

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

T.A.NO.109 of 2009
[W.P.(C) No.31291 of 2009 of the Hon'ble High Court of Kerala at Ernakulam]

WEDNESDAY, THE 14TH DAY OF DECEMBER, 2011/23RD AGRAHAYANA, 1933

CORAM:

HON'BLE MR. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN, MEMBER (J)

HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

K. P. GOPALAKRISHNAN NAIR, SOUPARNIKA (H),
NEAR RESHMI BRIKS,
ARATHILPARAMBA, PERUMANNA (P.O.),
KOZHIKODE.

APPLICANT/PETITIONER:

BY ADV. SRI. AJAYAKUMAR.G.

versus

1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY, MINISTRY OF DEFENCE,
NEW DELHI.
2. THE DIRECTOR GENERAL, TERRITORIAL ARMY,
AGS BRANCH, R.K.PURAM, NEW DELHI -11. **RESPONDENTS/RESPONDENTS:**
3. THE COMMANDER, T.A. GROUP HEAD QUARTER,
SOUTHERN COMMAND, PUNE.
4. THE OFFICER IN CHARGE, RECORDS,
BRIGADE OF THE GUARDS, KAMPTEE – 441 001.

R1 TO R4 BY SR. PANEL COUNSEL SRI. S.KRISHNAMOORTHY

ORDER

A.C.A. Adityan, Member (J):

This application has been transferred from the High Court of
Kerala, Ernakulam, wherein the same was filed as W.P.(C) No.31291 of

2009, under Section 34 of the Armed Forces Tribunal Act, 2007 and taken on file by way of assigning new number T.A.No.109/2009.

2. The short admitted facts are that, the applicant was enrolled on 28.2.1961. Out of the 28 years of terms of engagement of service, he had 14 years and 63 days of embodied service in the Territorial Army, at the time of his discharge. It is an admitted case that the applicant had an unembodied service of 13 years 302 days and the total service comes to 28 years, as per Ext.P1 discharge certificate. The grievance of the applicant is that even though after completing 28 years of service, the claim for pension was denied by the respondents on the score that he is having deficiency of service of 302 days in embodied service, which made the applicant to come forward with this application.

3. The respondents in their joint counter would contend that the applicant, an ex-Subedar, was enrolled on 28.2.1961 as a combatant and was discharged from service on 28th February 1989 under the Territorial Army Rule 14(a) and Army Rule 13(3) (iii) (i) on completion of the terms of engagement and at the time of discharge the total embodied service was 14 years and 63 days, and according to the respondents, there is a shortfall of 302 days of embodied service for service pension as the total qualifying service required for grant of

service pension is 15 years vide Para 132 of the Pension Regulations for the Army, 1961, Part I. They would further add that as per Government of India, Ministry of Defence letter No.68699/GS/TA-3(COND)/482-B/93/D(GS-VI) dated 19th April, 1993, there is a provision to condone the shortfall of service upto six months in respect of JCO's/ORs of Territorial Army for eligibility to service pension, but the applicant is lacking 302 days of service for the minimum qualifying service of 15 years to get service pension and the said shortfall cannot be condoned. Even though the respondents would quote other Government Orders like No.4684/DIR(PEN)/201 dated 14th August 2001, of the Government of India, Ministry of Defence and also letter No.54246/Petn/KPGN/GS/TA-3 dated 19th November, 2008 of Additional Directorate General (Territorial Army-3), Integrated Headquarters of Army, they would contend that those orders will not be applicable to the applicant and would finally say that the applicant is not entitled for the relief as prayed for in this application.

4. We heard the learned counsel appearing for the applicant and also Sri.S.Krishnamoorthy, the learned Senior Panel Counsel and Major Varun Arora, for the respondents and considered their respective submissions. This Tribunal has also passed interim order dated 14th July,

2010 requesting the respondents to comply with the relief asked for in the application, giving six months time. But, there is no compliance report filed yet. Hence, the case was posted under the caption "For Final Hearing" today and the matter was taken up today.

5. Now the point for determination in this application is whether the stand of the respondents that under the relevant G.Os. the condonation of shortfall of 302 days of embodied service of the applicant to make it as the qualifying service required for grant of service pension is not applicable to the applicant is correct or not?

5A. The stand of the respondents that shortfall of 302 days of embodied service cannot be condoned as per the relevant G.Os. will not hold any water because Government Order in MOD ID No.12(2)/04/Den/Sers dated 21.7.2004 will clarify the position and will come to the rescue of the applicant. The first Government Order on this point is G.O. No.4684/DIR(Pen)/2001 dated 14th August, 2001 of the Government of India, Ministry of Defence, is referred to by the respondents in their counter also, by which administrative powers in respect of certain subjects enumerated in para (a) thereunder is delegated to Service Headquarters. Sub-para (v) to para (a) of the said order dated 14th August 2001, deals with "Condonation of shortfall

in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months". Para 2 of the said GO states that "The relevant Regulation(s) of Pension Regulation for the Army/Navy/Air Force shall stand amended accordingly. Formal amendments to Pension Regulations will, however, be issued in due course of time". The same has followed giving retrospective effect to the said G.O. in MOD ID No.12(2)/04/Den/Sers dated 21.7.2004, wherein the position has been clarified in the following terms:

"Ministry of Defence

Subject: Condonation of short fall in qualifying service for grant of pensionary benefits in respect of personnel below officer ranks beyond six months and up to twelve months – clarification regarding.

Kindly refer to CGDA ID Note No.5669/ATP/Contempt/R.H.Ghatak dated 16.07.2004 on the subject cited above and to state the matter has been considered in consultation with IA (def) in the Ministry of Defence. It is clarified that the service Hqrs are empowered to exercise the powers delegated to them vide order No.4684/Dir (P)/2001 dated 14.08.2001 (referred to above) even to the cases which were pending with prior to the issue of the orders. However, they are required to exercise the power in the interest of justice, equity and fair play."

So, under such circumstances, the objection raised by the respondents that G.O. No.4684/Dir(Pen)/2001 dated 14th August, 2001 has no retrospective effect falls to the ground. So, as per Government Order in

MOD ID No.12(2)/04/Den/Sers dated 21.7.2004, the applicant is also entitled to condonation of shortfall of 302 days in the embodied service required for the minimum qualifying service for grant of service pension. The point is answered accordingly.

6. In fine, the application, T.A. NO.109 of 2009 is allowed. The respondents are directed to condone the shortfall of 302 days in the embodied service of the applicant, as per MOD ID No. 12(2)/04/Den/Sers dated 21.7.2004 and to disburse all monetary benefits flows thereunder within a period of three months. The applicant is entitled to 9% interest per annum for the arrears. It is also made clear that in case of failure to comply with the order within the stipulated time, the respondents are liable to pay a cost of ₹ 5000/- (Rupees Five Thousand) to the applicant.

Sd/-
LT. GEN. THOMAS MATHEW,
MEMBER (A)

DK.

Sd/-
JUSTICE A.C.A. ADITYAN,
MEMBER (J)

(True copy)

Prl. Private Secretary

T.A. No.109 of 2009
(WP(C) No.31291/09 of the
High Court of Kerala at Ernakulam)

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REGIONAL BENCH, KOCHI.

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ORDER

DATED: 14.12. 2011