ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

Original Application No. 35 of 2021 with M.A. No. 14 of 2021

Friday, this the 29th day of July, 2022

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

Ex-246824 Aircrafts Man Vazarkar H.V.
R/o Ashish Park, Flat No. 09, Plot No. 133/134, Sector No. 24, Pradhikaran, Nigdi, Distt – Pune – 411044

.... **Applicant**

Ld. Counsel for the Applicant : **Mr. R.K. Khare,** Advocate

Versus

1. Union of India (Secretary, MOD), Ministry of Defence, New Delhi – 110011.

2. Chief of Air Staff, Air HQ (VB), New Delhi – 10.

3. Dte of Air Veteran, Subroto Park, New Delhi-10.

4. CDA (Air Force), Draupadi Ghat, Allahabad (UP).

... **Respondents**

Ld. Counsel for the Respondents : **Mr. A.J. Mishra,**
Central Govt. Counsel

ORDER (Oral)

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

> "(a) That it may be declared that the applicant is entitled to get pension as the applicant has completed 15 years (9 years regular active service + 6 years reserved service) with the respondents.

(b) That this Hon'ble Tribunal may kindly pass the identical order like the judgments and orders passed in Original Application No. 47/2013 to 56/2013 and 17/2014 to 30/2014 and grant the pensionary benefits to the applicant with a direction to the respondents to give pensionary benefits to the applicant immediately.

(c) That this Hon'ble Tribunal be pleased to issue the mandatory order directing the respondents to give the pensionary benefits with immediate effects to the applicant (for regular and reserve service) on the basis of the judgment and order passed by this Hon'ble Tribunal in OA No. 13/2011 (Ashok Martand Deo vs. Union of India) and as per the orders passed by this Hon'ble Tribunal in similar cases.

(d) Pending the hearing and final disposal of the present application, this Hon'ble Court may kindly pass the appropriate order by way of interim relief directing the respondents to pay the pensionary benefits immediately alongwith arrears and interest permissible as per law, and on every month or before the first week of each month. Such amount of pensionary benefits may kindly be deposited in the respective Saving Account of the applicant.

(e) That the delay in filing the present application may be condoned by allowing the Original Application filed by the applicant for the said relief.

(f) Pending the hearing and final disposal of the present application the applicant may be granted the medical benefits under the ECHS.

(g) Ad-interim relief in terms of prayer clause (d) and (e) be awarded in favour of the applicant herein.

(h) If this Hon'ble Tribunal find that there is a delay in filing the present Original Application, same may be condoned in the interest of justice."

2. Succinctly stated, applicant was enrolled in the Indian Air Force on 29.09.1962 with terms of engagement to serve 9 years of regular service. After serving 9 years regular service, the applicant was not transferred to reserve and was discharged from service on 28.09.1971 and the applicant has not been paid pensionary benefits. Being aggrieved, the applicant has filed the present Original Application for grant of pensionary benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Air Force on 29.09.1962 with terms of engagement to serve 9 years of regular service + 6 years of reserve service but after serving 9 years he was arbitrarily discharged from service on 28.09.1971 without any pensionary benefits. Thereafter, he was not recalled by the respondents to continue for reserve period. This fact shows that the applicant was discharged from service without show cause notice and he was stopped from joining the remaining reserve service. Therefore, applicant is entitled to get the pensionary benefits because it is absolutely against the rule of basic principles of law of the promissory estoppels. The service book filed alongwith application as Annexure A-1 shows that the applicant was enrolled with terms of engagement to serve 9 years of regular service + 6 years of reserve service. The applicant after serving 9 years of regular service was not allowed to serve further to complete reserve service.

4. Learned counsel for the applicant further submitted that this Tribunal after considering the different judgments passed by other

Regional Benches of AFT including Principal Bench in the case of ***Sadashiv Haribhau Nargund & Ors*** (TA No. 564/2010, WP No. 6458/2009) in which Principal Bench relied on the case of ***Deokinandan Prasad vs. State of Bihar*** (AIR 1971 SC 1409) and the judgment of Hon'ble Kerala High Court in WP No. 29497/2004, have extended the benefit to similarly situated personnel. The respondents are bound by the principles of promissory estoppels as they engaged the applicant for a period of 9 years regular service and 6 years reserve service. The applicant was willing to keep himself continue in reserve service but he was discharged without any notice and opportunity of being heard. The law is settled that once the terms and conditions of service entered at the time of enrolment in the Air Force for a period of 9 years regular service + 6 years reserve service, the said period cannot be withdrawn by the respondents. He pleaded for grant of reservist pension to the applicant counting his regular service as well as reserve service to the extent of 15 years in view of judgments passed by the various Regional Benches of the AFT as well as by the Hon'ble Supreme Court on the subject. The applicant was discharged from service without extension or transferring to reserve service, hence, his 6 years period of reserve service which applicant was entitled to serve for continuing of engagement, would be combined with 9 years regular service rendered by him for considering his case for the grant of Reservist Pension under Para 136 of Pension Regulations for the Air Force, 1961 (Part I).

5. Learned counsel for the applicant further submitted that as per service book of the applicant, photocopy filed alongwith Original Application as Annexure A-1, applicant had to serve 9 years in regular service and 6 years in reserve in order to complete 15 years minimum qualifying service to get pension. The applicant during the course of service, was awarded Raksha Medal, Samar Sewa Medal, Sangram Medal and 25th Independence Day Pachim Star for his meritorious services and his character was assessed VERY GOOD. He fought Indo Pak War of 1965 with Pakistan while posted with 18 Wing Air Force and Indo Pak War of 1971 while posted with 9 Wing Air Force. The applicant was discharged illegally from service on 28.09.1971 after serving 9 years regular service. The applicant never showed unwillingness for extension of service or to transfer to reserve service but he was discharged from service illegally while some of his batch mates and juniors were transferred to Reserve. His further contention is that applicant incidentally met an ex-serviceman and after being advised by him, he sent a representation dated 09.06.2020 to the respondents for grant of pension which was rejected stating that minimum pensionable service of 15 years being not rendered by him, he was not entitled to pension under Para 136 of the Pension Regulations for the Air Force, 1961 (Part-1). Thereafter, applicant filed the present case before this Tribunal for grant of pension.

6. Submission of learned counsel for the respondents is that original service documents of the applicant have been destroyed

after the stipulated period of 25 years of retention and only single sheet information in the form of Long Roll is available. As per this, the applicant was enrolled in the IAF on 29.09.1962 and discharged from service w.e.f. 28.09.1971 under the clause "Other Reason". Before discharge from service, he had rendered a total 9 years of qualifying regular service. The applicant was not transferred to any Air Force Reserve. Pensionary benefits are governed by Regulation 121 for Service Pension, 136(a) for Reservist Pension and 127 & 128 for Service Gratuity as per Pension Regulation for the Air Force, 1961 (Part-1). The applicant was discharged from regular service and thus provisions of Pension Regulations are applicable to him. Since the applicant had a total service period of 9 years of qualifying regular service against 15 years, he was not granted any kind of pension in terms of Regulation 121 & 136(a). However, as per his entitlement, he was eligible for service gratuity which has already been paid to him. The applicant was not retained after completion of regular service in terms of AFI (I) 12/S/48, hence, he is not eligible to any kind of pension. There is also a provision that personnel who fail to attain the rank of Corporal within 9 years of engagement will be discharged from service.

7. Learned counsel for the respondents further submitted that it is evident from the Long Roll that applicant was fulfilling all the eligibility criteria to enhance the initial period of his engagement to 15 years in terms of Corrigendum 7 to AFI 12/S/48 dated 29.03.1969. However, he did not opt to contract for 15 years of engagement and was

discharged from regular service w.e.f. 28.09.1971 under the clause 'Other Reason'. He also submitted that there is a long delay in filing application and applicant's grievance of abrupt discharge from regular service at this belated stage is incorrect. He also submitted that statutory provisions of Regulations 136(a) of Pension Regulations for the Air Force, 1961 (Part-1), have also been upheld by the Regional Bench of AFT Kochi in OA No. 88/2010, ***Ex. Cpl. K Sasidharan vs. Union of India & Ors*** and other similar matters by AFT (RB), Chennai and Chandigarh. The respondents have also relied on AFT (RB), Kochi recent judgment in OA 79/2018, ***Muraleedharan Nair M.K. vs. Union of India and Ors***, decided on 26.05.2022. Hence, having served only for 9 years of regular service against 15 years as per Regulation 136(a) of Pension Regulations for the Air Force, 1961 (Part-1), reliefs claimed by the applicant cannot be acceded to and therefore, applicant is not eligible for any kind of pension. He pleaded for dismissal of Original Application.

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

9. In the present case, applicant's claim is with regard to grant of pensionary benefits (Reservist Pension) as per his terms of engagement of 9 years regular service only (and not 9 + 6 years as claimed by the applicant), under the provisions of Para 136 of Pension Regulations for the Air Force, 1961 (Part-1) which reads as under :-

"136. (a) A reservist who is not in receipt of a service pension may be granted, on completion of the prescribed period of nine years regular and six years reserve qualifying service, a reservist pension of Rs. 10.50 p.m. or a gratuity of Rs. 800 in lieu.

(b) A reservist who is not in receipt of a service pension and whose period of engagement for regular service was extended, and whose qualifying service is less than the total period of engagement but not less than 15 years may, on completion of the period of engagement or earlier discharge from the reserve for any cause other than at his own request, be granted a reservist pension at the above rate or the gratuity in lieu."

10. The question of granting Reservist Pension and Special Pension has been dealt with elaborately in the cases of similarly placed personnel of the Navy by the Hon'ble Apex Court in ***T.S. Das and Ors. vs. Union of India and Another*** (Civil Appeal No.2147 of 2011, dated 27.10.2016). The Hon'ble Apex Court in the above judgment has concluded that transfer to Reserve is not a matter of right and principle of promissory estoppel cannot be invoked to further the claim. The relevant extracts of Paras 8, 11, 12, 20 & 21 of the judgment (supra) are as follows:

"8. ..... The principle of equitable promissory estoppel invoked by the Tribunal in the impugned judgment is inapplicable to the present case, keeping in mind the express provisions in the extant Regulations regarding the service conditions of the original applicants. The original applicants cannot be heard to claim any right to be transferred to the Reserve Fleet or for that matter being automatically transferred there at."

11. ..... It provides that a "Reservist" who is not in a receipt of Service Pension, be granted Reservist Pension on completion of the prescribed Naval and Reserve Service of 10 years each. None of the applicants claim that they are entitled for Service Pension, nor have they been so granted. The eligibility of grant for Reservist Pension is upon completion of the prescribed Naval and Reserve qualifying service of 10 years each. It is not in dispute that each of the applicants completed the prescribed Naval

Service of 10 years in the first instance, also known as active service or engagement. It is also not in dispute that there is no formal order issued by the Competent Authority to draft the services of the concerned applicant on the Fleet Reserve Service after completion of 10 years of active service in the first instance.

12. As a matter of fact, the issue under consideration was the subject matter before the Armed Forces Tribunal, Principal Bench, New Delhi in T.A. No.492/2009. The Tribunal after analyzing the relevant provisions observed as follows:

> "9. It is an admitted position that the petitioner was not inducted for a Fleet Reserve Service. He has filed a Discharge Certificate and profile of his service on record and Service Certificate which does not show that the petitioner was engaged for a Fleet Reserve Service at all or not. However, learned counsel for the petitioner submitted that when he entered into the service at that time as per rule 10 years of regular service and 10 years of fleet reserve service and out of that five years service should be counted for the purpose of qualifying service for pension. It is true at relevant time when petitioner was inducted into service there was requirement of keeping the incumbent in fleet reserve, therefore, respondents are bound by the service conditions prevailing at that time and they must give 5 years benefit of fleet reserve service. It is true that we would have certainly acceded to the request but a difficulty arose that Regulation 269 clearly contemplates that incumbent can be kept for reserve fleet, if required. This Government policy to keep in fleet reserve was discontinued in the year 1976. The Regulation 269 clearly contemplates that incumbent can be kept in fleet reserve, if required that means this is enabling provision giving liberty to respondents to keep the incumbent in fleet reserve, it does not confer any right on the petitioner that he must be necessarily kept in fleet reserve. This is the discretion of the respondents that if they required, they keep the man in fleet reserve and if they find that they do not require the incumbent for fleet reserve, the incumbent cannot as a matter of right seek writ of mandamus, he has no statutory right to be kept in fleet reserve. The expression "if required" makes abundantly clear that discretion is with the respondents to keep the incumbent in fleet reserve or not. Since this policy has been discontinued in 1976, henceforth there is no provision to keep the incumbent in fleet reserve."

20. The quintessence for grant of Reservist Pension, as per Regulation 92, is completion of the prescribed Naval and Reserve qualifying service of 10 years "each". Merely upon completion of 10 years of active service as a Sailor or for that matter continued beyond that period, but falling short of 15 years or qualifying Reserve Service, the concerned Sailor cannot claim benefit under Regulation 92 for grant of Reservist Pension. For, to qualify for the Reservist Pension, he must be drafted to the Fleet Reserve Service for a period of 10 years. In terms of Regulation 6 of the Indian Fleet Reserve Regulations, there can be no claim to join the Fleet Reserve as a matter of right. None of the applicants were drafted to the Fleet Reserve Service after completion of their active service. Hence, the applicants before the Tribunal, could not have claimed the relief of Reservist Pension. The Tribunal (Regional Bench, Chennai) in O.A. No. 83 of 2013, however, granted that relief by invoking principle of equitable promissory estoppel and legitimate expectation in favour of the applicants. The Tribunal, in our opinion, committed manifest error in overlooking the

statutory provisions in the Act of 1957 and the relevant Regulations framed thereunder, governing the conditions of service of Sailors. The fact that on completion of 10 years of active service, the Sailor could be taken on the Fleet Reserve Service for a further period of 10 years cannot be interpreted to mean that the concerned Sailor had acquired a legal right to join the Fleet Reserve Service or had de jure continued on Fleet Reserve Service for a further 10 years after expiration of the initial term of active service/engagement. There is no provision either in the Act of 1957 or the Regulations framed thereunder as pressed into service by the applicants, to suggest that drafting of such Sailors on Fleet Reserve Service was "automatic" after expiration of their active service/enrolment period. Considering the above, it is not necessary to burden this judgment with the decisions considered by the Tribunal on the principle of equitable promissory estoppel and legitimate expectation, which have no application to the fact situation of the present case.

21. The original applicants contend that if the Government Policy dated 3rd July, 1976 is applied to the serving Sailors, inevitably, will result in retrospective application thereof to their deteriment. That is forbidden by Section 184-A of the Act. This argument does not commend to us. In that, the effect of the Government Policy is to disband the establishment of the Reserve Fleet Service with effect from 3rd July, 1976. As found earlier, drafting of Sailors to the Reserve Fleet Service was not automatic; but dependent on an express order to be passed by the competent Authority in that behalf on case-to-case basis. The Sailors did not have a vested or accrued right for being placed in the Reserve Fleet Service. Hence, no right of the Sailors in active service was affected or taken away because of the Policy dated 3rd July, 1976."

11. We have observed that judgment of AFT Mumbai dated 05.05.2014 on a bunch cases, is not relevant with the present case, as relied by the applicant, being based on different facts and deals partly with condonation of shortfall in service to earn reservist pension of those who have served more than 14 years of service but less than 15 years, whereas in the present case applicant is praying reservist pension after combing both colour and reserve service, without serving in reserve but treating it total 15 years.

12. When we examine the conditions of service which were applicable to the applicant, we find that the terms and conditions of service of personnel enrolled in the Air Force as 'Airman' were governed by AFI (I) 12/S/48, as amended from time to time. As per amendment No. 13 dated 13 April 57 of ibid AFI, the initial period of

engagement of personnel enrolled in the IAF as an Airman was 09 years Regular Service and 06 years **Reserve Liability**. Later an amendment to AFI 12/S/48 was issued by the Govt. of India vide Corrigendum 7 dated 29.03.1969 and the initial period of 09 years regular engagement was enhanced to 15 years w.e.f. 05.08.1966. Further, provisions were also available that Airman already serving their initial period of 09 years engagement may, if they so decide, contract for 15 years engagement provided those who fail to attain the rank of Corporal within 09 years engagement will, however, be discharged. The applicant's initial term of engagement was 9 years Regular Service and he did not opt to contract for 15 years of engagement and thus, he was discharged from regular service w.e.f. 28.09.1971 under the clause "Other Reason".

13. We are in agreement with the respondents that there is a clear distinction between 'Reserve Liability' and 'Reserve Service'. Reserve Liability is the condition or term of engagement in which an Airman is liable to be transferred to any Air Force Reserve if and when constituted. Air Force Reserve has been defined as any of the Air Force Reserves raised and maintained under Reserve and Auxiliary Air Force Act, 1951 and the Competent Authority may, by general or special order, transfer any Airman, who under the terms and conditions of his service is liable to serve in Reserve, to any Air Force Reserve, if and when constituted and thus, **transfer of any Airman to any Air Force Reserve is not automatic**.

14. The applicant was enrolled in the Air Force on 29.09.1962 and his initial period of engagement was 09 years Regular Service only. Hence, his perception of 09 years Regular Service and 06 years Reserve Service is incorrect. It is further clear from the content elaborated above, that transfer of any Airman to any Air Force Reserve is not automatic and thus, his willingness to serve in any Air Force Reserve is not in consonance with Reserve and Auxiliary Air force Act, 1951. In this regard we are guided by the very clear interpretation of this matter by the Hon'ble Supreme Court in the ***T.S. Das & Ors*** (supra). For sake of convenience, this para is reproduced below :-

> "15. In absence of an express order of the Competent Authority to take the applicants on the Fleet Reserve Service, the moot question is: whether the applicants can be treated as deemed to be in the Fleet Reserve Service on account of the stipulation in the appointment letter - that on completion of 10 years of Naval Service as a Sailor, they may have to remain on Fleet Reserve Service for another 10 years. That condition in the appointment letter cannot be read in isolation. The governing working conditions of Sailors must be traced to the provisions in the Act of 1957 or the Regulations framed thereunder concerning service conditions. From the provisions in the Act of 1957, there is nothing to indicate that the Sailor after appointment or enrolment is "automatically" entitled to continue in Fleet Reserve Service after completion of initial active service period of 10 years. The provisions, however, indicate that on completion of initial active service of 10 years or enhanced period as per the amended provisions is entitled to take discharge in terms of Section 16 of the Act. The applicants assert that none of the applicants opted for discharge. That, however, does not mean that they would or in fact have continued to be on the Fleet Reserve Service after expiration of the term of active service as a Sailor. There ought to have been an express order issued by the competent Authority to draft the concerned applicant in the Fleet Reserve Service. In absence of such an order, on completion of the term of service of engagement, the concerned sailor would stand discharged. Concededly, retention on the Fleet Reserve Service is the prerogative of the employer, to be exercised on case to case basis. In the present case, however, on account of a policy decision, the Fleet Reserve Service was discontinued in terms of notification dated 3rd July, 1976".

15. It is not disputed that the Applicant was discharged from service more than 49 years ago and the relevant documents of the Applicant

have since been destroyed except the Long Roll maintained by the Record Office.

16. The issue whether the Applicant is entitled to pension has to be resolved by perusing the relevant Regulations governing Reserve Service and conditions governing transfer to Reserve Service. As per Regulations 136(a) of the Regulations for the Air Force, 1961, only the period actually served in the "Regular Air Force Reserve" is taken into account for grant of Reservist Pension and not the period of "Reserve Liability" as Reserve Liability is the condition or term of engagement in which an Airman is only liable to be transferred to any Air Force Reserve if and when constituted but is not actually so transferred. However, the provisions for the constitution and Regulation of Air Force are governed by the Reserve and Auxiliary Air Force Act, 1951. "Air Force Reserve" has been defined as "any of the Air Force Reserves raised and maintained" under this Act. Further as per Sub Section 1 of Section 5, the Competent Authority may, by General or Special Order, transfer any Airman, who under the terms and conditions of his service is liable to serve in Reserve, to any Air Force Reserve, if and when constituted and thus transfer of an Airman to any Air Force Reserve is not automatic but the same is done on a specific order by a competent Authority and which is absent in the case of the applicant.

17. From the above, it is clear that a service person is expected to complete Colour Service before he is transferred to Reserve Service and that he may be required to be retained in the Colour Service so

long as a War is imminent or existing or the Establishment to which he belongs to is 10% below strength. It also states that on completion of his minimum period of colour service or an extension of Colour Service, service personnel may be transferred to Reserve if a vacancy exists, otherwise he will be discharged. Therefore, it is evident that transfer to Reserve is not a matter of right, but only if the individual fulfils the requirement of fitness and if vacancy so exists.

18. Resultantly, keeping in mind that the applicant does not fulfill the requisite conditions for grant of pension and in consonance with the provisions of AFI 14/S/48 (as amended) and Regulations 121, 127, 128 & 136 of Pension Regulations for the Air Force, 1961 (Part-1) and the Hon'ble Supreme Court directions in ***T.S. Das & Ors*** (supra), we find that applicant had completed only 9 years of qualifying regular service against the requirement of 15 years to make him eligible for reservist pension, he was not meeting the required criteria for grant of reservist pension and therefore, applicant was denied reservist pension being ineligible in terms of Regulation 121 & 136(a) of Pension Regulations for the Air Force, 1961 (Part-1). The applicant had rightly been paid service gratuity as entitled to him, hence, his claim for grant of reservist pension has rightly been rejected by the respondents as per rules, which needs no interference by this Tribunal.

19. In view of the above, we do not find any illegality or arbitrariness in denying reservist pension to the applicant as per rules. The O.A. deserves to be dismissed. It is accordingly

dismissed. The connected M.A. No.14 of 2021 (Delay condonation application) also stands disposed off.

20. No order as to costs.

21. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Ajnay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: July, 2022
SB