

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

(Through Video Conferencing)

OA No.164 of 2018

with

MA No.162 of 2018

Thursday, the 12th day of August, 2021

24

CORAM :

**HON'BLE MR.JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)**

S.No.1060201-Y,

Ex Sep G.Alagarsamy, aged 68 years,

No.16 Prabakaran Street, Hindustan Lever Colony,

Pammal, Chennai 600 075.

.. Applicant

By Legal Practitioner : M/s.MK Sikdar & AQ Choudhury

Vs

1. Union of India rep by Secretary,
Ministry of Defence, New Delhi 110 011

2. The Chief Of Army Staff,
South Block, IHQ of MoD (Army)
New Delhi 110 011

3. The Officer-in-Charge
Armoured Corps Records,
Ahmadnagar, Maharashtra 414 001

4. PCDA (Pensions)
Draupati Ghat
Allahabad, UP 211 014.

.. Respondents

By : Shri V.Balasubramanian, SPC

ORDER

M.A. No. 162/2018

1. Keeping in view the averments made in the Miscellaneous Application and finding that the claim for Pension being a recurring cause of action as laid down by Hon'ble Apex Court in UOI & Ors Vs. Tarsem Singh, reported in (2008) 8 SCC 648, MA is allowed condoning the delay in filing the OA.

O.A. No. 164/2018

1. By way of this Application under Section 14 of the Armed Forces Tribunal Act 2007, the Applicant has prayed for grant of Reservist Pension under Regulation 155 of Pension Regulations for Army 1961 (Part-I).

2. The Applicant was enrolled in the Indian Army on 27.04.1977 with period of engagement as 7 years Regular and 8 years Reserve Service.

3. On completion of 9 years, 64 days of Regular Service, he was discharged on 29.06.1986, under clause "at his own request on compassionate grounds" under Army Rule 13(3) III (iv).

4. The Respondents filed a detailed reply to the Application and have submitted the under mentioned points :

5. The Applicant was enrolled in the Indian Army on 22.04.1977 and discharged from service on 29.06.1986. The Applicant had 9 years, 2 months and 3 days of service. Since the Applicant had not qualified the minimum requirement for earning Service Pension, he was not granted any pension.

6. Being a non-pensioner, service documents of the Applicant have been destroyed on expiry of 25 years of the retention period in accordance with Para 592 to 596 of Defence Service Regulation for the Army 1987 (Revised).

7. Since the Applicant was discharged from service at his own request on compassionate grounds, he has not completed 15 years of Qualifying Service, he is not entitled for Reservist Pension. The Respondents had also taken objection that the Applicant approached this Tribunal after a lapse of 31 years.

8. However, while perusing the copy of Long Roll placed by the Respondents the cause of discharge is mentioned as "Discharged from service at his own request on compassionate grounds with Reserve Liability upto 29 June 1988". Thus, it is apparent that the Applicant was discharged from service at his own request.

9. Now the question arises as to whether the Applicant is entitled for Reservist Pension?

10. Entitlements and Eligibility for grant of Reservist Pension are given in Para 155 of Pension Regulations for the Army, 1961 (Part-1), which reads as under:-

"155. (a) A Reservist who is not in receipt of a Service Pension may be granted, on completion of the prescribed combined Colour and Reserve Qualifying Service, a Reservist Pension or Gratuity in lieu at the appropriate rate indicated in regulation 156.

(b) A Reservist who is not in receipt of Service Pension and whose period of engagement was more than 15 years but whose Qualifying Service is less than the period of engagement but not less than 15 years may on completion of the period of engagement or on earlier discharge for any cause other than at his own request be granted a Reservist Pension at Rs. 10 p.m. or a Gratuity of Rs. 750 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 him under regulation 140 based on the Qualifying Colour Service, had he been discharged from the Colours.

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."

11. Entitlements and Eligibility for grant of Special Pension are given in Para 164 of Pension Regulations for the Army, 1961 (Part-1), which reads as under:-

"Special Pension or Gratuity may be granted, at the discretion of the President, individuals who are not transferred to the Reserve and are discharged in large numbers in pursuance of government policy.

*(i) of reducing the strength of Establishment of the Army
or*

(ii) of re-organisation, which results in disbandment of any units/formation".

12. A case of similar nature was listed before the Hon'ble Supreme Court in the case of T.S. Das & Ors. Vs. UOI & Anr. (Civil Appeal No 2147/2011 decided on 27.10.2016). On the point whether the personnel who were discharged from service

without being transferred to Reserve Establishment are entitled to Reservist Pension or Special Pension, the Hon'ble Supreme Court decreed as under:-

"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 there-under, 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 there-under 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 detriment. 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. Even the argument of the original Applicants that the interpretation of expression "if required" occurring in Regulation 269(1) bestows unequal bargaining power on the Government is devoid of merits. The validity of Regulation 269(1) was not questioned before the Tribunal nor any relief was claimed in that behalf. Therefore, this argument is unavailable to the original Applicants. In any case, on a conjoint reading of the Regulations governing the Service Conditions of the Sailors and more particularly having noticed that it is the prerogative of the Government to place the Sailors to the Fleet Reserve Service; and at the same time option was given to the Sailors to opt for discharge in terms of Section 16 of the Act, we fail to understand as to how such dispensation can be termed as unequal bargaining power. The consequence of not placing the concerned Sailor to the Fleet Reserve Service may result in deprivation of Reservist Pension. However, original Applicants may be entitled to get a Special Pension under Regulation 95 of the Pension Regulations, being a separate dispensation for such Sailors, unless discharged by way of punishment under Regulation 279.*

22. *Accordingly, we hold that none of the Applicants before the Tribunal are entitled for Reservist Pension in terms of Regulation 92 of the Naval (Pension) Regulations, 1964. The*

Tribunal has relied on other decisions of other Benches of the same Tribunal, which for the same reason cannot be countenanced.

Re: Special Pension

23. *The next question is whether the Sailors appointed before 1973 were entitled for a Special Pension, in terms of Regulation 95 of the Pension Regulations. Indeed, this is a special provision and carves out a category of Sailors, to whom it must apply. Discretion is vested in the Central Government to grant Special Pension to such Sailors, who fall within the excepted category. Two broad excepted categories have been noted in Regulation 95. Firstly, Sailors who have been discharged from their duties in pursuance of the Government policy of reducing the strength of Establishment of the Indian Navy; or Secondly, of reorganization, which results in paying off of any ships or Establishment. In the present case, Clause (i) of Regulation 95 must come into play, in the backdrop of the policy decision taken by the Government as enunciated in the notification dated 3rd July, 1976. On and from that date, concededly, the Fleet Reserve Service has been discontinued. That, inevitably results in reducing the strength of the Establishment of the Fleet Reserve of the Indian Navy to that extent, after coming into force of the said policy. None of the Sailors have been or could be drafted to the Fleet Reserve after coming into force of the said Policy - as that Establishment did not exist anymore and the strength of Establishment of the Indian Navy stood reduced to that extent. Indisputably, the Sailors appointed prior to 3rd July, 1976, had the option of continuing on the Fleet Reserve Service after expiration of their active Service/ empanelment period. As noted earlier, in respect of each Applicants the appointment letter mentions the period of appointment as 10 years of initial active Service and 10 years thereafter as Fleet Reserve Service, if required. The option to continue on the Fleet Reserve Service could not be offered to these Applicants and similarly placed Sailors, by the Department, after expiration of their empanelment period of 10 years or less than 15 years as the case may be. It is for that reason, such Sailors were simply discharged on expiration of their active Service/ empanelment period. In other words, on account of discontinuation of the Fleet Reserve Establishment of the Indian Navy, in terms of policy dated 3rd July, 1976 it has entailed in reducing the strength of Establishment of the Indian Navy to that extent.*

24. *x x x*

25. *Thus understood, all Sailors appointed prior to 3rd July, 1976 and whose tenure of initial active Service/ empanelment period expired on or after 3rd July, 1976 may be eligible for a Special Pension under Regulation 95, subject, however, to fulfilling other requirements. In that, they had not exercised the option to take discharge on expiry of engagement (as per Section 16 of the Act of 1957) and yet were not and could not be drafted by the competent Authority to the Fleet Reserve because of the policy of discontinuing the Fleet Reserve Service w.e.f. 3rd July, 1976. The cases of such Sailors (not limited to the original Applicants before the Tribunal) must be considered by the Competent Authority within three months for grant of a "Special Pension" from three years prior to the date of Application made by the respective Sailor and release payment after giving adjustment of Gratuity and Death-cum-Retirement-Gratuity (DCRG) already paid to them from arrears. They shall be entitled for interest @ 9% P.A. on the arrears, till the date of payment.*

13. From the above, it is apparent that the Applicant was discharged from service at his own request on compassionate grounds. Therefore, in view of the principles settled by the Hon'ble Apex Court in the case of T.S. Das & Ors. Vs. UOI & Anr. (supra), the Applicant is not entitled to Reservist Pension or Special Pension.

14. Moreover, the Applicant kept silent for 31 years after discharge from service and did not pursue his case. Now, fully cognizant that his service documents have been destroyed after expiry of the retention period, he has preferred the present OA for grant of Reservist Pension. Therefore, in the light of the principles laid down by Hon'ble Apex Court in the case of C. Jacob Vs. Director of Geology and Mining & Anr., reported in (2008) 10 SCC 115, the stale claim cannot be revived for grant of Pensionary benefits.

15. Resultantly, this Application is Disposed Off, being devoid of merit.

16. No order on costs.

**Sd/--
(RAJENDRA MENON)
CHAIRPERSON**

**Sd/--
(BOBBY CHERIAN MATHEWS)
MEMBER (A)**

vp/-