 years of his discharge. The same was rejected vide letter No. B/39027/29 (5)/MOD/AG/PS-5 dated 10.04.2015 on account of non-completion of the mandatory 15 years of color service.

6. The applicant then filed an OA bearing No. 468/2015 on 08.07.2015 before this tribunal, which was disposed of *vide* order dated 10.07.2015 with directions to the competent authorities to decide the

representation of the applicant after carefully considering the plea of the petitioner in the light of the judgment passed in TA No. 564/2010 dated 12.01.2011 and OA No. 462/2014 dated 22.11.2014. The EME Records replied *vide* letter No. 7070212/SP-3/Pen dated 06.11.2015 stating that the applicant had only completed 11 years and 11 months of service, much below the mandatory 15 years of service for grant of service pension as per Para 47 of the **Pension Regulations for the Army, 2008 (Part- 1) ["PRA,2008"]**. Thereafter, the ADGPS, Army HQ disposed of the representation *vide* order dated 03.06.2016.

7. It is pertinent to note that the applicant had earlier applied only for service pension, which was rejected vide the impugned order dated 06.11.2015. Having been unsuccessful therein, the applicant has now filed the present OA challenging the said impugned order and, in addition, is seeking grant of reservist pension. However, no application was ever submitted to the competent authorities earlier seeking grant of Reservist Pension.

8. Meanwhile, the applicant expired on 08.08.2016. Upon his demise, the present Original Application has been filed by his legal representative, namely his wife. However, in the interest of justice, and in accordance with Section 22(2) of the AFT Act, we take up the present OA for consideration.

CONTENTIONS OF THE PARTIES

9. Learned counsel for the applicant submitted that the rejection of service pension is contrary to the *ratio decidendi* laid down by this

Tribunal in ***Re Sadashiv Haribabu Nargund and Others v. Union of India*** **[TA No. 564/2010]**, decided on 12.01.2011, and in ***Re AC1 B.D. Sharma v. Union of India*** **[OA No. 462 of 2014]**, decided on 20.11.2014. It was further urged that the ratio of these judgments can be applied *mutatis mutandis* to the applicant's case.

10. The learned counsel further submitted that, as per the terms and conditions of engagement for a Sepoy in the year 1963, the tenure comprised nine years of colour service with six years of reserve service, and upon completion of nine years of service, an individual automatically became entitled to service pension. He further submitted that the applicant had earlier filed OA No. 468/2015, which was disposed of vide order dated 10.07.2015, with directions to decide the matter in the light of the aforementioned judgments.

11. Furthermore, the learned counsel for the applicant submitted that in accordance with Para 125 of the **Pension Regulations for the Army, 1961 ["PRA, 1961"]**, a period of up to six months of the shortfall can be condoned for the grant of service pension and the period of six months was enhanced up to 12 months vide GoI-MoD letter No. 4684/Dir(Pen)/2001 dated 14.08.2001.

12. *Per Contra,* learned counsel for the respondents submitted that the service/medical documents of the applicant were destroyed by burning, having exceeded the 25-year retention period prescribed for non-pensionable cases under Paragraph 595 of the Regulations for the Army, 1987 (Revised Edition). He further submitted that, as per the entry

recorded in IAFK-1172 (Particulars of Non-Effective JCOs/OR/NCs on destruction of Sheet Roll), the following legitimate dues were paid to the applicant:

a) AFPP Fund Balance – Rs. 4499.00

b) Service Gratuity- Rs. 2041.25

c) Credit Balance- Rs. 3991.00

d) Death cum retirement Gratuity- Rs. 863.70

e) Admitted Gratuity- Rs. 2041.25

f) Admitted service Gratuity- Rs. 522.55

13. Learned counsel for the respondents has vehemently opposed the application, submitting that the applicant has rendered only 11 years and 329 days of qualifying service. Since the applicant had not rendered 15 years of qualifying service, he was rightly denied service pension as he is not entitled to the same in terms of Para 132 of PRA, 1961, wherein 15 years of qualifying service is required for the grant of service pension. He further submitted that, as per Para 125 of PRA, 1961 condonation of deficiency of service for eligibility of service/reservist pension is applicable except in the case of an applicant who is discharged from service at his own request on extreme compassionate grounds. The applicant had submitted a representation dated 26.09.2016 after a lapse of more than 39 years, which was suitably replied vide EME Records letter dated 10.12.2016. As the applicant was discharged at his own request on such grounds, the benefit of condonation of deficiency is clearly not applicable to his case. Reliance was also placed on Paragraph 155(b) of

the said Regulations, which permits the grant of reservist pension only where discharge is for reasons other than at one's own request. Accordingly, the applicant is entitled neither to condonation of deficiency of service nor to service/reservist pension.

ANALYSIS

14. We have heard the learned counsels for both the parties and have perused the record produced before us.

15. Accordingly, the issues that require consideration by this Court are two-fold:

i) *Whether the applicant is eligible for the grant of service pension in accordance with the applicable rules?*

ii) *Whether the applicant is eligible for the grant of reservist pension in accordance with the applicable rules and policy on the subject?*

16. It is an admitted fact that the applicant got enrolled in the Indian Army on 04.08.1963 and was discharged from service on 03.07.1975 at his own request on extreme compassionate grounds, and not pursuant to any governmental policy. Although the applicant has claimed that his term of service was nine years and six months, no documentary evidence has been produced to substantiate this assertion. The respondents, in their reply, have simply stated that the applicant was engaged on 04.08.1963 and discharged on 03.07.1975 at his own request on extreme compassionate grounds, after rendering 11 years and 329 days of service. The Discharge Book placed on record by the applicant does not indicate

that he was transferred to the reserve, on the contrary, the column relating to the date of transfer to the reserve has been left blank.

17. It is the contention of the learned counsel that the applicant is entitled to a service pension on the grounds that his 11 years and 329 days of service surpassed the nine-year colour service requirement applicable at the time of his discharge. Furthermore, if deemed ineligible for a service pension, the applicant claims a reservist pension pursuant to Para 155 of the PRA, 1961.

18. At this point, it is essential to advert to the relevant rules and regulations on the subject as provided in the PRA, 1961, which deal with the essential conditions for the grant of service pension. Regulation 132 of the PRA, 1961 provides for the minimum qualifying service for the grant of service pension. Para 132 of the PRA, 1961 reads as follows:

> **"Minimum qualifying service for pension**
>
> ***132. Unless otherwise provided for, the minimum qualifying color service for earning a service pension is 15 years."***

We are unable to accept the contentions advanced by the learned counsel for the applicant seeking the grant of a service pension. The record clearly establishes that the applicant rendered only 11 years and 329 days of qualifying service, thereby falling short by nearly three years of the prescribed minimum qualifying service of 15 years required for earning a service pension. In view of Paragraph 132 of the PRA, 1961, an individual becomes eligible for a service pension only upon completion of at least 15 years of qualifying service. Since this

mandatory requirement has not been fulfilled in the present case, the applicant is not entitled to the grant of a service pension, and no relief can be extended in the instant Original Application.

19. Regulation 125 of the PRA, 1961 provides for the condonation of a deficiency in qualifying service up to a maximum period of six months. Regulation 44 of the PRA, 2008 expands this benefit by permitting condonation of a deficiency in qualifying service up to twelve months, thereby enabling an individual who has completed 14 years and 6 months of qualifying service to be granted pension by condoning the shortfall. Even if the maximum permissible condonation of one year under the PRA,2008 were to be applied, the applicant would still fall short of the minimum qualifying service of 15 years, as he is nowhere close to completing the prescribed 15 year period of qualifying service.

20. Qua the issue of grant of reservist pension to the applicant, it is pertinent to note that the primary purpose of reserve liability is to provide a pool of trained manpower that can be rapidly mobilized to augment the regular armed forces during a crisis, war, or large-scale emergency. Being under reserve liability implies that an individual is legally required to report for duty upon receipt of a recall or mobilization notice. The Competent Authority may, by general or special order, transfer any Sepoy who, under the terms and conditions of his service, is liable to serve in the Reserve, however, such transfer to the Army Reserve is not automatic.

21. In the present case, the Discharge Certificate bears no specific endorsement as to whether the applicant was drafted to the Fleet Reserve or otherwise. Moreover, the applicant was discharged from service in 1975 at his own request on extreme compassionate grounds. The service documents of the applicant were destroyed on the basis of his being a non-pensioner, upon expiry of the mandatory retention period of 25 years, in terms of Para 595 of the Pension Regulations for the Army, 1987. Even assuming that he was drafted to the Fleet Reserve, the fact remains that the applicant did not complete the mandatory requirement of 15 years' qualifying service for the grant of pension and is, therefore, not entitled to a reservist pension or any other pension.

22. The issue regarding Reservist Pension/Special Pension 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.

23. 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.

24. 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 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.*

25. 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. 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 3rd 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 Hon'ble Supreme court. 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*** (supra) 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 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 with effect from 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"*
>
> *Emphasis supplied*

whereas in the Indian Army the Reserve Service was suspended with effect from 29.01.1976 itself. Hence, on lines with the ***T.S. Das***

(supra) judgment the crucial date for grant for Special pension in case of Indian Army will be 29.01.1976.

26. In the present case, since the applicant is from the army where the Reservist scheme had ended on 29.01.1976 hence the factual matrix is entirely distinguishable. It is apposite to refer to the policy letter dated 29.01.1976, by which the terms and conditions governing reserve liability for the Army were revised and the system of compulsory transfer to reserve liability was abolished. The said policy letter is reproduced hereunder for ready reference :—

[illegible]/Org 2(MP)(a)

Adjutant General's Branch
[illegible] New Delhi - 110011
[illegible] Jan 76

Headquarters
Southern Command
Eastern Command
Western Command
Central Command
Northern Command

The Officers-in-Charge
All Regts/Corps Records Office

PERIODS OF ENGAGEMENT — SEPOYS

Introduction

The system of maintenance of reserves and the allied aspects of the periods of engagement of sepoys had been under active consideration of this HQ for quite some time. The system of reserves as well as the existing periods of engagement have been found to be unsatisfactory in many a respects. Firstly, these have failed to meet adequately the qualitative as well as quantitative manpower requirements of the Army during an emergency. Secondly, transfer to the reserve has always been unpopular amongst personnel since it cuts short their career in the Army and deprives them of earning a colour service pension. Periodical recall of reservists for refresher training also disrupts their civil vocation and civil employers are also reluctant to employ reservists because of their liability for recall for training in addition to recall for active Army Service during emergency. In brief, the system was found to be neither in the interests of the Service nor of the individuals.

Revised terms of engagement

After detailed analysis of the entire problem, Army Headquarters had put forward certain proposals to the Government in this regard. These have been accepted and are being published vide SAI 1/S/76. An advance copy of the SAI is enclosed. The salient features of the new scheme are briefly as under:—

(a) The system of compulsory transfer to the reserve has been abolished.

(b) The periods of engagement laid down in SAI 10/S/[illegible] amended, have been revised. With effect from 1 Feb 76 enrolment in Army will be made only on the following [illegible] engagements:—

(ii) Personnel belonging to technical categories, tradesmen categories and artisan categories will have Colour service of 10 years followed by a reserve liability of three years or 45 years of age, whichever is earlier.

(e) All personnel proceeding on premature discharge on compassionate grounds will also carry a reserve liability for two years.

(f) During reserve liability period, personnel will not be entitled to any retaining fee, nor will they be called up for refresher training. They will, however, receive their service pension admissible under the normal rules.

The revised periods of engagement have a number of advantages over the existing ones and need be given wide publicity. They will give personnel a longer span of colour service and thereby be eligible to qualify for a colour pension. The period in reserve liability under the new scheme has also been rationalised and the requirement of refresher training done away with. Our personnel should, therefore, be advised to opt for the revised terms.

Ages of enrolment

Although for the purpose of periods of engagement, all trades/categories have been divided into only two groups(as against three at present), the ages of enrolment for each trade/category will remain unchanged. In other words, in so far as ages of enrolment are concerned, fresh enrolment with effect from 1 [illegible] will continue to be made as per age brackets given in AI 8/S/81 as under:-

(a) Trades/Categories listed in Annexure 'A' and 'B' of AI 10/S/81, as amended. 17-21 years

(b) Trades/Categories listed in Annexure 'C' of AI ibid. 17-24 years

(c) Trades/Categories listed in Annexure of AI ibid and erstwhile NCOs categories 17-27 years

Option for serving personnel

In accordance with para 4 of SAI 1/S/76, serving personnel including recruits, enrolled upto 31 Jan 76 will automatically switch over to the new terms unless they opt to the contrary. The following procedure will be adopted in this regard:-

(a) Since there will be a variation in the terms of engagement of personnel, it has been decided that option certificates will be obtained from all individuals irrespective of whether they desire to remain on the old terms or to come over to the new terms. These options should be [illegible]

(b) Option certificates from personnel who are due for discharge during the period Feb-Mar 76 will be obtained immediately and in any case before they proceed on leave pending retirement.

(c) Option certificates will also be obtained from those sepoys who are on leave pending retirement/transfer to reserve but have not been finally struck off strength as on 1 Feb 76. Both the option certificates will be forwarded by registered post, at their home address. Option certificates from such personnel MUST be obtained before their final date of discharge/transfer to reserve. Personnel who opt for the revised terms, and consequently become eligible for a longer period of colour service, will be recalled immediately and allowed to serve till completion of their new period of colour service.

It should be appreciated that obtaining of option certificates from each individual, as per directions given above, is a legal requirement and its non-compliance may entail regularisation of court orders. As such, it will be ensured by the Officers-in-Charge Records that no lapse in this regard is allowed to occur.

Option once exercised, will be final. Specimen option certificates are attached at Appendices 'A' and 'B'.

Serving personnel who do not opt for the revised terms will not be granted any further extension of colour service under the provisions of para 146(b) of the Regulations for the Army, 1962 regardless of their length of service. Such non-optees should be transferred to the reserve to complete their combatant colour service liability. It is impressed on OC Units that in the best interest of the individual, all such non-optees should be explained the advantages of their opting for revised terms and thereby continuing in service vis-a-vis disadvantages of their being non-optees.

Applications for compassionate discharge of personnel who do not opt for the revised terms of engagement will be thoroughly examined by OIC Records before such discharge are sanctioned.

Non-optees shall not be transferred to the reserve on compassionate grounds before completion of their colour service.

Please acknowledge.

Sd/-x x x x
(INDER SETHI)
Brig
SANGTHAM NIDESHAK/for O
ADJUTANT GENERAL

Col
Corps Headquarters
Regt/Corps Comd

In view of the above, since the individual was neither drafted to reserve nor was in service on the crucial date of 29.01.1976, hence the question of grant of reservist pension or special pension to the applicant *ex facie* does not arise.

27. The applicant's separation from Armed Service on 03.07.1975 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 164 of the Pension Regulations for the Army, 1961 (Part-1) is thus absent. Accordingly, even though the applicant has not specifically claimed the grant of Special Pension, his claim for Special Pension by placing reliance on the judgment in T.S. Das (supra) cannot be sustained, as the circumstances of his discharge do not fall within the statutory categories prescribed under the Regulations for the grant of Special Pension.

28. The reliance placed by the applicant on the judgments of the Hon'ble Armed Forces Tribunal in T.A. No. 564/2010, ***Sh. Sadashiv Haribabu Nargund & Others v. Union of India,*** decided on 12 January 2011, and O.A. No. 462/2014, ***AC-1 B.D. Sharma v. Union of India,***

decided on 20 November 2014, is wholly misplaced. We find that the aforesaid judgments are clearly distinguishable and do not advance the case of the applicant. Notably, both decisions were rendered prior to the authoritative pronouncement of the Hon'ble Supreme Court in ***T.S. Das (supra),*** which now governs the field and, therefore, prevails.

29. It is reiterated that since the applicant was enrolled in the Indian Army in the year 1963 and was discharged from service in 1975 at his own request on extreme compassionate grounds, prior to completion of the mandatory qualifying service of 15 years, he is not entitled to the grant of service pension. As regards the claim for reservist pension or special pension, it is evident from the record, and in the light of the law laid down by the Hon'ble Supreme Court in ***T.S. Das (supra),*** that the applicant was never drafted to the Reserve and, therefore, is not entitled to reservist pension. Further, as the applicant was not in service on the crucial date, i.e. 29.01.1976, when the Government policy disbanding the reservist scheme was issued, he is also not eligible for the grant of special pension.

30. In the light of the above discussion, we find no infirmity or illegality in the impugned order annexed as Annexure A-1 (colly) issued by the respondents. Consequently, the Original Application is devoid of merit and is accordingly dismissed.

31. There shall be no order as to costs.

32. Pending miscellaneous application(s), if any, stand closed.

Pronounced in open Court on 5th day of February, 2026.

(JUSTICE NANDITA DUBEY)

MEMBER (J)

(RASIKA CHAUBE)

MEMBER (A)

/Sj/