

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI**

**O.A.No.28 OF 2010**

FRIDAY, THE 24TH DAY OF FEBRUARY, 2012/5TH PHALGUNA, 1933

CORAM:

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

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

CAPTAIN A.K.VIJAYARAGHAVAN (RETD), AGED 81 YEARS,  
(PERSONAL NO.IC 5383), III C CENTRAL ZONE APARTMENTS,  
AMMAN KOVIL ROAD, KOCHI, KERALA – 682 035.

**APPLICANT :**

BY ADV. SRI. V.K. SATHYANATHAN.

***versus***

1. UNION OF INDIA, REPRESENTED BY ITS  
SECRETARY, MINISTRY OF DEFENCE,  
SOUTH BLOCK, NEW DELHI.

2. THE CHIEF OF ARMY STAFF,  
ARMY HEADQUARTERS (SENA BHAVAN),  
NEW DELHI.

3. PRINCIPAL CONTROLLER OF DEFENCE ACCOUNTS (PENSIONS),  
OFFICE OF THE PCDA (P), DRAUPADI GHAT,  
ALLAHABAD, U.P.

**RESPONDENTS:**

R1 TO R3 BY SRI. P.J. PHILIP, CENTRAL GOVT. COUNSEL.

**ORDER**

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

This application is by an Octogenarian, a retired officer of the Army, for grant of pro-rata pension and also for gratuity with interest challenging the impugned orders under Annexure A8, A11 and A13. According to the applicant, he had joined in the Indian Army in June 1949 and he was commissioned on 10.6.1951 after two years of training

in the Military Academy. The applicant retired on 19.9.1964 under Rule 14 of the Army Rules, 1964 after earning a Qualifying Service of 13 years, 3 months and 9 days. During 1964, according to the applicant, one military nurse had fallen in love with him, but it later became a talk of the Unit and the applicant was forced to retire from service compulsorily on this ground on 19.9.1964 after serving for 13 years, 3 months and 9 days. The applicant after discharge had approached the competent authorities for his pension, but the request was turned down by the authorities, (Annexure A2 and A3). In the communication received from the office of the C.D.A.(Pension), Allahabad under Annexure A4, an offer was made to the applicant to elect either a retiring gratuity of Rs.13000/- under the New Pension Code or a retiring gratuity of Rs.17,000/- under the Old Pension Rules. In May 1988, the applicant made another representation to the second respondent. The second respondent vide Annexure A5 letter had informed that his application has been forwarded to C.D.A.(P), Allahabad. As per the communication from Army Headquarters under Annexure A8, the applicant was informed that he was not eligible for pension since his qualifying service is less than 20 years. The Ceremonial and Welfare Directorate of Army Headquarters granted him a Platinum Grant of Rs.25000/- for the service he had rendered to the Nation, under

Annexure A10 letter. The claim for pension and gratuity was rejected by the respondents under Annexure A11 letter. The applicant would quote the cases of Ex Corporal K.G.Nambiar, Ex Sergeant N.K.Bose, Ex Corporal Amar Singh Rathore, Ex.Sergeant Surendrapal Singh etc. and would claim that he is entitled to pro rata pension and gratuity.

2. The respondents in their reply statement, after admitting the enrollment of the applicant and his retirement under Rule 14 of the Army Rules, 1964 would oppose this application, on the ground that President of India has the discretion to grant retiring gratuity on the basis of the audit report and the audit report relating to the applicant was sent by PCDA (P) Allahabad vide No.G2/M/27027 dated 27.11.1964 to the Army Headquarters under Annexure R1, and the Ministry of Defence, Government of India vide No.A/09142/AG/PS-4(d)/s/D(Pension)/Services dated 31.3.1965 has intimated that the President has decided not to grant any retiring gratuity to the applicant. A copy of the order dated 31.3.1965 is Annexure R2. In fact, the applicant is challenging Annexure R2 order of the President in this application, which cannot be allowed and hence this application is liable to be dismissed.

3. We heard the learned counsel appearing for the applicant, Sri.V.K.Sathyanathan, and also Sri.P.J.Philip, Central Government

Counsel appearing for the respondents and considered their respective submissions.

4. The point for consideration is, whether the applicant's claim for pro rata pension and gratuity can be granted in spite of Annexure R2 communication of the Government of India?

5. The point:- Admittedly, the applicant is a retired officer in the Army after putting in 13 years, 3 months and 9 days of service. So, as per Regulation 25(a) of the Pension Regulations for the Army, Part I, 1961 the applicant is not having the minimum qualifying service required by Officer/Commissioned Officer for pension, which is 20 years. As per Regulation 5 of the Pension Regulations for the Army, Part I, 1961, the applicant is also not entitled to any gratuity in view of Annexure R2 order. Regulation 5 of the Pension Regulations for the Army, 1961 reads as follows:

"In special circumstances, to be determined by the President or as may be specified in these Regulations, the pension (service, disability or family), children's allowance or gratuity to be granted or granted to an individual or any portion of it may be withheld, suspended or discontinued. In exceptional cases, the payment of part or whole of the pension, allowance or gratuity withheld or suspended may by order of the President be made to the wife or other dependent(s) of the pensioner".

The impugned Annexure R2 letter emanated from the Government of India, Ministry of Defence, New Delhi vide No.A/09142/AG/PS-4(d)/s/D(Pension)/Services dated 31.3.1965 under which it has been

communicated that the President of India has decided not to grant retiring gratuity to the applicant in the following lines:

"I am directed to refer to memorandum No.G1/M/27027 dated the 27<sup>th</sup> November 1964 from the Controller of Defence Accounts (Pensions),Allahabad, addressed to the Adjutant General's Branch, Army Headquarters, on the above subject and to say that after careful consideration of the circumstances in which the officer was retired from service, the President has decided that no retiring gratuity will be paid to the officer in respect of his army service."

Under such circumstances, we are of the considered view that this Tribunal cannot grant the relief asked for in this application to the applicant. The point is answered accordingly.

6. In fine, the application is dismissed as devoid of merit. We recommend the case of the applicant to the Rajya Sainik Board, Kochi to take into consideration the advanced age of the applicant and also the piquant situation under which the applicant has been placed, to grant suitable ex-gratia grant or aid to the applicant. No costs.

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

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

DK.

(True copy)

Prl. Private Secretary

OA No.28 of 2010

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REGIONAL BENCH, KOCHI.

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**ORDER**

DATED: 24.02.2012