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Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI
E-Court

8. O.A. No. 11 of 2021

Ex. POME Fateh Singh Johal
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p>28.07.2022 <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Mr. K. Gidh, Ld. Counsel for the applicant and Mr. A.J. Mishra, Ld. Counsel for the respondents.</p> <p>Original Application is allowed.</p> <p>For order, see our judgment passed on separate sheets.</p> <p>Misc. Application, if any, pending for disposal, shall be treated to have been disposed of.</p> <div></div> <p>(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>UKT/SB</p>

(E- Court)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

ORIGINAL APPLICATION No. 11 of 2021

Thursday, this the 28th day of July, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Fateh Singh Johal Ex.POME, RH-4 E-12, Sector 9 (North)
 Near Sunil Gavaskar Maidan CBD Belapur, Navi Mumbai-
 400614.

..... Applicant

Learned counsel for the : **Shri K Gidh, Advocate.**
 Applicant

Versus

1. The Union of India Through Secretary, Ministry of Defence, South Block, New Delhi-110001.
2. The Chief of Personnel, Ministry of Defence, Government of India, South Block, New Delhi-110001.
3. Pay & Allowances Directorate Integrated Headquarters, Ministry of Defence (Navy) 108. Talkatora, Stadium Annex, Park Lane, New Delhi-110004.

.....Respondents

Learned counsel for the : **Shri A.J. Mishra,**
 Respondents. **Central Govt. Counsel**

ORDER

"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (a) *Quash and set aside the order 03.01.2020 of the Lt. Commander (Personnel and Administration, dying pension to the Applicant at 03.01.2020.*
- (b) *Direct the respondent No.3 to pay the Applicant his Pension as per the provisions of Regulation 95 of the Navy (Pension) regulations, 1964, as is being paid to those who have rendered at least 10 years of active service.*
- (c) *Pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper.*

2. Learned Counsel for the applicant submitted that the applicant joined Indian Navy on 20.04.1966. He participated in Indo Pak war 1971 and received Sangram Medal. Applicant retired from service on 30.04.1976 after rendering more than 10 years of Active Service as he was not required for Fleet Reserve Service. Subsequent to retirement of applicant, four months later the Fleet Services were abolished on 03.07.1976. Learned counsel for the applicant pleaded that denying the pension to applicants who have actively served the Navy with at least 10 years is violative of Article 14 inasmuch that Navy pays pension

to other sailors for having rendered Active Service of 10 years but applicant was not provided any pension. The decision not to accept Fleet Reserve was taken by Navy authorities. The issue of pension for those with over 10 years of active service attained finality with the decision of the Hon'ble Supreme Court in T.S. Das & Ors Vs Union of India & Ors Civil Appeal No 2147 of 2011. The Hon'ble Apex Court issued directives in T.S. Das & Ors Vs Union of India & Ors (Misc Application No 1224 of 2017 in Civil Appeal No 2147 of 2011. Applicant submitted representation for grant of pension which was rejected by the respondents vide order dated 03.01.2020. Learned counsel for the applicant pleaded that direction be given to respondents to grant pension for 10 years of service to the applicant.

3. On the other hand, Ld. Counsel for the respondents contended that applicant was discharged from service after rendering about 10 years of active service. Since he had not rendered qualifying service of fifteen years for grant of service pension as per Regulation 78 of Navy Pension Regulation 1964, he was not granted service pension. He further submitted that as per Regulation 92 of Navy Pension Regulation 1964, a reservist has to render a prescribed naval and reserve qualifying service of ten years each to become entitled for Reservist Pension. In the

instant case, the ex sailor was discharged from active service as "NOT REQUIRED" and endorsement for the same was made on his certificate of the Service (IN 271). The reservist service was an enabling provision for recalling Reservists as and when any contingency developed and was based upon the requirement of the service and suitability of the sailor. The Hon'ble Supreme Court vide its order dated 27 September 2018 exercising its jurisdiction under Article 142 of the Constitution of India directed the respondent Union of India to pay Special Pension under Regulation 95 of the above mentioned Regulations, commencing 01st Sep 2018. Accordingly, respondents promulgated Government of India, Ministry of Defence letter No 4(10)/2017-D(Pen/Legal) dated 22 Oct 2018 sanction of the Competent Authority was accorded for grant of Special Pension under Regulation 95 of Navy (Pension) Regulations, 1964, to the ex-sailors appointed prior to 03 Jul 1976 and discharged on or after 03 Jul 1976 on expiry of 10 years of service. In the instant case, the ex-sailor was discharged from service on 30.04.1976 i.e. prior to 03 Jul 1976. Therefore, the ex-sailor does not fulfil the eligibility criteria for grant of Special Pension as directed by the Hon'ble Supreme Court. Accordingly, his claim for grant of pension was denied by the respondents. Learned counsel for the respondents pleaded that in view of the facts and rule position, the applicant is

not entitled for pension and present O.A. is liable to be dismissed being devoid of merits.

4. We have heard learned counsel for the parties and perused the documents available on record. We have also gone through the rule position and we find that the question which needs to be answered is whether "the applicant is entitled for grant of pension or not?"

5. In the instant case applicant was denied pension on the ground that he rendered only 10 years of active service. Regulation 95 of The Navy (Pension) Regulations, 1964 reads as under:-

95. Special Pension and Gratuity to Sailors – When admissible- A special pension or gratuity may be granted at the discretion of the Central Government, to sailors who are not transferred to the reserve and are discharged in large number in pursuance of Government Policy.

(i) of reducing the strength of establishment of the Indian Navy; or

(ii) of re-organisation. Which results in paying off of any ships or establishments.

6. The Navy authorities, in light of the directives of the Hon'ble Supreme Court in T.S Das (Supra), decided to grant Pension to those Sailors with 10 years of Active Service but limited it to those who retired after 03.07.1976, under Regulation 95 of The

Navy (Pension) Regulations, 1964.

7. It is evident that executive instructions cannot be issued in contravention of the rules framed under the proviso to Article 309 of the Constitution and statutory rules cannot be set at naught by the executive fiat. It is a sound principle of all jurisprudence that a prior particular law is not easily to be held to be abrogated by a posterior law, expressed in general terms and by the apparent generality of its language applicable to and covering a number of cases, of which the particular law is but one. In case of ***Uol v. Sri Somasundaram Vishwanath***, the Hon^{ble} Apex Court observed that if there is a conflict between the executive instruction and the rules framed under the proviso to Article 309 of the constitution, the rules will prevail. Similarly, if there is a conflict in the rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.

8. In the instant case, applicant joined Navy on 20.04.1966 and was discharged from service on 30.04.1976 due to change of policy without completing 15 years of service mandatory for grant of service pension. He participated in 1971 Indo Pak War. As per policy criteria applicable at that time, applicant joined Navy for 10 years of colour service and 10 years of reserve

service. Later on by a circular dated 03 July 1976 Govt of India modified the service conditions, making it 15 years colour service and compulsory reserve liability for 2 to 3 years. Those who completed 10 years colour service prior to 3 July 1976 and transferred to Fleet Reserve were granted pension and other facilities. Govt changed the policy and stopped drafting sailors to the Fleet Reserve and therefore as a result, applicant was discharged from service before 03 July 1976 after rendering about 10 years of colour service only. Neither the applicant was transferred to Reserve nor he was granted special pension as per Regulation 95 of Indian Navy Act 1957. Govt of India, Ministry of Defence vide letter dated 22.10.2018 granted pension to ex-sailors appointed or discharged on or after 03.07.1976 on expiry of 10 years of service and not to those like the applicant who discharged before 03.07.1976. This policy is against fundamental rights. The applicant retired very close to the datum on which the Reserve Fleet was winding up. Regulation 95 of The Navy (Pension) Regulations, 1964 allows Special Pension and gratuity to Sailors who are not transferred to reserve and are discharged in large number in pursuance of Govt policy. Any policy of deprivation of or restriction on inherent fundamental rights of citizens must take care to see that justice is not only done but manifestly appears to be done.

The policy should be issued in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. Policy should be in a manner which is patently impartial and meets the requirements of natural justice. The policy decision without regard to the principles of natural justice is void. The said policy is discriminatory and arbitrary, thereby offending Articles 14 and 16 of the Constitution of India. If special pension to an ex- sailor having 10 years of colour service and who retired on or after 03 July 1976 can be granted, then it can also be granted to an ex-sailor having 10 years of colour service and who retired prior to 03 July 1976.

9. In view of the above, the O.A. deserves to be allowed, hence **allowed**. The impugned order passed by the respondents rejecting the claim of the applicant for grant of special pension is set aside. Applicant was not considered for Fleet Reserve because the policy of Fleet Reserve Service was discontinued w.e.f. 03.07.1976. The applicant is entitled for grant of special pension for his services rendered in the Navy from three years prior to filing of the O.A. (which was filed on 04.01.2021) as per pension regulation for the Navy and release payment after adjustment of Gratuity and Death Cum Retirement Gratuity already paid to him. Respondents are directed to give effect to

the order within four months from the date of receipt of a certified copy of this order failing which the respondents shall have to pay interest @ 8% per annum from the date of this order till the date of actual payment.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 28 July, 2022
UKT/-