

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**(Through Video Conferencing)**

OA No 251/2018

with

MA 275/2018

Thursday, the 12th Day of August 2021**25.****CORAM :****HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON****HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)**

Ex LAC S Rajasekaran, aged 74 years

S.No.264474

S/o Sundarapandian

4/123 Rahamat Nagar, 4th Street

Tuticorin 628002

Tamil Nadu

..... Applicant

By Legal Practitioner: Shri SP Ilangovan

vs.

1. Union of India, rep. by the Secretary
Government of India, Ministry of Defence
South Block, DHQ Post, New Delhi-110 011.

2. The Chief of the Air Staff,
Air Force Headquarters, Vayu Bhavan
DHQ Post, New Delhi-110 011

3. The Director, Directorate of Air Veterans
Air Force Pension & Welfare (SP)
Air Force Record Office, Subroto Park
New Delhi 110 010

4. The JCDA (Air Force)
Subroto Park
New Delhi 110 010

.... Respondents

By Mr. V Balasubramanian, CGSPC

ORDERM.A. No. 275/2018

1. Keeping in view the averments made in the Miscellaneous Application and finding that the claim for Pension being a recurring cause of action as laid down by Hon'ble Apex Court in UOI & Ors Vs. Tarsem Singh, reported in (2008) 8 SCC 648, MA No 275/2018 is allowed condoning the delay in filing the OA.

O.A. No. 251/2018

2 By way of this Application under Section 14 of the Armed Forces Tribunal Act 2007, the Applicant has prayed to quash the impugned order dated 14.8.2018 and to grant Reservist Pension/Special Pension from the date of discharge, i.e. 30.10.1975.

3. The brief facts of the case are that the Applicant was enrolled in the Indian Air Force on 24.08.1964 with terms of engagement for 09 years Colour Service and 6 years Reserve Service. On completion of 9 years of Colour Service, he was retained in the Regular Service due to exigency of service. Though the Applicant was willing to continue in the Reserve Service, he was discharged from Service on 31.10.1975 on completion of 11 years and 69 days of Regular Air Force Service without pension under the caption "On fulfilling the condition of his enrolment on completion of 9 years service" without being transferred to Reserve List due to disbandment of units and establishments and for want of vacancy in the Air Force.

4. The Respondents filed a reply to the Application and have submitted that the OA has been filed after a long delay. The Respondents also submitted that there was a long delay in filing the OA and thus the OA is to be dismissed on grounds of being grossly time barred and lack of merit.

5. We have heard both the parties and perused the material placed on record.

6. The Learned Counsel appearing for the Applicant argued that admittedly, the Applicant had rendered 11 years and 69 days of Extended Regular Service and was discharged from service on 31.10.1975 under clause "On fulfilling the condition of his enrolment on completion of 9 years", and as such, the Applicant is entitled to Reservist Pension as per Para 136 (a) of Pension Regulations for the Air Force, 1961 for his Service. Learned Counsel for the Applicant contested that at the time of enrolment, the Applicant was governed by the provisions of AFI Order No. 12/Special/48 (AFI (I) 12/S/48) dt 24.07.1948, as amended vide AFI (1)/12/S/48 dt 13.04.1957 and the provisions of Corrigendum No 7 dated 29.03.1969, as contested by the Respondents, were not applicable to him. Therefore, after rendering 9 years of service, the Applicant should have been transferred to Reserve Establishment and after completion of prescribed combined Colour and Reserve Qualifying Service of 15 years, Reservist Pension should have been granted in terms of Para 136 (a) of Pension Regulations for the Air Force, 1961 (Part-1). He further contested that the Respondents are bound by the principle of promissory estoppels. In support of his contention, the Learned Counsel has relied upon the judgments passed by this AFT, Chennai Bench in OA 17 of 2013 (Ex AC-1 R Vasudevan Vs UOI & Ors), AFT Kochi judgment in TA 09/2012 (NT Panicker Vs UOI & Ors), and AFT (PB)

New Delhi judgment dt 12.01.2011 in TA 564/2010 (Sadashiv Haribabu Nargund & Ors Vs. UOI & Ors), and other similar matters, wherein, the Applicants who were discharged from service without being transferred to Reserve Establishment on the ground of being no vacancy in the Reserve or discharged from service with Gratuity otherwise than at his own request, have been granted Reservist Pension.

7. On the other hand, the Learned Senior Panel Counsel appearing for the Respondents submitted that the Application is highly belated as it was filed after 42 years and deserves to be dismissed on that ground alone. Moreover, since the Applicant was a non-pensioner, his Service Record had already been destroyed after the lapse of 25 years from the date of his discharge, hence no details of the Applicant are available with them. However, as per Discharge Certificate available, the Applicant was enrolled in the Indian Air Force on 24.8.1964 with terms of engagement for 9 years Regular Service and 6 years Reserve Service. According to Corrigendum 7 to 12/S/48 dated 29.03.1969, which governs terms and conditions of engagement in respect of Airmen in IAF, those personnel who fail to attain the rank of Corporal within 9 years of engagement, cannot be granted extension of regular Service and will eventually be discharged from service. As the Applicant could not attain the rank of Corporal within 9 years of engagement, he was not granted extension of regular Service and discharged from service on 31.10.1975. As per Regulation 136 (a) of Pension Regulations for the Air Force, 1961 (Part-1), as amended vide CS No 95/X/70, an airman may be granted Reservist Pension, on completion of the prescribed combined Colour and Reserve Qualifying Service, of not less than 15 years, on his transfer to Pension Establishment either on completion of his term of engagement or prematurely irrespective of the period of Colour

Service. As the Applicant has not completed prescribed combined Colour and Reserve Qualifying Service of 15 years, he is not entitled for Reservist Pension. The Applicant was paid Rs. 3212.05/- as Service Gratuity and Rs. 1909.85/- as DCRG for the qualifying service rendered by him. The Respondents have relied on the judgement dated 7.1.2013 passed by AFT, RB, Kochi in OA No.88/2010 in the case of Ex Cpl K Sasidharan vs UOI & Ors wherein it is clear that there should be atleast an order of the Competent Authority for transfer of any officer or airman falling in of the aforesaid categories to the Regular Air Force Reserve. The Respondents have further contested that the Applicant was granted Service Gratuity and DCRG, therefore, he is not entitled for Reservist Pension as per Para 136 (a) of Pension Regulation for the Air Force, 1961 (Part I).

8. The Respondents have confirmed that the Applicant was enrolled in the IAF on 24.8.1964 for a term of 9 years Colour Service and 6 years of Reserve Liability. The Applicant was subsequently discharged from service on 31.10.1975 "on fulfilling the condition of his enrolment on completion of 9 years service". Now the question arises whether the Applicant is entitled for Reservist Pension?

9. Entitlements and Eligibility for grant of Reservist Pension are given in Para 136 of Pension Regulations for the Air Force, 1961 (Part-1), which reads as under:-

"136. (a) A Reservist who is not in receipt of a Service Pension may be granted on completion of the prescribed period of nine years regular and six years Reserve Qualifying Service, a Reservist Pension of Rs. 10.50 p.m. or a Gratuity of Rs. 800 in lieu.

(b) A Reservist who is not in receipt of a Service Pension and whose period of engagement for regular Service was extended, and whose Qualifying Service is less than the total period of engagement but not less than 15 years may, on completion of the period of engagement or on

earlier discharge from the Reserve for any cause other than at his own request, be granted a Reservist Pension at the above rate or the Gratuity in lieu.

(c) Where a Reservist elects to receive a Gratuity in lieu of Pension under the above clauses, its amount shall, in no case, be less than the Service Gratuity that would have accrued to him under regulation 128 based on the Qualifying regular Service, had he been discharged from regular Service.

Note: The option to draw a Gratuity in lieu of Pension shall be exercised on discharge from the Reserve and once exercised shall be final. No Pension/Gratuity shall be paid until the option has been exercised."

10. Entitlements and Eligibility for grant of Special Pension are given in Para 144 of Pension Regulations for the Air Force, 1961 (Part-1), which 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 numbers in pursuance of government policy -

- (a) of reducing the strength of Establishment of the Air Force;*
- or*
- (b) of re-organisation, which results in disbandment of any units/formation".*

11. A case of similar nature was listed before the Hon'ble Supreme Court in the case of T.S. Das and Ors. Vs. UOI & Anr. (Civil Appeal 2147/2011 decided on 27.10.2016). On the point whether the personnel who were discharged from service without being transferred to Reserve Establishment are entitled to Reservist Pension or special Pension, the Hon'ble Supreme Court decreed as under:-

"20. The quintessence for grant of Reservist Pension, as per Regulation 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 Regulation 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 Regulation 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 O.A. 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 there-under, 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 there-under 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 retrospective 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 any relief was 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 Regulation 95 of the Pension Regulations, being a separate dispensation for 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 Regulation 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 Regulation 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 reorganization, which results in paying off of any ships or Establishment. In the present case, Clause (i) of Regulation 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 in reducing the strength of Establishment of the Indian Navy to that extent.

24. x x x

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.

12. Analysis of documents on record reveal that the Applicant was not transferred to Reserve Establishment and Discharged from Service with Gratuity otherwise than at his own request, there being no vacancy in reserve. In view of the judgment of the Hon'ble Apex Court in the case of T.S. Das & Ors Vs. UOI & Anr. (supra), the Applicant is not entitled to Reservist Pension. However, in the light of the principle laid down by Hon'ble Apex Court in the above judgment and considering the fact that the Applicant has rendered 11 years and 69 days of Colour Service, he is entitled to Special Pension with effect from the date of his discharge from service. Since the Applicant had approached after a long delay, in accordance with the principles laid down by the Hon'ble Apex Court in the case of Union of India & Others Vs. Tarsem Singh reported in (2008) 8 SCC 648 and T.S. Das & Ors. Vs. UOI & Anr. (Supra), the arrears of Pension is restricted for a period of three years prior to the date of filing of the Original Application, on 11.09.2018.

13. In-fine , this Application is allowed partially. The Respondents are directed to grant Special Pension to the Applicant wef 11.09.2015, ie., three years prior to the date of filing of

this Application. The amount of Gratuity, if already paid to the Applicant be adjusted against the amount of arrears. The arrears will be paid within three months from the date of receipt of copy of orders, failing which the Applicant will be entitled for 8% interest from the date of receipt of copy of the order by the Respondents.

14. No order on costs.

Sd/-

**LT GEN BOBBY CHERIAN MATHEWS
MEMBER (A)**

Sd/-

**RAJENDRA MENON
CHAIRPERSON**

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