

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.61 of 2013

Wednesday, the 3rd day of July, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN (RETD) ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

Ex Nk/Reservist. (No 7031662)
R. Narayanaswamy (Age 79 yrs)
Kannithevanpatti, Keelarajakularaman PO,
Via- Rajapalayam, Virudhunagar District, TAN 626136.

... Applicant

By Legal Practitioner:
Cdr. SP Ilangovan (Rtd)

Vs.

1. Union of India Represented by : The Defence Secretary,
Ministry of Defence, South Block,
New Delhi-110 011.
2. The Chief of the Army Staff,
Army HQ, Sena Bhavan,
New Delhi 110011.
3. Oi/C, EME Records,
Secunderabad 500021, C/o 56 APO
4. The Principal CDA (Pensions)
Draupathighat, Allahabad, U.P. 211014.

... Respondents

By None

ORDER

(Order of the Tribunal made by
Hon'ble Justice V.Periya Karuppiah,
Member-Judicial)

1. Heard Mr. SP Ilangovan, Learned Counsel for the applicant appointed by the Tamil Nadu State Legal Services Authority on behalf of the applicant, on maintainability of the application.
2. This application has been filed by the applicant seeking for direction to be issued to the respondents to pay the eligible Army Service Reservist Pension from 1.8.1987 i.e. the date of his retirement from Army and to pay the arrears with 12% interest till the date of such payment.
3. According to the submission of the Learned Counsel for the applicant, the applicant was enrolled in the Army on 23.9.1955 for 10 years colour service and 10 years reserve liability. He would also submit that the applicant was not transferred to reserve service at the time of his discharge on 29.10.1967, even though the discharge was at his request on extreme compassionate grounds. He would also submit that the claim for service pension before the Hon'ble High Court of Madras in Writ Petition No.568/08 was dismissed on the ground of delay and laches on 23.9.2008 and the Writ

Appeal filed against the said Judgement in WA No.1647/2011 was also dismissed confirming the Judgement of the Learned Single Judge on 11.11.2011. He would also submit that the applicant was not aware of his right for reservist pension and, therefore, he had insisted for the service pension which was refused and the said Judgements would not bar the applicant since the applicant is basing his claim on reservist liability. He would also submit that the decision with regard to delay and laches would not also arise in view of the Judgement of the Hon'ble Apex Court reported in **(2008) 8 SCC 648**, between **Union of India and others Vs. Tarsem Singh**, in which the claim of pension is having continuous and recurring cause of action and, therefore, the claim of the applicant is entertainable.

4. We have given anxious consideration to the arguments advanced by the Learned Counsel for the applicant. We have also perused the records.

5. On a careful perusal of the claim of the applicant, we could see that the applicant is seeking for reservist pension by stating that he was enrolled in the army for 10 years colour service and 10 years reservist service. He is relying upon the Long Roll given by the respondents in which terms of service is shown as 10/10. Per contra, the Discharge Certificate issued to the applicant does not show the terms of service as 10 years colour service and 10 years reserve service. The applicant, who was very conscious to

claim his right of pension before the High Court of Madras in W.P.No.568/08, did not disclose or whisper the term of engagement as 10 years of colour service and 10 years of reserve service. He had asked for pro rata pension since he had not completed 15 years of qualifying service for pension. The claim of the applicant was dismissed since there was no rule for the grant of pro rata pension, in the Army Rules. Delay and laches were also considered by the High Court of Madras, which was also affirmed in the Writ Appeal made in WA No.1647/2011. The plea of the applicant that he was not aware of the terms of service at that time cannot hold water since he has to provide particulars to the Hon'ble High Court of Madras about his service and the claim. The reply of the respondents to the latest claim of the applicant would go to show that all the records of the applicant, being a non-pensioner were destroyed on the lapse of 25 years from the date of his retirement. The applicant having opted to claim pro rata pension before the Hon'ble High Court of Madras by setting forth different pleas after a delay of more than 40 years, now has come forward before this Tribunal with a different plea and claim of reservist pension in a different sets of facts. The applicant did not get permission before the Hon'ble High Court of Madras to proceed with his other rights, if any, when the appeal was disposed of by the Hon'ble High Court on 11.11.2011. In the said circumstances, the applicant cannot be permitted to approbate and reprobate the pleas set forth before Courts and to seek relief according to his convenience.

6. We are, therefore, not inclined to entertain the application even at the initial stage as it is not maintainable. Accordingly, the Original Application is dismissed as not maintainable.

7. The Advocate's fee for the Legal aid Counsel appearing for the applicant is fixed at Rs.1500/-, which has to be paid by the Tamil Nadu State Legal Services Authority, Chennai.

Sd/-
LT GEN (Retd) ANAND MOHAN VERMA
MEMBER (A)

Sd/-
JUSTICE V.PERIYA KARUPPIAH
MEMBER (J)

03.7.2013
(True Copy)

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

Internet : Yes / No
Internet : Yes / No

NCS

To,

1. The Defence Secretary,
Union of India,
Ministry of Defence, South Block,
New Delhi-110 011.
2. The Chief of the Army Staff,
Army HQ, Sena Bhavan,
New Delhi 110011.
3. Oi/C, EME Records,
Secunderabad 500021, C/o 56 APO
4. The Principal CDA (Pensions)
Draupathighat, Allahabad, U.P. 211014.
5. Mr. SP Ilangovan,
Counsel for applicant.
6. Tamil Nadu State Legal Services Authority,
High Court Complex, Chennai.
7. OIC, Legal Cell,
(Army), ATNK & K Area,
Chennai.
8. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN (RETD) ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

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