

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI

O.A.NO.124 OF 2010

WEDNESDAY, THE 13TH DAY OF MARCH, 2013/22ND PHALGUNA, 1934

CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)
HON'BLE LT.GEN.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

K.C.THANKAPPAN, S/O.CHACKO, 73 YEARS,
(EX SEPOY). NO.1153587/ARTILLERY),
KARIMALATH HOUSE, PURAMATTOM,
THIRUVALLA (PRESENTLY RESIDING AT
KARIMALATH HOUSE, NEDUKUNNAM.P.O.
KOTTAYAM DISTRICT.

BY ADV.MR.M.V.THAMBAN

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
MINISTRY OF DEFENCE , NEW DELHI – 11.
2. THE CHIEF OF ARMY STAFF,
ARMY HEADQUARTERS, NEW DELHI – 11.
3. THE OFFICER COMMANDING,
ARTILLERY RECORDS, NASIK ROAD CAMP – 422 102.
4. PRINCIPAL CONTROLLER OF DEFENCE
ACCOUNTS (PENSION), DRAUPADI GHAT,
ALLAHABAD.

BY ADV.SRI.SW.KRISHNAMOORTHY, SENIOR PANEL COUNSEL

O R D E R

Shrikant Tripathi, Member (J):

1. Heard Smt.Thara Thamban for the applicant and Mr.S.Krishmanoorthy, Senior Panel Counsel for the respondents and perused the record.

2. The applicant K.C. Thankappan, Ex Gunner No.1153587 was enrolled in the Regiment of Artillery on 11th of March 1958 for 7 years in colour and 8 years in reserve service. He was transferred to reserve on 24th April 1965 after rendering 07 years 01 month and 13 days colour service on fulfilling the conditions of enrollment. The applicant was recalled for duty while he was in reservist service during the National Emergency in 1965 at the time of Indo-Pak War, but he failed to rejoin the duty, therefore, he was declared absent with effect from 24th June 1965. But he later on rejoined the duty when coercive measures were taken by issuing apprehension roll to the civil police. In view of the aforesaid absence, the applicant was tried

summarily and was convicted accordingly. Ultimately he was discharged from service on 9th June 1973. He had by that time rendered 14 years and 110 days service excluding 345 days of non qualifying service due to illegal absence. The applicant's claim for the service pension was denied on the ground that he had not rendered the requisite length of qualifying service of 15 years. He filed W.P.(C)No.9326 of 2005 in the High Court of Kerala which was transferred to this Bench as T.A.No.31 of 2009. Ultimately the said Transferred Application was disposed of by the Bench on 11th of March 2010 with the direction to the competent authority to consider the applicant's request for condonation of the short fall and grant of reservist pension, in the event of condonation. A copy of the order rendered by the Bench is on record as Annexure A8. Accordingly, the respondents reconsidered the applicant's matter and passed a speaking order, Annexure A10, rejecting the applicant's prayer for the condonation of the short fall. The respondents seem to have taken into account the fact that the applicant was in

possession of 24 Are and 22 square meter agricultural land, two pucca room house and had earning from farming. More so, his children had been married and were living separately and were not in any way dependent on him. These aspects prevailed upon the respondents to take the decision of not condoning the short fall as applied by the applicant.

3. In normal course, the applicant was not entitled to service pension in view of the fact that he had not rendered the qualifying service of 15 years to earn pension. The short fall of service could be condoned by the respondents, but they, keeping in view the aforesaid facts and circumstances and financial status of the applicant, declined to condone the short fall, therefore, we do not consider it just and expedient to interfere with the discretion exercised by the respondents in the matter.

4. The applicant was himself responsible for the short fall. He had been required to serve during the Indo Pak War in 1965 but his illegal absence for 345 days necessitated for the respondents to try him summarily and

accordingly punish him. In this view of the matter, the short fall which was attributable on the applicant was very material aspect and therefore the respondents were justified in denying the condonation applied for.

5. In view of the aforesaid, the Original Application has no merit and is accordingly dismissed.

6. There will be no order as to costs.

7. Issue copy of the order to both side.

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

Sd/-
JUSTICE SHRIKANT TRIPATHI
MEMBER (J)

an (true copy)