

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 41 of 2017

Friday, this the 26th day of August, 2022

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Bajirao Shankar Ranbhise, Ex Hav No 10148168, Permanently Resident of EP School Compound, 259 Nagala Park, Kolhapur, District- Kolhapur- 416112, Maharashtra.

..... Applicant

Counsel for the : **Shri Y.P. Singh, Advocate**
Applicant

Versus

1. Union of India, (through Secretary of Ministry of Defence), 104, South Block, New Delhi – 110011.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, New Delhi - 110011.
3. The Officer Incharge, Records, The Maratha Light Infantry, PIN – 900499, C/o 56 APO.
4. The Commanding Officer, 109 Infantry Battalion (TA), Maratha Light Infantry, PIN- 934309, C/o 56 APO.
5. Principal Controller of Defence Account (Pension), G-4/3 Section, Draupadi Ghat, Allahabad-211014.

.....Respondents

Counsel for the : **Shri B.K. Ashok,**
Respondents. **Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

8.1 Direct the respondents to take the option certificate a fresh from the applicant for counting the previous service for pension as the same was not traceable in their records.

8.2 Direct the respondents to grant service pension to the applicant with effect from the date of his discharge from Territorial Army Service, i.e. 18.10.1985.

8.3 Direct the respondents to calculate and pay the arrears of service pension to the applicant within a period of two months from the date of receipt of this order.

8.4 That such other and further reliefs, as the nature and circumstances of this application may require, and the Hon’ble Tribunal may deem fit and proper to give effect to the aforesaid reliefs, be granted in favour of the applicant for dispensing justice.

2. The factual matrix of the case is that applicant was enrolled in Territorial Army (TA) on 28.10.1958. He served regularly up to 27.10.1973 that is for 10 years and 280 days and thereafter transferred to Reserve Service. He was re-enrolled in T.A. on 17.01.1975. After completion of 05 years and 79 days of embodied service he was discharged from TA

service on 18.10.1985. He completed 15 years, 11 months and 19 days of embodied service. Applicant represented his case for grant of service pension which was denied. Being aggrieved by denial of service pension, the applicant has filed the present Original Application.

3. Learned counsel for the applicant submitted that applicant was enrolled in the T.A. on 28.10.1958. On completion of 15 years of service on 27.10.1973, he was discharged from TA under Rule 14 (a) of the Territorial Army Rules, thereby rendering total 10 years and 280 days of embodied service. He was granted terminal gratuity of Rs. 3364.75/- for his 10 years and 280 days of embodied service. He was re-enrolled in the TA on 17.01.1975. On completion of 05 years of embodied service, he was discharged from TA under Rule 16 of Territorial Army Rules, 1948 (Revised Edition 1976), on 18.10.1985. Thus he rendered 15 years, 11 months and 19 days embodied service and he is entitled for service pension. He approached respondents for grant of service pension, but the same was denied. During the course of the argument, learned counsel for the applicant placed reliance on the judgment of AFT, Lucknow passed in ***T.A. No 1320 of 2010, Brahm Deo Mandal vs. Union of India***, decided on 05.10.2016. He pleaded that competent authority be directed

to consider the case of the applicant for the grant of service pension.

4. Per contra, learned counsel for the respondents submitted that total embodied service after counting first and second spell works out to 15 years and 359 days but the applicant did not exercise any option for counting his former service within six months from the date of his re-enrolment towards grant of service pension as contained in Govt of India, Min of Def letter dated 11.06.1985. He also did not refund Terminal Gratuity received on discharge from TA service for the first spell of service and retained the same with himself. Hence, the claim of the applicant for counting of former service and grant of service pension is untenable and he is not eligible for counting of former TA service and grant of service pension along with its arrears. He submitted that claim of the applicant for grant of service pension was rightly rejected due to policy constraints. He submitted that the plea of the applicant is not sustainable in the eyes of law and be dismissed being devoid of merit and lack of substance.

5. We have heard learned counsel for the parties and perused the record.

6. After hearing counsels of both the sides and perusing the evidence on record, the question which needs to be answered is “Whether the applicant is entitled for grant of service pension of Sep or not”?

7. Para 132 of Pension Regulations for the Army 1961 (Part I) deals with grant of service pension which reads as under:-

“132. The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years”.

8. Plain reading of para 132 of Pension Regulations for the Army 1961 (Part- I) indicates that 15 years of colour service is necessary for earning service pension and applicant has already rendered 15 years of embodied service in both spells.

9. In the instant case, the applicant has rendered 15 years and 359 days embodied service in the Army. Govt of India vide letter dated 11.06.1985 introduced pensionary benefits for the personnel of the Territory Army whereby service pension was granted to Territorial Army personnel (other than civil govt servants and civil pensioners) who have minimum qualifying aggregate embodied service of 15 years in the case of JCOs/ORs. For the purposes of qualifying service, Regular service in the Army, Navy and Air Force will be counted to the

same extent as admissible to Regular Army Personnel. As per this letter pensionary benefit is also admissible to those who have retired prior to issue of the letter.

10. The word 'pension' is defined in Article 366, sub class (17) of Indian Constitution. In fact, the right to get pension is considered as an incidence of service under Article 309 of the Constitution of India. The payment of pension is not an act of charity. In **D.S. Nakara Vs. Union of India (1983) 1 SSC 305** Hon'ble The Apex Court has held that pension is neither a bounty nor a matter of grace. In **Deoki Nandan Prasad Vs. State of Bihar (AIR 1971 SC 1409)**, the Apex Court has also held that pension is a right and its payment does not depend upon the discretion of the Government. Pension is payment to a person in consideration of past services rendered by him. It is most unfortunate that a war veteran has had to run from pillar to post for litigation for his dues for years. The contention of the respondents that applicant has not opted for counting former service, hence he is not entitled for grant of service pension is not agreed. As per policy, applicant is entitled for service pension but he was denied the same because he did not submit option certificate for counting his previous service. As such O.A. deserves to be allowed.

11. The applicant has laid his claim before the Tribunal by filing this application on 23.03.2017. Due to law of limitation, as per the principles laid down in **Tarsem Singh's** case by the Hon'ble Apex Court, the applicant shall be entitled to the claim only from 03.03.2014 (i.e.) the date three years prior to the date of filing the application. The amount paid as gratuity shall be adjusted in the arrears of service pension payable to the applicant. Applicant shall submit all documents as required by the respondents for grant of service pension.

12. Accordingly, O.A. is **allowed**. Respondents are directed to grant ordinary service pension of Sepoy to the applicant from three years prior to filing of O.A. after adjusting the amount of terminal gratuity already paid. The O.A. was filed on 23.03.2017. Respondents are further directed to complete the entire exercise within four months from the date of receipt of a certified copy of this order failing which they shall be liable to pay interest at the rate of 8% from due date till the date of actual payment.

13. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 26 August, 2022
Ukt/-

