ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.151 of 2013

Thursday, the 8th day of January, 2015

The Honourable Justice V.Periya Karuppiah
(Member-Judicial)
and
The Honourable Lt Gen K Surendra Nath
(Member-Administrative)

Smt.Kulandai Therese
W/o Late Lance Naik Ponniah, aged about 79 years
No.104, Ward No.5, Street No.2
Village and Post: Thevaram, Uthamapalayam
Theni, Tamil Nadu-625 530 ...Applicant

By Legal Practitioners:
M/s K.Ramesh, M.K.Sikdar and Ms.Archana

vs

1. Union of India
Through The Secretary
Ministry of Defence, New Delhi – 110 011

2. The Chief of Army Staff
Through Adjutant General (ADGPS)
Army Headquarters, New Delhi – 110 011

3. The Senior Record Officer
Regiment of Artillery Records
Nasik Road Camp, Maharashtra

...Respondents

Mr.N.Ramesh, CGSC

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

This application has been filed by the applicant Smt Kulandai Therese, wife of Late L/Nk Ponniah *alias* Chinnappa to quash and set aside the impugned order of respondent No. 3 dated 14 February 1987 and grant the applicant's husband service / reservist pension from the date of his discharge from service and, on his death, to grant her ordinary family pension.

2. Briefly, the applicant's husband Shri Ponniah alias Chinnappa was enrolled in the Indian Army on 17 November 1943. He got discharged from service at his own request on extreme compassionate grounds on 18 June 1956. At the time of his enrolment, he would claim, that the terms and conditions at the time of enrolment implied 9 years of active service and 6 years of reserve service. The applicant would further claim that her husband had completed, in accordance with the terms and conditions of service, 9 years of regular service and though he was due to be transferred to reserves for a period of 6 years, he continued to serve in the regular service till 18 June 1956 and, therefore, he had completed a service of 12 years and 7 months.. She would further claim that though her husband had asked for voluntary discharge on extreme compassionate grounds, yet his reserve liability continued to operate. Therefore, at the end of 15 years of regular / reserve service, he ought to have been given service / reservist pension. After the death of her husband L/Nk Ponniah alias Chinnappa, the applicant had filed a

petition requesting for grant of ordinary family pension to the 3rd respondent *vide* letter dated 29 January 1987. However, respondent No.3 in their letter dated 14 February 1987 have rejected her claim stating that her husband was discharged from service at his own request before fulfilling the conditions of enrolment on extreme compassionate grounds and he did not have the qualifying service for pension. Further, there is no entry regarding grant of pension to him and as her Late husband was not granted any pension, she was also not eligible for grant of ordinary family pension. Though the applicant had again requested for grant of pension through letter dated 16 March 2011 and also on 07 January 2013, the respondents have not granted her any family pension. Aggrieved over the impugned letter dated 14.2.1987, she has approached this Tribunal to quash the said order and grant pension to her husband from the date of his discharge from service on 18 June 1956 and to grant her family pension upon his death.

3. The respondents in their reply would state that the applicant's husband was enrolled in the Indian Army on 17 November 1943 and was discharged from service from 19 June 1956 at his own request before fulfilling the conditions of enrolment on extreme compassionate grounds. Since he had not completed the minimum qualifying service for pension, i.e., 15 years, the individual was not granted any kind of pension at the time of his discharge. They would also state that the records in respect of the applicant were destroyed after 25 years in accordance with the regulations on the subject, he being a non-pensioner. In the Long Roll, it was recorded that he was married

to Colandhai Ammal on 21 January 1930 and nominated her as next of kin at the time of enrolment. They would also state that even though the applicant's husband was not entitled to any pension, the applicant is receiving Rs.2,000/- per month from World War Veterans Life Time Assistance and Rs.1,000/- per month from Raksha Mantri's Discretionary Fund for life as per records available with District Sainik Board and Ex-Servicemen Welfare Board, Theni, Tamil Nadu. It is pertinent to mention that the applicant has filed this application for pension after a lapse of 26 years after the death of her husband and more than 57 years after the applicant's husband was discharged from service. The respondents would state that in view of the foregoing the O.A. is liable to be dismissed as lacking merit or substance.

4. We have heard the arguments of Mr.K.Ramesh, counsel for the applicant and Mr.E.Arasu, learned Central Government Standing Counsel assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing for the respondents and also perused all the documents that were made available.

5. From the records, we observe that the applicant had joined the Indian Army on 17 November 1943 and it is not disputed by either parties that after serving for approximately 12 years and 7 months, he was discharged from service at his own request. The terms of service at the time of enrolment was 9 years of regular service and 6 years of reserve service. Though no records are available, it appears that the service of the applicant was extended and he continued to serve in the regular Army on completion of initial 9 years in terms

of engagement and he was discharged from service at his own request. The applicant's counsel would argue that even though the applicant's husband had voluntarily asked for discharge from service, his reserve liability would not end merely because he asked for voluntary discharge from service and the principle of *promissory estoppel* would continue to operate and he should have been given reservist pension on completion of combined colour and reservist service of 15 years.

6. To buttress the claim, the counsel for the applicant would put forth the judgment of the Hon'ble Principal Bench reported in 2011 (1) 174 between Shri Sadashiv Haribabu Nargund vs UoI and others which held that once the respondents have availed the services of the individual for 9 years of active service and kept him on reserve service for 6 years, they cannot go back, and the principle of *promissory estoppel* would be squarely applicable and accordingly granted him reservist pension. He would also put forward the case of Sowar Manoj Singh Bhadauriya vs UoI and others in OA No.527 of 2013 dated 26.11.2014 before the Hon'ble Principal Bench, wherein the applicant though discharged from service under Army Rule 13 (3) for being a habitual offender and the applicant had put in only 12 years of service, the Tribunal allowed the person to be deemed to be in service till he completes 15 years of pensionable service so as to entitle him to receive pension. The applicant's counsel would also claim that even though the applicant's husband had taken discharge voluntarily he would still come under the doctrine of '*promissory estoppel'* and would state that the Hon'ble Apex Court recognizes the doctrine

which, in essence, imposes a duty on public authority to act fairly by taking into consideration all relevant factors before effecting the change in its policy which would affect the person who had been beneficiary of the continuing policy. The applicant's counsel would claim that no documents have been produced by the respondents showing the exact terms and conditions of enrolment of the applicant's husband by the respondents. And that, the applicant's husband was not intimated by an official letter as a warning that he would be out of reserve service if he takes voluntary discharge. Therefore, he would argue that in the absence of a letter of that nature being produced by the respondents, it should be assumed that the applicant's husband continued to have reserve liability even after discharge from service and, therefore, he should be deemed to have completed his 15 years of regular service-cum-reservist liability and therefore is entitled to service / reservist pension and on his death she is entitled to ordinary family pension.

7. The respondents would argue that the application has come after more than 57 years of the discharge of the applicant and, therefore the documents have been destroyed in accordance with the regulations on the subject as the applicant's husband was a non-pensioner. Further, the applicant has approached the Hon'ble Tribunal after a lapse of 25 years after the death of her husband. Therefore, no documents are available and this fact of the documents not being available at this belated stage has been brought to the notice of the Court in their initial arguments itself. The respondents would state that when a person seeks voluntary discharge from service and it is

granted to him, he would no longer be considered to have reserve liability unless specifically stated in his discharge certificate. The respondents would also argue that it is very clear that the applicant had been discharged from service at his own request before fulfilling the conditions for either service pension or reservist pension, i.e., 15 years of colour service or combined 9 and 6 years of colour and reserve service. The fact that the applicant's husband had been discharged from service at his own request had been conceded by the applicant herself and is also stated unambiguously in the O.A. itself. Since the applicant's husband had done only 12 years and 7 months of service and discharged from service at his own request, the principle of *promissory Estoppel* is no longer applicable since it is the applicant who had voluntarily withdrawn from the said contract. They would also cite the judgment of the Hon'ble Kochi Bench which had quoted in O.A.71 of 2011 in the case of Natarajan vs UoI and others that if the applicant had opted himself for discharge on completion of colour service or any time thereafter, but before completion of normal tenure of 15 years, he would not be entitled to reservist pension. Therefore, the applicant cannot claim that her husband has been estopped from receiving pension.

8. It is beyond dispute that the applicant's husband had, after serving in the regular Army for a period of 12 years and 7 months, was discharged from service at his own request. The applicant would claim that even though her husband sought voluntary discharge from service, he should be considered to be under reserve liability till he completes 15 years (combined regular and

reservist service) and grant him reservist / service pension under the Doctrine of *promissory estoppel.* The question before us is, would the Doctrine of *promissory estoppel* continue to be applicable, when one of the parties voluntarily chooses to withdraw from a committed obligation. Section 115 of the Indian Evidence Act 1872 defines estoppel:

> *"When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act on such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing"*

The doctrine of *estoppel* is based on the principle that consistency in word and action imparts certainty and honesty to human affairs. If a person makes a representation to another, on the faith of which the latter acts, to his prejudice, the former cannot recant representation. The Hon'ble Apex Court's judgment in Bakal Cashew Co v STO (1986) SCC 365 has defined the doctrine of *promissory estoppel* as below:

> *"Three principles are evolved in order to protect the applicability of doctrine of promissory estoppel against the government. They are (i) that there was a definite representation by the Government, (ii) that the person to whom the representation or promise was made, in fact altered their position by action upon such representation and (iii) that he has suffered some prejudices sufficient to constitute an estoppel"*

9.. The above principle was applied by the Principal Bench in the case of Sadashiv Haribabu Nargund vs UoI when it observed that the applicant was discharged after completion of 9 years of regular service and was not placed in the 6 years reservist service and the condition of service was altered by the Government unilaterally to the detriment of the person. Accordingly the

Hon'ble Bench ruled in favour of the applicant by granting him reservist pension. However, this principle cannot be applied squarely to the extant case as in this case, the applicant himself had voluntarily withdrawn from his commitment to serve for 15 years by seeking voluntary discharge from service and, therefore, cannot claim that he was estopped from getting pension. The counsel for the applicant also quoted the case of Sowar Manoj Singh Bhadauriya vs UoI and others quoted *ibid* would also not apply to the extant case. In the *ibid* case, the applicant i.e., Sowar Manoj Singh Bhadauriya was discharged from service as a habitual offender after completion of 12 years of service and since the Tribunal felt that the discharge was unduly harsh granted him pension as if he was in service till he completed 15 years of pensionable service. Bhadauriya did not seek voluntary discharge but was discharged by an order of Government / competent authority. This would, therefore, not apply to the instant case where the applicant's husband himself had sought voluntary retirement before fulfilling the terms and conditions of service. From the documents we also note that while the applicant's husband was discharged from service, there were no entries to the effect that he is liable to continue in the reserve. The applicant's husband cannot claim that he should be deemed to be in the reserve liability to enable him to earn pension when no such entry exists in the Records / Discharge Certificate. The argument of the applicant's counsel that the respondents have failed to produce documents relating to his terms and conditions of service and discharge from service and, therefore, in the absence of documents, presumption should be in favour of the applicant may not hold water. The applicant's husband, during his life time

after discharge from service did not agitate for pension, even though he had lived for 31 years after the said discharge. It was only after his death, his widow had applied for family pension. Presumption would, therefore, show that the applicant's husband was well aware that at the time of voluntary discharge, he would not be entitled to any pension. In view of the inordinately long delay and laches, the onus of producing any documents, in support of the claim, would be on the applicant. The only two surviving documents, i.e., the discharge certificate and Long Roll do not support the contention of the applicant.

10. For the doctrine of *promissory estoppel* to be effected, especially in relation to the Government, it should be reasonably proved that there has been a dishonest behaviour on the promissor, i.e., the Government, which has an irreversible change of position on the part of the promissee. Since, in the extant case, there has been no change either in the stance of the Government or any dishonest behaviour and the discharge was purely voluntary based on his own request, i.e., Promissee, on compassionate grounds, the doctrine of *promissory estoppel* cannot be invoked.

11. The applicant's counsel claimed that even if the doctrine of *promissory estoppel* is not clearly established, the applicant's husband would still be entitled to pension under the doctrine of 'Legitimate Expectation'. The doctrine of 'Legitimate Expectation' as recognized by the Apex Court (Navjyoti Coop.Group Housing Society vs UoI (1992) 4 SCC 1977), in essence, imposes a duty on public authority to act fairly taking into consideration all relevant

factors before effecting a change in its policy which would affect a person who had been beneficiary of the continuing policy. The Hon'ble Apex Court (UoI vs Hindustan Development Corporation) also indicated that the doctrine of Legitimate Expectation can be incurred only if it is founded on the sanction of law or custom or an established procedure followed in regular and natural sequence…….. Such expectation should justifiably be legitimate and protectable. It also noted that Legitimate Expectation is not the same thing as an anticipation. It is also different from a mere wish or a hope. A mere disappointment will not give rise to legal consequences.

12. In the instant case, the applicant had, on the death of her husband, had applied for ordinary family pension, even though she was aware that her husband during his life time, was not in receipt of service /reservist pension. Drawing from the interpretation of the said doctrine by the Hon'ble Apex Court, the claim of the applicant for ordinary family pension is more in the form of a hope rather than a legitimate right. In response to her application for family pension, she was advised that though her husband was not entitled to the said family pension, she could apply for financial assistance from the State Government / Ministry of Defence through Zila Sainik Board. She is in receipt of financial assistance since 1996. She is now receiving Rs.2000/- per month from War Veterans Life Time Assistance from Tamil Nadu Government and Rs.1000/- from Raksha Mantri's Discretionary Fund through Ex-Servicemen Welfare Board, Theni, Tamil Nadu. No doubt, this grant / assistance from the Government is a noble gesture, the moot question is whether the financial

assistance being given is adequate in the present circumstances given the high cost of living. We note that the applicant is 80 years old and eking out a living all by herself. Clearly a sum of Rs.3000/- per month which she is receiving now as a financial assistance is not adequate. We note that she is not even entitled to medical facilities such as ECHS. It is the duty of the society to ensure that our war veterans and their widows are cared for and live in dignity at the fag end of their life. Taking all this into consideration, we recommend that a one-time grant of Rs.50,000/- be made as financial assistance to the applicant from the Welfare Funds of the Army / Ministry of Defence. We further observe that many of the World War II veterans / their widows are not in receipt of ECHS facilities, as they are not receiving any pension. We recommend that they may be specially exempted and ECHS benefits be extended to them in the autumn of their lives, when medical assistance is most necessary. Such an act would be a noble gesture on part of the Government and would have salutary effect.

13. In sum, the applicant's husband is not entitled to grant of pension as he had not completed the mandatory minimum requirement of service before he took voluntary discharge. In consequence, the applicant is not entitled to ordinary family pension on the death of her husband. However, keeping in view the age of the applicant, a widow, and her pecuniary condition, we recommend a sum of Rs.50,000/- be granted as financial assistance from the Welfare Funds of the Army / Government. We further recommend that the Government

extend ECHS benefits to the applicant and also to other World War II veterans and their widows at an early date.

14. Accordingly, the O.A. is disposed off. No order as to costs.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

08.01.2015
True copy

Member (J) – Index : Yes/No Internet : Yes/No

Member (A) – Index : Yes/No Internet : Yes/No

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To

1. The Secretary
   Govt.of India, Ministry of Defence
   New Delhi – 110 011

2. The Chief of Army Staff
   Through Adjutant General (ADGPS)
   Army Headquarters, New Delhi – 110 011

3. The Senior Record Officer
   Regiment of Artillery Records
   Nasik Road Camp, Maharashtra

4. The Managing Director, ECHS
   Adjutant General's Branch
   Army Headquarters, South Block
   New Delhi – 110 011

5. Joint Secretary
   Department of Ex-Servicemen Welfare
   Ministry of Defence, 5-A, South Block
   New Delhi – 110 011

6. M/s K.Ramesh, M.K.Sikdar, and Ms.Archana
   Counsel for the applicant.

7. Mr.N.Ramesh, CGSC
   For Respondents.

8. O i C, Legal Cell,
   ATNK & K Area,
   Chennai-600009.

9. Library, AFT/RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.151 of 2013

Dated : 08.01.2015