

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL BENCH
AT CHANDIMANDIR**

O.A No. 1294 of 2012

Kehar Singh ... **Petitioner**
v.
Union of India and others ... **Respondent (s)**

For the Petitioner : Mr. CDS Guleria, Advocate
For the Respondent(s) : Mr. S. K. Sharma, Sr.PC

Coram : **Justice Vinod Kumar Ahuja, Judicial Member**
Lt Gen (Retd) N.S.Brar, Administrative Member

ORDER
11. 11.2013

The facts alleged by the petitioner are that he was enrolled in the Army on 21.06.1961 in the Pioneer Corps and without being transferred to the Reserve, was discharged from service in pursuance of Government policy due to reduction in the strength of establishment of the Armed Forces, "being surplus to the establishment." The petitioner had not left the service on his own accord but was discharged on being surplus to the establishment. He had rendered 11 years, 09 months and 13 days of service. As per Regulation 164 of Pension Regulations for the Army, 1961, individuals not transferred to the Reserve and discharged in large numbers in pursuance of Government policy of reducing strength of establishment or re-organisation which results in disbandment of unit / formation, are entitled to Special Pension. Under Regulation 164 (ii) of the Pension Regulations, soldiers who have rendered more than 10 years but less than 15 years of service, are entitled to service pension, as determined as per Regulation 136. The petitioner made repeated appeals/representations for grant of pension but to no avail (Annexure A2 to A6).

With the above alleged facts, the petitioner seeks directions for grant of Special Pension as applicable, with interest from the date of discharge.

Written statement has been filed by the respondents and it is stated that the petitioner was enrolled in the Pioneer Corps as a Non Combatant on 21.06.1961. He was combatised as Pioneer (GD) on 20.10.1964 and discharged from service on 04.04.1973 under Army Rule 13 on being rendered surplus to establishment. As per Regulation 126 of Pension Regulations for the Army, 1961, one half of non-combatised service is to be counted towards combatant service for pension and gratuity. Accordingly, the petitioner had rendered 10 years and 44 days of qualifying service which is to be counted for pension and gratuity. He was accordingly paid service gratuity.

It is then stated that Regulation 164 of Pension Regulations provides for Special Pension or Gratuity to be granted at the discretion of the President to individuals who are not transferred to Reserve and are discharged in large numbers in pursuance of Government policy. Since the petitioner was paid service gratuity at the time of discharge, and had accepted the same, he was not entitled to claim Special Pension, as only one of the two is payable. He had also not rendered the minimum qualifying service of 15 years and was, therefore, not entitled to service pension in terms of Regulation 132 of Pension Regulations for the Army, 1961.

While arguing the matter, learned counsel for the petitioner placed strong reliance on the judgments of Kochi Bench (**OA No 83 of 2013, Soundirarajan Ramdas v. Union of India and others**, decided on **22.04.2013.**), Kolkata Bench (**OA No 53 of 2011, Ganesh Chander Singh v. Union of India and others** decided on **23.03.2012**) and this Bench of the Tribunal (**OA No 614 of 2011, Ex-Sep Ravel Singh v. Union of India** and others decided on **19.12.2012**) to say that all the petitioners in these cases were enrolled for a period of colour and reserve service and on completion of colour service they were entitled to be placed on the reserve as per the terms of engagement. Not placing them on reserve would attract the doctrine of promissory estoppel.

Heard the learned counsel for the parties.

We may note that in all the judgments relied upon by the petitioner the individuals were enrolled for a term of Colour and Reserve service and on completion of Colour service were discharged and not placed on the Reserve. It was held that denial of reserve service being contrary to the terms of engagement, they could not be denied the benefits of reserve service and reservist pension.

The petitioner on being combatized would be eligible for terms of enrolment for a period of 7 years colour service and 8 years of reserve. He was apparently retained beyond the period of colour service and then discharged on being surplus to the establishment and not placed on the reserve. Under these circumstances, he too would be entitled to the benefits of reserve service and reservist pension, however, as he was specifically discharged on being surplus to the establishment, he is clearly covered by Regulation 164 of the Pension Regulations for the Army, 1961 and entitled to Special Pension. In so far as the argument of the respondents related to he being entitled to either special pension or gratuity, and having been granted gratuity was not entitled to special pension is concerned, we find that nothing has been shown as to how and why this discretion was exercised and the petitioner denied special pension.

Under the facts and circumstances of the matter we allow this petition and hold the petitioner entitled to special pension for the qualifying service of 10 years and 44 days from the date of his discharge. He is also entitled to arrears of the same which shall however be restricted to a period of three years prior to the filing of this

petition ie from 23.08.2009. Gratuity already paid may be deducted from the amount due. The respondents are directed to calculate the amount due and make actual payment within a period of four months from the date of receipt of certified copy of this order.

[Justice Vinod Kumar Ahuja]

[Lt Gen (Retd) N. S. Brar]

11.11. 2013

RS

Whether the judgment for reference
is to be put on Internet ?

Yes/No