

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.43 of 2013

Wednesday, the 18th day of September, 2013

THE HONOURABLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER - JUDICIAL)

AND

THE HONOURABLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

Ex – CPL (NO239828) Abdul Munaf (Age 70 yrs)
No 3/1314, Mohan Meistry Colony, V Jettihalli,
Dharmapuri Dt, TN 636701.

... Applicant

By Legal Practitioner:
Mr. SP Ilangovan

Vs.

1. Union of India, Ministry of Defence, Rep by:
The Defence Secretary,
Ministry of Defence, South Block,
DHQ Post, New Delhi 110011.
2. The Chief of the Air Staff,
Air Force Head Quarters, Vayu Bhavan,
DHQ Post, New Delhi 110011.
3. Director of Air Veterans,
Subroto Park,
New Delhi 110010.

... Respondents

By Mr. B. Shanthakumar, SPC

ORDER

[Order of the Tribunal made by
Hon'ble Justice V. Periya Karuppiah,
Member(Judicial)]

1. This application has been filed by the applicant seeking for the grant of eligible Reservist Pension and benefits due after calling for the records relating to the impugned order of the respondent made in Air HQ/99798/3/SP/DAV dated 11.3.2013 and for other reliefs.

2. The facts of the case which are necessary for the purpose of consideration would be as follows :-

The applicant was enrolled in the Indian Air Force as Combatant on 15.3.1962 on an engagement for the term of 09 years Regular service and 06 years Reserve service. The applicant ought to have been transferred to the Reserve List on 15.3.1971, but was retained in colour service itself due to Indo-Pakistan war in the year 1971. The applicant took part in 1965 and 1971 Indo-Pakistan wars. Despite the applicant opted for Reserve service, he was released from Air Force on 12.3.1973 on completion of 10 years and 363 days of Regular service due to disbandment of units and establishments and for want of vacancy. The applicant was not transferred to Reserve List.

His character and general behavior during service was exemplary and exceptional. Thus the Air Force has committed breach of contract of engagement of service and the applicant was deprived of his eligibility for Reservist Pension. The applicant sent applications on 6.2.2006 and 9.3.2006 for the grant of Reservist Pension after knowing about the award of Pro-rata Reservist Service Pension for Air Force from newspapers. But they were rejected by Oi/C, Air Force Records, vide letter No.RO/2704/239838/P&W(SG) dated 20.3.2006. The subsequent claim for Reservist Pension through Tamil Nadu State Legal Services Authority dated 12.1.2013 for the grant of Reservist Pension was also rejected by the 3rd respondent without any application of mind through its letter No.Air HQ/99798/3/SP/DAV dated 11.3.2013. The applicant, therefore, requests for setting aside the impugned order and for the grant of Reservist Pension as prayed for in the application.

3. The objections raised by the respondents in the Reply Statement would be as follows :-

The applicant was enrolled in the Indian Air Force on 15.3.1962 and was discharged from service on 14.3.1971 under the clause "On completion of his regular service". He was transferred to Regular Air Force Reserve on 15.3.1971 and subsequently discharged from the Reserve on 12.3.1973

under Rule 38 (1) (iv) of the Res & Aux AF Act Rules, 1953 i.e. "Services No Longer required". He had rendered 01 year and 363 days in Reserve Service, thus total 10 years and 363 days of service (Regular + Reserve) and was paid with Service Gratuity of Rs.1258/-. He was not sanctioned with Reservist Pension as he did not fulfil the minimum prescribed, combined colour and reserve qualifying service of 15 years as required by Regulation 136(a) of Pension Regulations for the Air Force, 1961 (Part-I). The pension of airman is governed by the Pension Regulations for the Air Force, 1961, and as per Regulation-121 of Pension Regulations for the Air Force, the minimum qualifying service required to earn Service Pension is 15 years of Regular Service. Reserve liability period will not be taken into account while computing the qualifying service for the grant of Service Pension. As per provisions of Regulation-144, Special Pension or gratuity may be granted at the discretion of the President, to individuals who are not transferred to reserve and are discharged in large numbers in pursuance of Government policy towards reducing the strength of establishment or of re-organisation, which results in disbandment. The terms and conditions of service of personnel enrolled in Indian Air Force as 'Airman' are governed by Air Force Instructions (India) No.12/Special/48 (AFI (I)12/s/48) issued by Government of India on 24.7.1948, as amended from time to time. As per the said terms and conditions, in Para-12, the initial period of engagement of candidates was 09 years Regular Service and 06 years in the Reserve. An

amendment to the said Rules was issued by the Government of India on 13.4.1957. According to amendment No.13, for the future entrants, on completion of their engagement of Regular Service including extensions and prolongations, they will be liable to service in the Regular Air Force Reserve for a period of 06 years with effect from the date on which their regular engagement expires. From 5.8.1966, the initial period of engagement of airmen was enhanced from 09 years to 15 years Regular Service vide Government of India, MOD letter No.Air HQ/23997/3/PP&R/6800/D(A-III) dated 28.7.1966. The terms and conditions in AFI (I)/12/S/48 was accordingly amended vide Corrigendum 7 to AFI (I)/12/S/48 dated 29.3.1969. The airmen already serving their initial period of 09 years engagement may also be allowed to contract for 15 years of engagement counting from the date of their enrolment, subject to the condition that those who fail to attain the rank of Corporal within 09 years will be discharged. It was advised to the affected airmen that while they had the option to change the initial period of engagement from 09 to 15 years irrespective of other considerations and for those who do not exercise such option, further extension of the service period would depend upon the manning position of the trade at the end of nine years. The Reserve liability and Reserve service are governed by Reserve and Auxiliary Air Force Act 1952. Sub-section 1, clause (a) of Section 5 of the said Act would show that the competent authority may by general or special order, transfer any

airmen to serve in any Air Force Reserve under its terms and conditions of service to the Regular Air Force Reserve. The applicant was thus enrolled on 15.3.1962, his initial term of engagement was governed by the amended provision of AFI(1)/12/S/48 in the letter of Government of India dated 13.4.1957 i.e. 09 years of Regular service and six years in the Reserve liability. The terms and conditions of service of the applicant was nine years of regular service and six years of reserve liability. Since the applicant was liable to serve, there would not be any question of breach of contract as contended by the applicant. The applicant had only 10 years and 363 days of Regular service to his credit against the minimum 15 years of combined colour service (Regular + Reserve) to earn pension under Regulation-136 of Pension Regulations for the Air Force, 1961 (Part-I) and, therefore, the applicant is not eligible for any Reservist Pension. Therefore, the application filed by the applicant seeking for the grant of Reservist Pension is liable to be dismissed.

4. On the pleadings, the following points are found emanated for consideration :-

- 1) Whether the applicant is entitled for setting aside the impugned order in letter No.Air HQ/99798/3/SP/DAV dated 11.3.2013 and

is eligible for the grant of Reservist Pension and the benefits thereunder ?

2) To what relief the applicant is entitled for ?

5. Heard Mr. SP Ilangovan, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Mr. M. Tiwari, JWO (Legal Cell), Air Force Station, Avadi, Chennai, appearing for the respondents.

6. The Learned Counsel for the applicant would submit in his argument that the applicant was enrolled in the Indian Air Force as Combatant on 15.3.1962 and was discharged from service on 12.3.1973, after completing 10 years and 363 days of Regular service and the terms of engagement of the applicant was for 15 years i.e. 09 years Regular service and 06 years Reserve service and the applicant was discharged from Air Force on completion of his Regular service despite the applicant had opted for Reserve service are not seriously disputed by the respondents. He would further submit in his argument that the applicant having been enrolled in the service for 09 years Regular service and 06 years Reserve service under the then existing rules cannot be left without any service pension for no fault of his when he was liable to serve the Air Force during the Reserve service. He

would further submit that when the applicant was under reserve liability, he is entitled for the grant of Reserve Pension after the completion of the Reserve service since the inclusion of Reserve service would complete the qualifying service of 15 years for the grant of service pension. He would also submit that the rejection of any service pension on the part of the respondents is not sustainable. The respondents are liable to pay the pension to the applicant since his service tenure would be 15 years, if both colour service and reserve service are clubbed. He would also submit that the law is well settled that once the terms of service entered with applicant for the enrolment in the Air Force is for 09 years Regular service and 06 years Reserve service, which cannot be withdrawn by the respondents by issuing subsequent orders or through policy letters. He would also bring it to our notice that the provisions of Air Force Instructions (India) No.12/Special/48(AFI(I)12/S/48) issued by Government of India dated 24.7.1948 as amended by AFI(1)/12/S/48 dated 13.4.1957, would govern the enrolment of the applicant in the Air Force and at that time, the initial period of engagement of candidates enrolled was 09 years Regular service and 06 years Reserve service. He would further submit that the claim of the respondents that the applicant was not transferred to the Reserve service and, therefore, he is not entitled for Reservist Pension would not hold water since the respondents have entered into the terms of engagement with the applicant under those AFI orders. He would further submit that the receipt

of gratuity at the time of discharge of the applicant would not in any way hinder the grant of Reservist Pension and the applicant is ready to adjust the gratuity received with the ensuing pension payable to him. He would, therefore, request us to set aside the impugned Order of rejection by the respondent in its letter dated 11.3.2013, and to grant eligible Reservist Pension and benefits to the applicant and to allow the application.

7. The Learned Senior Panel Counsel would submit in his argument that the applicant was no doubt enrolled in the Air Force under the provisions of Air Force Instructions (India) No.12/Special/48(AFI(I)12/S/48) issued by the Government of India dated 24.7.1948, amended by AFI(1)/12/S/48 dated 13.4.1957, for 09 years Regular service and 06 years in the Reserve liability, but he was not transferred to Reserve service after completion of his regular engagement. He would further submit that the competent authority constituted by the Government of India decided as to the requirement of Reserve service and since the service of the applicant was not required for Reserve service, he was discharged after completion of Regular service of 10 years and 363 days. The applicant was granted with Service Gratuity of Rs.1258/- payable for 10 years and 363 days of Regular service and the applicant cannot get any benefits since he has accepted the grant of gratuity at the time of his discharge. He would also submit that the principle laid down by the Principal Bench in T.A.No.564/2010 cannot be applied in this

case since the facts of this case are different from the facts of the case discussed in that Judgement. He would further submit that the applicant was not called for any service during Reserve service and, therefore, the present case cannot be equated with the facts of the case in T.A.No.564/2010 before the Principal Bench of Armed Forces Tribunal, New Delhi. He would further submit that the facts of the present case would not warrant the Government of India to add the Reserve service with the Regular service so as to find the qualifying service period at 15 years for the applicant. He would also submit that as per Regulation-136 of Pension Regulations for the Air Force, 1961 (Part-I), the minimum period of qualifying service required for the grant of Reservist Pension is 15 years, but the applicant had admittedly completed only 10 years and 363 days of Regular service. Therefore, he would request us to dismiss the claim of the applicant as devoid of merits and to dismiss the application.

8. We have given anxious thoughts to the arguments advanced on either side. We have also perused the documents filed on either side.

9. **Points 1 & 2:** On a careful perusal of the application and the Reply Statement, we came to understand that the applicant was enrolled in the Indian Air Force on 15.3.1962 as 'Combatant' for a period of 09 years in

Regular service and for a period of 06 years in Reserve service. It is also an admitted fact that at the time of applicant's enrolment, the Air Force Instructions (India) No.12/Special/48(AFI(I)12/S/48) dated 24.7.1948 as amended by AFI(1)/12/S/48 dated 13.4.1957, was in force and according to the said AFI orders, the service conditions of the applicant have to be considered. The claim of the applicant that his terms of service was entered for a period of 09 years Regular service and for a period of 06 years Reserve service has been admitted by the respondents in their Reply Statement in several occasions. The only point raised by the respondents in support of the impugned order and for the rejection of Reservist Pension was that the applicant was not transferred to Reserve service by the respondents and the applicant had also received the gratuity and other benefits at the time of his discharge from Air Force after 10 years and 363 days of Regular service. For better understanding of the terms of service conditions of the applicant, the AFI orders, which were prevalent at the time of his enrolment, are necessarily to be scrutinised. The AFI Order No.12/Special/48 (AFI(I)12/S/48) issued by the Government of India on 24.7.1948, would run as follows :-

"12. Terms of Engagement: Candidates will be enrolled for nine years Regular Service and six years in the Reserve. The period of engagement will count from the date of enrolment."

10. It was amended by another Order AFI(1)/12/S/48 dated 13.4.1957, which reads as follows :-

" Insert the following as sub-clause (iv) to para 13.

(iv) Notwithstanding anything contained in Paras. 12 and 13(i) and (ii) above regarding Reserve Liability, the Reserve Liability of the future entrants will be as under:--

(a) Reserve Liability

On Completion of their engagement of regular service including extensions and prolongations thereof, airmen will be liable to serve in the Regular Air Force Reserve for a period of 6 years with effect from the date following the date on which their regular engagement expires.

(b) Extension of Service in the Reserve

On completion of the initial period of service in the Regular Air Force Reserve, an airman may be required by the Competent Authority to serve in the Regular Air Force Reserve for such further period or periods not exceeding in the aggregate 5 years as it may think fit, vide Section 7 of the Reserve and Auxiliary Air Force Act, 1952.

(c) In the case of airmen who are discharged before the expiry of their regular engagement, the period of the unexpired portion of their regular engagement will be added to their Reserve Liability.

(d) Airmen, who are not transferred to the Regular Air Force Reserve on expiry of their active list engagement, will have the liability to be transferred to the Regular Air Force Reserve any time during the period of the Reserve Liability.

(e) Notwithstanding anything contained in this paragraph, no airman shall be liable to serve in the Regular Air Force Reserve after attaining the age of 55 years, vide Rule 4 of the Reserve and Auxiliary Air Forces Act Rules, 1953. "

11. In the above Orders, it has been categorically laid down that the initial period of engagement of candidate enrolled was 09 years of Regular service and 06 years in the Reserve. This AFI was amended again vide Corrigendum No.7 dated 29 March, 1969. The amendments are:

" 7. A.F.I 12/S/48 regarding Terms and Conditions of Service of Regular Airmen is amended as follows:

Delete existing para 2,13,13A and substitute as under:-

" Period of engagement:- Candidates will be engaged with effect from the date of enrolment for the undermentioned periods of service with the Regular Air Force and in the Regular Air Force Reserve:-

(a) Regular Service;

(i) Candidates will be enrolled initially for 15 years of regular service but those who fail to attain the rank of Corporal within 9 years will be discharged.

Note: Airmen already serving their 9 years of initial engagement may be allowed to contract for 15 years of engagement counting from the date of their enrolment subject to the fulfilment of the condition mentioned in this sub-clause.

(ii) On completion of 15 years regular service, an airman may be allowed, at the discretion of the C.A.S. to extend the period of regular service by 6 years (amended as 2 years vide AFI 19/77 and Corrigendum No.16/77, applicable w.e.f. 01 Sep 1976) to complete 21 years service. On completion of 21 years regular service, further extensions of regular service may be granted for a period of 3 years

at a time or such shorter period as deemed necessary up to the age of 55 years.

(Para 12(a)(i) & (ii) above has been amended vide Corrigenda No.15-56 of AFI/21/79 dated 01 Oct 1979)

(i) Subject to the provisions of succeeding sub-clauses and para 13 (c) on completion of the period of the regular service, including extension, if any, mentioned in (a) above, the airmen will be liable to serve in the Regular Air Force Reserve for a period of 6 years (amended as 2 years vide AFI 19/77 and Corrigendum No.16/77, applicable w.e.f. 01 Sep 1976) with effect from the date on which regular engagement expires.

(ii) In the case of airmen transferred to Regular Air Force Reserve before the expiry of their regular service for which they were engaged, un-expired portion of their regular service will be added to their reserve liability.

(iii) Airmen who are not transferred to Regular Air Force Reserve on the expiry of their regular service will have the liability to be transferred to the Regular Air Force Reserve any time during the period of the reserve liability.

(iv) On completion of the initial period of service in the Regular Air Force Reserve, an airman may be required by the competent authority to serve in the Regular Air Force Reserve for such further period or periods not exceeding in the aggregate five years as it may think fit vide Section 7 of the Reserve and Auxiliary Air Forces Act, Rules 1953.

13. Retention after completion of regular service-(a) If at the time he becomes entitled to be discharged, a state of war exists between India and foreign power, or in the opinion of the Central Government a war is imminent or a state of emergency has been declared or if the strength of the trade in which he is mustered is 10% below the authorized establishment, an airman may, notwithstanding anything contained in para 12(b) above, be retained in the Air Force Service for such further period or periods as the Chief of the Air Staff may order.

(b) During the period of this retention under sub-para(a) an airman will continue to be governed by the normal terms and conditions of service in the same manner as if an extension had been granted to him.

(c) The reserve liability of an airman who has been retained in Air Force service under this paragraph shall be reduced by the period of such retention."

12. When the applicant was enrolled in the IAF on 15.3.1962, the provisions of Para-12 of AFI (I) Order No.12/Special/48(AFI(I)12/S/48) dated 24.7.1948 as amended by AFI(1)/12/S/48 dated 13.4.1957, was only applicable and the provisions of the amendment made vide Corrigendum No.7 dated 29.3.1969, was not available. According to the then existing AFI Order No.12/Special/48(AFI(I)12/S/48), the initial period of Regular service was 09 years and Reserve service was for 06 years. It is also found in the Long Roll that the terms of service of the applicant was 09/06 years. The respondents have also admitted in Paras-6, 7 and 15 of their Reply Statement that the applicant was engaged in 09 years of Regular service and 06 years of Reserve service.

13. The contention of the respondents throughout would be that there is a clear distinction between Reserve liability and Reserve service as provided in the statutory provisions and the applicant who was not transferred to Reserve service would not be eligible for Reservist Pension as he did not

complete 15 years of combined colour service. For that, we have to look into the provisions of Service Pension for the airmen:-

"14. Section 121 of Pension Regulations for Air Force 1961 Part II stipulates "Unless otherwise provided for, the minimum qualifying regular service for earning a service pension is 15 years". Section 126 of the said Regulations stipulates "An individual transferred to the reserve after earning a service pension shall be granted such pension from the date of his transfer". Under the provision of Section 121 the petitioner is not entitled to service pension since he has not completed 15 years of regular service. However, Section 136 of the said Regulations come to the petitioner's aid:

RESERVIST PENSION

" 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 on 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.

(c) Where a reservist elects to receive a gratuity in lieu of pension under the above clauses, its amount shall, in no case, be less than the service gratuity that would have accrued to him under regulation 128 based on the qualifying regular service, had he been discharged from regular service.

Note: The option to draw a gratuity in lieu of pension shall be exercised on discharge from the reserve and once exercised shall be final. No pension/gratuity shall be paid until the option has been exercised. "

Had he been transferred to reserve service he would have been eligible for pension under the provisions of Section 136(a). Admittedly he was paid the gratuity. But he was probably unaware of the implications of gratuity payment. He was not transferred to Reserve consequent to a decision taken during Air Force Commanders' Conference held on 23 Aug 1972 details of which are contained in a letter dated 31 October 1972 produced by the respondents. The relevant extracts are:

"1. In the Air Force Commanders' Conference held on 21-23 Aug 72 it was decided that the Reserve scheme should be suspended....."

2. As a result of this, it has been decided that no airman will be transferred to the Regular Air Force Reserve on expiry of his regular engagement."

What emerges is that the respondents unilaterally decided to suspend the Reserve Scheme thus depriving the petitioner of his pension. Further, the regular Air Force Reserve Airman mentioned about the Commander's Conference had decided that the Reserve Scheme should be suspended cannot be enforced because it is against the above said rule.

14. We find two cases where the individual had not been transferred to Reserve List and was denied pension for the combined service. In the case of **PG Hariappa vs. UoI and Ors.** in OA-1 of 2011 before AFT Chennai Bench, the petitioner had served for less than 15 years and had requested for grant of pension. The order was:

"Admittedly, the applicant had total service of 10 years and 15 days as admitted by the respondents in their reply statement and also as seen from the discharge certificate. Under such circumstances, We are of the considered view that the applicant is entitled to his pension as per

Regulation 164 r/w 136 of the Pension Regulations for the Army 1961, Part-I. But, even though the applicant was discharged on 1st April 1955, he kept quiet for nearly 40 years and for the first time he approached the V Central Pay Commission, Government of India, only on 05.08.1994. Under such circumstances, for the latches on his part, the monetary benefit is to be restricted to from August 1994 even though he is entitled for the pension from 2nd April 1955. Point is answered accordingly.

7. In fine, the application is allowed and the applicant is declared entitled to his service pension as per Regulation 164 r/w 136 of the Pension Regulations for the Army 1961, Part I. The monetary benefit be given effect to only from August 1994."

15. In the case of **K Sivaraman vs. UoI and Ors.** in TA-53 of 2010 before Kochi Bench of AFT, the Order was:

"11. In the result, the Transferred Application is disposed of in the following manner:

The claim of the petitioner that he is entitled to get service pension and retirement gratuity are rejected.

It is declared that petitioner is entitled to get reservist pension, treating that he had completed 13 years and 13 days of colour service and 6 years and 253 days of reserve service."

16. The respondents cite O.A.13 of 2011 before AFT Mumbai. This was a joint case filed by 27 applicants seeking pension benefits. They had been discharged after regular service of different durations and not transferred to Reserve service. The Order provided relief to the applicants who were eligible. The Order in respect of those who were not found eligible reads:

" As rightly brought out by the respondents, the applicants in their OA have not actually relied upon any statutory provisions for claiming pensionary benefits as also all applicants are not similarly placed. On evaluation of each applicants case on merit, we agree that the applicants are not on the same footing and hence there is a need to categorise them and rule accordingly. Further, they have not specified what type of pension, whether it be Service Pension or Reservist Pension or any other type of pension which the applicants feel that they so rightly deserve to be given. We therefore feel that the applicants case is not on "terra firma" of statutory provisions quoted above and hence we

cannot be persuaded to grant relief merely on the basis of principles of promissory estoppels."

17. Now, the question that needs our attention is whether the Reserve liability period of the applicant is to be taken into consideration, thus making him eligible for pension under Section-136(a) of the Pension Regulations for the Air Force, 1961 (Part-I). We turn to the case of **Shri Sadashiv Haribabu Nargund and Ors. Vs. UoI and Ors.** in TA No 564 of 2010 before the Principal Bench of AFT. Relevant extracts of the Order passed by the Hon'ble Tribunal on 12 January 2011 are as follows:

"6. It is admitted position that petitioner when recruited in Indian Army, he was under an obligation to serve 9 years as regular service and 6 years as reserve service and that has to be counted for making 15 years for the purposes of qualifying service. The qualifying service for PBOR is 15 years. A similar matter when approached before Hon'ble Kerala High Court, Hon'ble Kerala High Court took a view that the respondent Union of India is bound to take into consideration the reservist service for grant of pension. Against this order an appeal was filed before the Division Bench which was dismissed as is clear from the judgment dated 31st May 2006 in W.P.(C) No. 29497 of 2004. In

that judgment it has been mentioned that a similar order has been passed in earlier writ petitions also. In this connection, our attention was invited to the detailed judgments delivered by the Chennai Bench and the Kolkata Bench which have taken a view relying on the decision given by the Hon'ble Kerala High Court and the two decisions of the Division Bench of same Court held that reserve period is also liable to be counted for the purpose of pension. As a matter of fact, in the initial appointment given to the petitioner it was clearly mentioned that petitioner will have to serve 9 year as regular service and 6 years as reserve service. Subsequently the respondents cannot reverse the situation that since the appointment has been terminated, therefore, they are not entitled to count 6 years reserve service. The respondents are bound by principle of promissory estoppels, that once they made a representation and asked the other party to act on it and petitioner has served for 9 years as regular service and kept him in reserve service for 6 years, they cannot wriggle out of this on the moral ground that subsequently after China War their services were terminated also. This is clear breach of terms and conditions of appointment."

"...We fail to appreciate that once the appointment has been given and petitioners have as per the terms of the appointment given their services to the respondents how can now they back and say that since we have terminated the services of the petitioners, we will not give them benefit of reserved service. This cannot be accepted and respondents cannot be permitted to take this plea."

*"7. The Principle of Promissory Estoppel which has been evolved by Indian Courts in passage of time have been crystalised in various decisions of the Supreme Court. The first case in line is that of **Union of India V. Anglo (Indo)-Afghan Agencies Ltd. (AIR 1968 SC 718)**. Subsequently the various decisions have come, but there is another landmark decision in the case of **Motilal Padampat Sugar Mills V. State of Uttar Pradesh (AIR 1979 SC 621)**. The Lordship **Bhagwati J.** has summed up the principle which reads as under:*

"...where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to rise in the future, knowing or intending that

it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not."

The Lordship has further observed that

"It is elementary that in a republic governed by the rule of law, no one, howsoever high or low, is above the law. Every one is subject to the law as fully and completely as any other and the Government is no exception. It is indeed the pride of constitutional democracy and rule of law that the Government stands on the same footing as a private individual insofar as the obligation of the law is concerned: the former is equally bound as the latter. It is indeed difficult to see on what principle can a Government, committed to the rule of law, claim immunity from the doctrine of promissory estoppels? Can the Government say that it is under no obligation to act in a manner that is fair and just or that it is not bound by considerations of

"honesty and good faith?". Why should the Government not be held to a high "standard of rectilinear rectitude while dealing with its citizen?"

8. Therefore, the principle of equitable promissory estoppel binds the government to stand by their promise and not to be unfair and act in the disadvantage of other party.

9. Similarly in the case of "**Bakul Cashew Co. V. STO (1986) SCC 365**, three principles are evolved in order to protect the applicability of doctrine of promissory estoppel against the government. They are (i) that there was a definite representations by the government, (ii) that the person to whom the representation or promise was made, in fact altered their position by action upon such representation and (iii) that he has suffered some prejudice sufficient to constitute an estoppels.

10. These are three main ingredients in order to judge the action of the state that whether the party has suffered on account of breach of the representation made by the government."

The order further reads :

"12. It is clearly unfair that a person should change his position much less the Government to detriment of citizens. The public interest demands that administration must abide by the promises held out to citizens. It is totally immoral to go back from the promises held out by the mighty state to the detriment of a small people."

18. In the light of the principles laid down by the Hon'ble Principal Bench and Hon'ble Apex Court on promissory estoppels, the Reserve liability of the applicant should have been considered as Reserve service for being reckoned with the Regular service so as to find out the qualifying service of the applicant. If it is done so, the Reserve liability of the applicant should have been counted as Reserve service to be reckoned with Regular service of 10 years and 363 days and the total qualifying service of the applicant would come to 15 years, which would earn a Service Pension for the applicant. The requisition made by the applicant for the grant of Reservist Pension ought to have been accepted by the respondents. But it has been erroneously rejected and the applicant had come before us with the claim for Reservist Pension.

19. In view of the foregoing discussion, we hold that the period of Reserve service should also be taken for qualifying service of the applicant to make

him eligible for pension under Section-136(a) of Pension Regulations for the Air Force, 1961 (Part-I). However, the amount paid as Service Gratuity shall be liable to be recovered from or adjusted in the pension payable to the applicant.

20. Even though the applicant is entitled for claiming the Reservist Pension from the date of completion of Reserve service during the year 1973, the applicant did not raise his claim all these years. He had come forward with this claim by filing the application only on 8.4.2013. The claim of any pension has got a recurring and continuous cause of action and, therefore, we cannot disallow the claim of Reservist Pension since he has not claimed his right immediately after three years from the date of completion of 15 years of service in the year 1977. In view of the application filed on 8.4.2013, his claim would not be barred for three years prior to the said date. This position has been clearly laid down by the Hon'ble Apex Court in the case of **Union of India and others Vs. Tarsem Singh** reported in **(2008) 8 SCC 648**. Therefore, we are of the firm view that the applicant is entitled for the Reservist Pension on and from 8.4.2010 to be calculated in accordance with rules and the respondents are directed to pass a Pension Payment Order and to pay the arrears from the said date till this date within a period of three months from today. The non-compliance of which will

entertain the respondents to pay interest at 9% p.a. from today over the arrears. Accordingly, these points are decided in favour of the applicant.

21. In fine, the applicant is entitled for Reservist Pension to be calculated as per rules from 8.4.2010 and the said payment of pension shall be paid after adjusting the gratuity amount already paid to the applicant apart from issuing a Pension Payment Order to that effect accordingly, within three months from this date. Failing to comply, the applicant is entitled for 9% interest over the arrears of pension from today till the date of compliance.

22. With the aforesaid observations and directions, the application is allowed. However, there is no order as to costs.

23. The Advocate's fee for the Legal aid Counsel appearing for the applicant is fixed at Rs.5000/-, and is directed to be paid by the High Court Legal Services Committee, Chennai.

Sd/-
LT GEN ANAND MOHAN VERMA
MEMBER (A)

Sd/-
JUSTICE V.PERIYA KARUPPIAH
MEMBER (J)

18.9.2013
(True Copy)

Member (J) – Index : Yes / No
Member (A) – Index : Yes / No

Internet : Yes / No
Internet : Yes / No

To,

1. The Defence Secretary,
Ministry of Defence,
South Block, DHQ Post,
New Delhi-110011.
2. The Chief of the Air Staff,
Air Force Head Quarters, Vayu Bhavan,
DHQ Post, New Delhi 110011.
3. Officer-in-Charge,
The Air Force Pension & Welfare (SP)
Air Force Record Office, Subroto Park,
New Delhi-110 010.
4. Mr. SP Ilangovan,
Counsel for applicant.
5. Mr. B. Shanthakumar, SPC
Counsel for respondents.
6. High Court Legal Services Committee,
High Court Campus, Chennai.
7. OIC, Legal Cell,
Air Force, Avadi,
Chennai.
8. Library, AFT, Chennai.

**HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)**

O.A.No.43 of 2013

18.9.2013