

IN THE ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

OA No.117 of 2021
With
MA No.118 of 2021

1.2.2023

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CORAM

HON'BLE MR JUSTICE K HARILAL, MEMBER (J)

HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

Ex Sep M Gopal
No. 2583399N
S/o Muthu
Mottur Village, Gonur Post
MEttur Taluk, Salem District

..... Applicant

By Legal Practitioner: S Meenakshi & K Udayaselvi, Advocates
vs.

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

2. The Chief of Army Staff
Army Headquarters
South Block, New Delhi- 110 001

3. The Accounts Officer (Pension)
Office of the Principal Controller of Defence Accounts
(Pension)
Draupadi Ghat Allahabad UP 211 014

4. Madras Regiment
Abhilekh Karyalaya
Records, the Madras Regiment
PIN 900458, C/o 56 APO

... Respondents

By : M Karthikeyan, SCGPC

ORDER

1. The Applicant has filed this OA to set aside the Impugned Order G-2/II/Spl/2018 dated 14.12.2018 passed by the 3rd Respondent, and direct the Respondents to grant Pension w.e.f. 31.12.1989 with all consequential benefits.

2. The Learned Counsel for the Applicant submits that the Applicant was enrolled on 12.11.1980. The Applicant submits that in 1985 his father and his elder brother died. Hence, the Applicant, due to domestic problems, requested to discharge him on voluntary retirement but the same was orally rejected. The Applicant submits that his earlier request for Voluntary Retirement was sanctioned and accordingly he was discharged on 31.12.1989 on completion of 9 years 1 month and 20 days of Qualifying Service though he was willing to continue in service. The Applicant submits that he had sent several representations but there has been no reply. The Applicant further sent a representation on 15.11.2018 for grant of Pension but the same was rejected vide the Impugned Order dated 14.12.2018. Aggrieved by the action of the Respondents, the Applicant has filed this OA seeking relief as prayed for.

3. The Learned Counsel for the Respondents submits that the service documents of the Applicant have already been destroyed after the prescribed period of retention of 25 years from the date of discharge being a non-pensioner. As per the records, the Applicant was enrolled in

the Madras Regiment on 12.11.1980 and discharged from service with effect from 31.12.1989 on compassionate grounds under Army Rule 13(3)III (iv) at his own request before fulfilling the conditions of enrolment after rendering 9 years, 1 month and 19 days of Qualifying Service. The Learned Counsel further submits that as per Para 132 of the Pension Regulations Act (Part I) for the Army, 1961, the minimum qualifying service for earning Service Pension is 15 years and since the Applicant has not completed the minimum qualifying service, he was not granted Service Pension. The Respondents also submit that the Applicant has filed this OA for grant of Service Pension after a lapse of more than 31 years from the date of discharge from service and relies on the judgement of the Hon'ble Supreme Court in (2010) 8 SCC 685 Balwant Singh vs Jagdish Singh & Ors. Hence, the Respondents pray to dismiss the OA being devoid of merit and grounds of delay and laches.

4. We have heard the Learned Counsel for the Applicant as well as the learned Central Government Senior Panel Counsel appearing for the Respondents and perused the documents placed on record.

5. It is not disputed that

(a) The Applicant was enrolled in the Madras Regiment on 12.11.1980 and discharged from service with effect from 31.12.1989 on compassionate grounds under Army Rule 13(3)III (iv) at his own request before fulfilling the conditions of enrolment after rendering 9 years, 1 month and 19 days of Qualifying Service.

(b) The service documents of the Applicant have already been destroyed after the prescribed period of retention of 25 years from the date of discharge being a non-pensioner.

6. The issue which need to be determined before deciding the outcome of this Application is whether the Applicant entitled to Service Pension?

It is abundantly clear that Rule 132 of the Pension Regulations for the Army 1961 (Part I) stipulates that

“The Minimum period of qualifying service (without weightage) actually rendered and required for earning Service Pension shall be 15 years.”

The Applicant was discharged from service prematurely at his own request with qualifying service of 9 years 1 month and 19 days which is well short of the minimum mandated Pensionable Service.

7. We also find that the reasons for filing the OA after such a protracted delay of 10870 days cannot be justified as per 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 wherein the stale claim cannot be revived for grant of Pensionary benefits.

8. In fine, we are of the considered view that the Application is bereft of strength on all counts and merits dismissal.

9. The OA is disposed off accordingly. The connected MA also stands disposed off.

10. No order on Costs.

Sd/-

**LT GEN BOBBY CHERIAN MATHEWS
MEMBER (A)**

Sd/-

**JUSTICE K HARILAL
MEMBER (J)**

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To

1. S Meenakshi & K Udayaselvi, Counsel for Applicant
2. M Karthikeyan, SCGPC for Respondents
3. OIC, Legal Cell (Army), Dakshin Bharat Area, Chennai
4. Library, AFT, RB, Chennai

**HON'BLE JUSTICE K HARILAL
MEMBER (J)
AND
HON'BLE LT GEN BOBBY CHERIAN MATHEWS
MEMBER (A)**

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