

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A.No.15 of 2011

THURSDAY, THE 9TH DAY OF FEBRUARY, 2012/20TH MAGHA, 1933

CORAM:

HON'BLE MR. JUSTICE A.C.ARUMUGAPERUMAL ADITYAN, MEMBER (J)
HON'BLE LT. GEN. THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

M.VIJAYAN UNNI, AGED 75 YEARS
(EX 212747 CORPORAL OF INDIAN AIR FORCE),
GOKULAM, SRI NAGAR COLONY,
KUNNATURMEDU, PALAKKAD
KERALA – 678 013.

APPLICANT

BY ADV. SRI.V.K.SATHYANATHAN.

VERSUS

1. UNION OF INDIA, REPRESENTED
BY IT'S SECRETARY,
MINISTRY OF DEFENCE, SOUTH BLOCK
NEW DELHI – 110 011.
2. THE CHIEF OF THE AIR STAFF
AIR HEADQUARTERS (VAYU BHAWAN)
RAFI MARG, NEW DELHI -110 011.
3. THE AIR OFFICER COMMANDING
AIR FORCE RECORD OFFICE,
SUBROTO PARK,
NEW DELHI -110 010.
4. PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS (PENSIONS)
OFFICE OF THE P.C.D.A(P), DRAUPADI GHAT,
ALLAHABAD, U.P. 211 014.

RESPONDENTS

BY ADV. SRI.TOJAN J.VATHIKULAM, CENTRAL GOVT. COUNSEL.

ORDER**A.C.A. Adityan, Member (J)**

The applicant, a septuagenarian, who was discharged after completion of 9 years of colour service and before completion of 6 years of reserve service has come forward with this application for reservist pension challenging the impugned orders under Annexures A7, A9, A11, A13, A17, A19, A20 and A21.

2. The averments in the affidavit to the application sans irrelevant particulars are as follows:- The applicant was discharged from the Indian Air Force. He was enrolled in the Air Force on 6/10/1953 as an Airman. His term of engagement was 9 years regular and 6 years reserve service. In accordance with the applicant's terms of engagement, he was discharged from Indian Air Force on 6/10/1965 after completion of 9 years of regular service. He was transferred to reserve service after 6/10/1962. The said service was reserve service. A copy of the certificate of transfer to reserve service dated 6/10/1962 issued by the competent authority is Annexure-A1. Later on 30/9/1965 the applicant was discharged from reserve service after completion of 2 years and 360 days of service. Total colour and reserve service has become 11 years and 360 days. A copy of the discharge certificate dated 16/10/1965 is Annexure-A2. An Airman who has combined service of 15 years colour and reserve

service is entitled to reservist pension. An earlier discharge from reserve for any cause other than individual's own request will entitle him for reservist pension. However, applicant was not given with any pension after his discharge. He was granted service gratuity for his regular period and half of the reserve service. A copy of the letter dated 3/10/1969 vide No.CAO/10103/212747/APW/Res is Annexure-A3. A copy of the service particulars certificate dated 4/11/1992 is Annexure-A4. After the receipt of Annexure-A4 the applicant had approached the competent authority pointing out the discrepancies made in Annexure-A4 certificate saying that the reserve service of the applicant was not mentioned in the said certificate. But the applicant was informed that only active service will be reflected in the certificate. In an identical case, the Hon'ble High Court of Kerala at Ernakulam had sanctioned reservist pension for the applicant in O.P.No.7713/1996 who was an Airman in the Indian Air Force who had completed 9 years of colour service, but was discharged from service before he is completing the service. The Writ Appeal No.1392/1997 preferred against the judgment in O.P.No.7713/1996 was also dismissed by a Division Bench. In another case of similar nature in W.P.(C) No.29497/2004 in which the petitioner therein who had served in the Air Force for 9 years and discharged with reserve liability, was called during the emergency and after the emergency he was discharged. But he was not kept in reserve after discharge from reserve service. However, the Hon'ble High Court had allowed the

said Writ Petition and directed the respondents to pay reservist pension. The Writ Appeal preferred against the verdict in W.P.No.29497/2004 was appealed under W.A.No.1439/2006. But the same was also dismissed by a Division Bench. One Corporal Ravunni filed a representation before the Hon'ble Defence Minister during 2006 praying for reservist pension, the Indian Air Force Authorities have initiated his case and he was sanctioned and paid the reservist pension. All the representations made by the applicant entered in vain. Annexure-A5 is one of such representation dated 21/4/2007 by the applicant to the Secretary of Air Force Association, New Delhi. The Secretary of the Air Force Association vide his letter No.AFA/ASSSO/50/1 dated 3/5/2007 has forwarded Annexure-A5 to the office of the 3rd respondent. Annexure-A6 is the copy of the same. There was no reply received from the 3rd respondent. In the reply to one of his reminders dated 16/8/2007 under letter No.RO/2704/2/P&WW(RES) dated 30/10/2007 (Annexure-A7) the applicant was informed by the 3rd respondent that he is not entitled to reservist pension as per Regulation 136 of the Pension Regulations for the Air Force. The main objection raised by the 3rd respondent is that the applicant has not served for 15 years and that he had received gratuity. The discharge of the applicant from the reserve was not on any request of his own and the gratuity paid was service gratuity and not lump sum gratuity. Another representation dated 16/11/2007 made by the applicant to the 3rd respondent also does not bear any

fruit. In Annexure-A9 reply received from 3rd respondent under letter No.RO/2801/Corr/C-05/PW(SP) dated 17/12/2007 it was informed that the long roll relating to the applicant does not contain the applicant's reserve service particulars. The applicant had made another representation dated 4/1/2008 to the 3rd respondent under Annexure-A10. In Annexure-A11 reply the 3rd respondent would state that the applicant is presumed to have received lump sum gratuity. Thereafter the applicant had made another representation dated 6/3/2008 under Annexure-A12 which was reminded under letter dated 20/5/2008. Thereafter the applicant had received a reply under letter No.RO/2801/Corr/C-05/PW(SP) dated 5/6/2008 (Annexure-A13) under which the 3rd respondent would admit that the gratuity received by the applicant is service gratuity, but rejected the claim of the applicant for reservist pension on the ground that the applicant is short of qualifying service. The applicant had forwarded a detailed representation to the 3rd respondent on 26/6/2008 under Annexure-A14 which was acknowledged by the Air Headquarters vide letter No.Air HQ/41003/212747/Cpl/PA-III dated 23/7/2008 (Annexure-A15) which was followed by another letter dated 28/8/2008 (Annexure-A16) requesting to expedite the matter under Annexure-A17 letter No.RO/2801/Corr/C-05/PW(SP) dated 30/9/2008. The 3rd respondent had replied that the claim of the applicant is time barred. The applicant had also produced Annexures A18, A19, A20 and A21 letters rejecting the claim of the applicant for reservist pension.

Hence the applicant has come forward with this application for reservist pension challenging the impugned orders.

3. The respondents in their common reply statement would contend that the applicant was enrolled in the Indian Air Force on 6/10/1953 and was transferred to the reserve on 6/10/1962 after completion of 9 years of regular service under the clause "on completion of regular terms of engagement". There is no entry in the long roll with regard to the discharge of the petitioner from the reserve. However, as per Air Head Quarters Leter No.AirHQ/31/31783/212747/Res.3 dated 16/10/1965 the individual was discharged from the reserve on 30/9/1965 under the clause "services no longer required", before completion of his term of engagement in the regular Air Force Reserve. Accordingly, at the time of discharge, the applicant had total service of 11 years and 360 days (9 years in the regular and 2 years and 360 days in the reserve). As per Regulation 121 of the Pension Regulation for the Air Force, 1961 (Part-I), the minimum qualifying service to earn service pension is 15 years and as per Regulation 136 to earn reservist pension one should have combined service of 15 years in the colour and reserve service. Since the applicant had only 11 years and 360 days inclusive of his regular and reserve service, he was not qualified either for service pension or reservist pension. The applicant was paid an amount of Rs.826/- as service gratuity for his service of 11 years and 360 days. The service documents/records of the applicant have been destroyed

after retention of the stipulated period. The applicant has come forward with the application after an inordinate delay of 47 years, for which no explanation is forthcoming from the applicant. It is well settled law that a litigant should not be benefitted by lodging a late appeal and he should not stand to benefit by virtue of delay. In a similar case, O.A.84/2010 this Tribunal has rejected the claim of reservist pension on 16/5/2011. Hence the application is liable to be dismissed.

4. We heard Sri.V.K.Sathyanathan, learned counsel appearing for the applicant and the learned Central Government Counsel, Sri.Tojan J.Vathikulam for the respondents and considered their respective submissions.

5. The point for determination in this application is whether the applicant is entitled to reservist pension as prayed for?

6. **The point:-** With regard to the terms of engagement in respect of the applicant in the Indian Air Force i.e., 9 years regular plus 6 years reserve service there is no dispute. According to the respondents, after the applicant's completion of terms of engagement of 9 years of regular service he continued in the reserve service only for 2 years and 360 days and thereafter he was discharged from service on the ground that his "service is no longer required". According to the applicant, he has not opted for voluntary discharge from reserve service and even after serving for 2 years and 360 days in the reserve service in spite of his wish to continue in the reserve

service to complete his term of engagement, the respondents without assigning any reason have discharged him on the ground " his service is no longer required" for which he is in no way responsible and the denial of reservist pension on the said ground is illegal. Even though the respondents would quote Regulation 121 of the Pension Regulation for the Air Forces, 1961 and also Regulation 136 to strengthen their defence, since the applicant had not completed the minimum qualifying service of 15 years to earn service/reservist pension, he is not entitled to the relief asked for in the application, in a similar case the Principal Bench of the Armed Forces Tribunal at New Delhi (T.A.No.564 of 2010 W.P.(Civil) No.6458 of 2009 relying on several dictums of the Hon'ble Apex Court, namely, **Deokinandan Prasad v. State of Bihar** (AIR 1971 SC page 1409), **Union of India v. Anglo (Indo) – Afghan Agencies Ltd.** (AIR 1968 SC 718), **Motilal Padampat Sugar Mills v. State of Uttar Pradesh AIR** (1979 SC 621), **Bakul Cashew Co. v. STO** (1986) SCC 365) and **State of S.P.Dubey Versus M.P.S.R.T.C.** (AIR 1991 SC 276) has come to a definite conclusion that once the applicant is found that he is in no way responsible for the discharge during his reserve service, it is to be treated that he has completed the terms of engagement and he is entitled to the reservist pension. The important observation in the above said order runs as follows:-

"As a matter of fact, in the initial appointment given to the petitioner it was clearly mentioned

that petitioner will have to serve 9 year as regular service and 6 years as reserve service. Subsequently the respondents cannot reverse the situation that since the appointment has been terminated, therefore, they are not entitled to count 6 years reserve service. The respondents are bound by principle of promissory estoppels, that once they made a representation and asked the other party to act on it and petitioner has served for 9 years as regular service and kept him in reserve service for 6 years, they cannot wriggle out of this on the moral ground that subsequently after China War their services were terminated also. This is clear breach of terms of conditions of appointment. Once respondents availed the services of petitioners for 9 years as active service and kept them on reserve service for 6 years they cannot go back.

The said principle was reiterated by his Lordship **Bhagwati J.** in **Motilal Padampat Sugar Mills v. State of Uttar Pradesh (AIR 1979 SC 621)**, which reads as under:-

"....where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relation ship to rise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it

and he would not be entitled to do back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not."

It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual insofar as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a government, committed to the rule of law, claim immunity from the doctrine of promissory estoppels? Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of "honesty and good faith?". Why should the Government not be held to a high "standard of rectilinear rectitude while dealing with its citizen?"

The doctrine of promissory estoppel against the Government has been laid down in the judgment of the Apex Court in *Bakul Cashew Co. v. STO* (1986) SCC 365 under the following lines:-

"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."

Under such circumstances, the discharge of the applicant after he had completed the colour service of 9 years and while he was in the midst of his reserve service of 2 years and 360 days the respondents after entering into a contract of engagement with the applicant for 9 years colour service and 6 years reserve service cannot discharge him on the ground "his services are no longer required", without assigning any substantial reason. So, we are of the considered view that the impugned orders under Annexures A7, A9, A11, A13, A17, A19, A20 and A21 are liable to be set aside and the same are hereby set aside and that the applicant is consequently held entitled to the reservist pension.

7. Now the next question is whether the applicant is entitled to reservist pension after a long delay of 47 years. In **Union of India and Others vs. Tarsem Singh**, (2008) 8 SCC 648, arising from Civil Appeal Nos.5151-5152 of 2008 arising out of SLP (C) No.3820-3821 of 2008, it has been held the relief of arrears of disability pension is liable to be restricted to three years prior to the date of

filing of this application. The relevant portion of the said judgment runs as follows:

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a

consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition”.

Under such circumstances, as per the dictum laid down in **Union of India and Others vs. Tarsem Singh (supra)**, the applicant is also entitled to disability pension, but arrear is restricted to three years prior to the filing of this application. The point is answered accordingly.

In fine, the application is allowed. The impugned orders under challenge are set aside and the applicant is declared entitled to reservist pension from three years prior to the date of filing of this application i.e., 20/1/2008. For compliance – three months, failing which the applicant will be entitled to 9% interest per annum for the arrears. No cost.

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

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

mds/

(True copy)

Private Secretary