

A

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

**OA No. 613 of 2017 with MA 536/2017**

**Ex Sep Dayanand Sharma**

**... Applicant**

***Versus***

**Union of India & Others**

**.... Respondents**

**For Applicant** : Mr. V. S. Kadian, Advocate

**For Respondents** : Mr. K.K. Tyagi, Advocate

**CORAM:**

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)**

**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**O R D E R**

**MA 536/2017**

This is an application filed under section 22(2) of the Armed Forces Tribunal Act, 2007, seeking condonation of delay of 5993 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of **Union of India v. Tarsem Singh** [2009 (1) AISLJ 371] and in **Ex Sep Chain Singh v. Union of India & Ors.** (Civil Appeal No. 30073/2017) and the reasons mentioned, the MA 536 of 2017 is allowed and the delay of 5993 days in filing the OA

613/2017 is thus condoned. The MA is disposed off accordingly.

**OA 613/2017**

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

- “(a) Quash and set aside the impugned letters No. 6372281F/Legal Notice/SP/Pen dated 12.07.2016 and letter No. 6372281/Doss/SP/Pen dated 18.08.1998;*
- (b) Direct respondents to grant service pension/reservist pension or special pension as applicable with effect from date of his discharge from service. And/or;*
- (c) Direct respondents to pay the due arrears of pension with interest @ 12% p.a. from the date of discharge with all consequential benefits;*
- (d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case.”*

**BRIEF FACTS**

2. The applicant was enrolled in the Indian Army on 08.10.1977 and discharged from service, upon completion of

terms of engagement, w.e.f. 31.10.1994 under item III (i) annexed to Rule 13 (3) of Army Rules 1954.

3. The applicant at the time of discharge was short of 02 years and 269 days of service in completing the minimum qualifying service criteria i.e., 15 years, for the grant of service pension due to 04 years and 269 days of non-qualifying service due to him being absent without leave and overstaying of leave.

4. The applicant was denied the benefit of grant of service pension at the time of discharge vide letter No. 6372281/Doss/Pen dated 16.08.1995 stating that the applicant due to deliberate absence got 04 years and 269 days of non-qualifying service, as such fell short of 02 years and 269 days in completing the minimum pensionable service i.e., 15 years for the grant of service pension. The applicant was communicated the said denial of service pension by the respondents vide letter no. 6372281/Doss/SP/Pen dated 18.08.1998.

5. The applicant had served a legal notice cum representation dated 13.06.2016 against the denial of the service pension and the same was also rejected by the

respondents vide letter no. 6372281F/Legal Notice/SP/Pen dated 12.07.2016 reiterating that the applicant is not entitled for the grant of service pension due to non-completion of minimum pensionable service due to deliberate absence and unsatisfying service resulting in 04 years and 269 days of non-qualifying service.

6. Aggrieved by the decision of the respondents, the applicant has filed the instant OA. In the interest of justice, in accordance with Section 21(1)(a) of the AFT Act, we take up the present OA for consideration.

### **CONTENTIONS OF THE PARTIES**

7. The learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 08.10.1977 and was locally discharged from service w.e.f. 31.10.1994, upon completion of terms of engagement, under item III (i) annexed to Rule 13 (3) of the Army Rules 1954.

8. The learned counsel for the applicant submitted that at the time of discharge the applicant was not granted service pension despite of completing 17 years and 23 days of military service.

9. The learned counsel for the applicant in Para 5.2 of the OA had relied on Para 155 of the Pension Regulations for the Army, 1961 (Part-1) for the grant of service pension, stating that an individual is entitled to reservist pension after continuing his physical color plus reserve liability. Furthermore, the learned counsel for the applicant submitted that in accordance with Para 125 of the Pension Regulations for the Army, 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.

10. The learned counsel for the applicant placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Vijay Shankar Mishra v. UOI & Ors.** Civil Appeal No. 12179-12180 of 2016, to contend that the issuance of a discharge order under Rule 13(3) of the Army Rules, 1954, merely on the ground of incurring more than four red ink entries is unsustainable and could not be a ground for discharge without considering other relevant circumstances.

11. *Per Contra*, the learned counsel for the respondents submitted that the applicant was locally discharged from

service w.e.f. 31.10.1994 under Army Rule 13 (3) III (i) and that the applicant was a perpetual and habitual offender and had remained absent from military service on several occasions and was awarded various punishments.

12. The learned counsel for the respondents further submitted that the applicant at the time of discharge had 04 years and 269 days of non-qualifying service due to him being absent without leave / overstaying of leave and as such the service of the applicant was deficient by 02 years and 269 days in completing the minimum pensionable service criteria i.e., 15 years for earning service pension. The details of the punishment awarded are as under:

S.No.	Offence	Army Act	Period of Absence	Punishment Awarded
a.	Over staying of Leave	S. 39 (b)	06 days (14.09.79 – 19.09.79)	07 days' pay fine
b.	Over staying of Leave	S. 39 (b)	18 days (20.07.80 – 06.08.80)	14 days' pay fine and 14 days confinement to lines
c.	Over staying of Leave	S. 39 (b)	26 days (16.03.82 – 10.04.82)	25 days rigorous imprisonment
d.	Violation of Good Orders and Military Discipline	S. 63	-	14 days rigorous imprisonment
e.	Over staying of Leave	S. 39 (b)	63 days (09.03.1988 – 10.05.1988)	28 days rigorous imprisonment

f.	Deserting of Service	S. 38 (1)	242 days (28.08.88 – 26.04.89)	02 months and 29 days rigorous imprisonment
g.	Over staying of Leave	S. 39 (b)	02 days (10.12.89 – 11.12.89)	07 days rigorous imprisonment
h.	Over staying of Leave	S. 39 (b)	03 years and 277 days (12.06.90 – 16.03.94)	14 days' pay fine

Since the applicant, as per records, remained absent for 04 years and 269 days and did not complete minimum pensionable service of 15 years, the applicant in accordance with Para 132 of the PRA 1961 (Part-1), is not eligible for the grant of service pension.

### **ANALYSIS**

13. We have heard the learned counsels for both the parties and have perused the record produced before us. The applicant in Para 8 of the instant OA seeks the quashing of the impugned order annexed as Annexure A-1 (colly) and consequently seeks service pension or reservist pension. The learned counsel for the respondents has contended that the applicant is not eligible for the grant of service pension in accordance with Para 132 of the PRA 1961 (Part-1). Therefore, the issues that require consideration of 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?

14. It is not in dispute that the applicant got enrolled in the Indian Army on 08.10.1977 and upon completion / fulfillment of terms of engagement got locally discharged from service w.e.f. 31.10.1994 under item III (i) annexed to Rule 13 (3) of the Army Rules, 1954 and at the time of discharge the applicant was paid other consequential benefits applicable to him.

15. It is the contention of the learned counsel for the applicant that the applicant is eligible for the grant of service pension as the applicant has put in 17 years and 23 days of service and if not eligible for service pension, the applicant in accordance with Para 155 of the PRA 1961 (Part-1) has sought reservist pension.

16. At this point, it is essential to advert to relevant rules / regulations on the subject as provided in the Pension Regulations for the Army (PRA) 1961, (Part-1) which deals



about the essential condition for the grant of service pension. Regulation 132 of the PRA 1961 (Part-1) provides for the minimum qualifying service for the grant of service pension. Para 132 of the PRA 1961 (Part-1) reads to the effect:

**“Minimum qualifying service for pension**

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

We cannot agree with what the learned counsel for the applicant had contended in favor of the grant of service pension to the applicant as the applicant has got a total period of 04 years and 269 days of non-qualifying service due to his deliberate absence from the duty. Since the applicant has got 04 years and 269 days of non-qualifying service, the applicant as such fell short of 02 years and 269 days in completing the minimum qualifying service criteria i.e., 15 years for earning the service pension and hence, the applicant in view of Para 132 of the PRA 1961 (Part-1) cannot be granted the relief of service pension as an individual gets entitled for earning the service pension after serving at least 15 years of qualifying service which in case of the applicant in the instant OA is not fulfilled.

17. 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 means that the individual is legally required to report for duty if they receive a recall or mobilization notice and the Competent Authority may, by general or special order, transfer any Sepoy, who under the terms and conditions of his service and is liable to serve in Reserve and that transfer of any Sepoy to any Army Reserve is not automatic.

18. Since the applicant got enrolled in the Indian Army in the year 1977, it is essential to advert to a policy letter dated 29.06.1976 vide which the terms and conditions qua reserve liability were revised and the system of compulsory transfer to the reserve liability was abolished. The said letter is reproduced herein below for reference: -

IX/Org 2(MP)(a)

Adjutant General's Branch  
DHQ 40 NEW DELHI- 110011  
29 Jan 76

Headquarters

Southern Command  
Eastern Command  
Western Command  
Central Command  
Northern Command

The Officers-in-Charge  
All Regt/Corps Record 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 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

2. 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 as 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/64 amended, have been revised. With effect from 1 Feb 76, enrolment in Army will be made only on the following terms:-

Technical Cor?

In view of the above, the question of grant of reservist pension or special pension to the applicant *ex facie* does not arise.

19. The engagement of individuals to serve in reserve service was discontinued in the year 1976 and the applicant was enrolled in the year 1977, therefore, the claim of the applicant for grant of reservist pension is unsustainable and cannot be granted.

20. In view of the above analysis, we find no infirmity or illegality in the impugned order annexed as Annexure A-1 (colly) as issued by the respondents. The O.A. deserves to be dismissed and is accordingly dismissed. Consequently, the connected MA 536/2017 also stands disposed of.

21. No order as to costs.

Pronounced in the open court on this 16<sup>th</sup> day of January, 2026.

**[REAR ADMIRAL DHIREN VIG]**  
**MEMBER (A)**

**[JUSTICE NANDITA DUBEY]**  
**MEMBER (J)**

/PRGx/