

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.39 of 2013

Monday, the 19th day of August, 2013

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

AND

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

P. Dhanusmurthy
Ex AC 1 (No.251594) Age 70 Years
Sinnamalai Kuntru Post,
Ettayapuram-Taluk,
Tuticorin District,
Tamilnadu 628 902.

... Applicant

By Legal Practitioner:
Mr. SP Ilangovan

Vs.

1. The Defence Secretary,
Ministry of Defence,
DHQ Post, South Block,
New Delhi-110 001.
2. The Chief of the Air Staff,
Air Force Head Quarters,
VayuBhavan, DHQ Post,
New Delhi-110 011.
3. Officer In-Charge,
The Air Force Pension & Welfare (SP)
Air Force Record Office, Subroto Park,
New Delhi-110 010.
4. The PCDA (Pension),
Draupathighat,
Allahabad, UP 211014.

...Respondents

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 for the grant of eligible Reservist Service pension and benefits due to the applicant after setting aside the impugned Order of the 3rd respondent made in RO/2801/1/Cell/10/P&W (SP) dated 12.1.2012, and for other reliefs.

2. The case of the applicant as stated in the application would be as follows :-

The applicant was enrolled in the Indian Air Force as Combatant on 19.10.1963, on the engagement terms of 09 years Regular Service and 06 years Reserve Service. After completion of 09 years colour service on 19.10.1972, the applicant was retained for five additional months due to national emergency. Due to disbandment of units and for want of vacancy in the Reserve List, the applicant was discharged from Regular Colour Service on 9.3.1973. The applicant took part in 1965 and 1971 Indo-Pakistan wars and was decorated with several medals. He had rendered 09 years and 141 days of regular active service in the Indian Air Force, and his general behavior and character was assessed as "Very Good". But he was not paid any pension and had been running from pillar to post for getting

Reservist Service Pension. He did not get any reply for his 1st application for pension dated 5.4.1973. He underwent by-pass surgery recently and due to poor health condition and poverty, he could not pursue the matter. After learning about the decisions of Armed Forces Tribunal for grant of Reservist Pension, he made an application dated 11.11.2011 to the Air Force Records which was rejected arbitrarily vide letter dated 12.1.2012 and the said letter is impugned in this application. The applicant did not opt to be discharged from service. The Air Force authorities have committed breach of contract by discharging him before completion of reserve service and deprived him the Reservist Service Pension. The applicant relied upon the Orders passed by AFT, Chennai, in O.A.No.1/2011 and O.A.No.7/2011 and AFT, Kolkatha, in O.A.No.53/2011 for payment of Reservist Service Pension and requests the Tribunal to allow the application and to grant the Reservist Service Pension to him.

3. The objections raised by the respondents in the reply statement would be as follows:-

The service documents of the applicant were destroyed after the stipulated retention period of 25 years, in accordance with Section 6, Chapter XVIII of Regulation 1026 of Regulations for the Air Force. Before destruction of the original documents, important details such as service and other particulars of the applicant were preserved in a single sheet called

"Long Roll". The applicant was enrolled in Indian Air Force on 19th October 1963 and discharged from service on 8th March 1973 under the clause, "with gratuity otherwise than at his own request". He was not transferred to reserve service. However, he was paid with the Service Gratuity of Rs.2381/- and DCRG of Rs.1386.60. 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 and reserve liability period will not be taken into account. With effect from 05 August 1966, the initial period of engagement of airmen was enhanced to 15 years regular service vide GO/MoD Lr.No.Air HQ/23997/3/PP&R/6800/D (A-III), dated 28 July 1966. Since the applicant was on the strength of IAF during the intervening period, the proviso to Corrigendum 7 to AFI 12/S/48 that "*those airmen who fail to attain the rank of Corporal within 9 years will be discharged*", is applicable to him. Thus, the applicant was discharged under the clause, "with gratuity otherwise than at his own request" and he was paid Service Gratuity and DCRG. The applicant's contention that he was discharged from service without being transferred to reserve service is not correct. The judgments cited by the applicant are not applicable to the facts and circumstances of this case. Therefore, the application filed by the applicant seeking for the grant of Reservist Service Pension is liable to be dismissed.

4. On the pleadings, the following points are found emerged for consideration.

- 1) Whether the applicant is entitled for setting aside the impugned order in Letter No. RO/2801/1/Cell/10/P&W (SP) dated 12.1.2012 and is eligible for the grant of Reservist Service Pension and the benefits thereunder?
- 2) To what relief, the applicant is entitled for?

5. Heard Mr. B.A. Thayalan, Learned Counsel representing Mr. SP Ilangovan, Learned Counsel for the applicant and Mr. B. Shanthakumar, Learned Senior Panel Counsel assisted by Mr. R.K. Shukla, MWO, 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 19.10.1963 and was discharged from service on 9.3.1973, after completing 09 years and 141 days of regular service and the terms of engagement of the applicant was for 15 years to get service pension i.e. 09 years regular service and 06 years reserve service and the applicant was discharged from Air Force on completion of his colour service despite the applicant had not opted for discharge, 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 in the reserve service. He would further submit that when the applicant was under reserve liability, he is entitled for the grant of Reservist Service Pension after the completion of the reserve service period since the inclusion of reserve service period 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 under the promissory estoppel, 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, it cannot be withdrawn by the respondents by issuing any subsequent orders or policy letters. He would 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 case of the respondents that the applicant was not transferred to the reserve service and, therefore, he is not entitled for Reservist Service Pension would

not hold water since the respondents are promissory estopped by entering 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 12.1.2012 and to grant eligible Reservist service pension and other benefits to the applicant by allowing 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 Government of India dated 24.7.1948 (Annexure R-4), amended by AFI(1)/12/S/48 dated 13.4.1957 (Annexure R-5), for 09 years regular service and 06 years in the reserve liability, but he was not transferred to reserve service after the completion of his regular engagement. He would also bring it to our notice that with effect from 5.8.1966, initial period of engagement of airmen was enhanced to 15 years regular service vide letter No.Air HQ/23997/3/PP&R/6800/D (A-III) issued by Government of India, Ministry of Defence, dated 28.7.1966 (Annexure R-6). Accordingly, it was amended vide Corrigendum 7 to AFI 12/S/48 dated 29.3.1969 (Annexure R-

7). He also submitted that vide letter No.Air HQ/40252/2/PA-1 issued by Government of India, MoD dated 7.9.1966 (Annexure R-8), there was a provision that airmen serving initial engagement period of 09 years may be allowed to contract for 15 years from the date of enrolment subject to condition that if they fail to attain the rank of Corporal within 09 years, they will be discharged without transferring to reserve service. The terms and conditions with regard to reserve liability and reserve service are governed by the Reserve and Auxiliary Air Forces Act 1952 (Annexure R-9). The applicant's contention that he was discharged from service after completion of 09 years and 141 days of regular service without being transferred to the reserve service is not correct. Para 2 of Air Force Record Office letter No.RO/S 2502/ERW(DIS) dated 31.10.1972 (Annexure R-10) says that no airman will be transferred to the regular engagement, but will be discharged on completion of regular engagement, if not willing for extension of service. He would further submit that the competent authority constituted by the Government of India had decided as to the requirement of reserve service and since the service of the applicant was not required after the extended period of 141 days, he was discharged after completion of regular service of 09 years and 141 days. The applicant was also granted service gratuity and other benefits payable for 09 years and 141 days of regular service and the applicant cannot get any pensionary benefits since he had accepted the grant of gratuity and other benefits at the time of his discharge. As per Regulation-121 of Pension Regulations for the Air Force, 1961 (Part-I), the

minimum qualifying service for earning service pension is 15 years of regular service. 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 09 years and 141 days of regular service. Given the fact that the last rank (classification) held as on discharge is 'AC1', the applicant could not have been allowed to contract for 15 years of engagement as he failed to attain the rank of Corporal within 09 years 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 records.

9. **Point No.1:** On a careful perusal of the Original Application and the Reply Statement, we came to understand that the applicant was enrolled in the Indian Air Force on 19.10.1963 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 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 09 years and 141 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 (1)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 of 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 on 19.10.1964, 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 Para-7, 13 and 21 that the applicant was 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 laches 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. Now, the question that needs our attention is whether the reserve liability period of the petitioner is to be taken into consideration thus making him eligible for pension under Section-136(a) of the Pension Regulations for Air Force. 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 do 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."

17. 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 nine years 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 by the respondents and the applicant had come before us with the claim for Reservist Pension. Therefore, it has become necessary to set aside the impugned Order No.RO/2801/1/Cell/10/P&W (SP) dated 12.1.2012, as not sustainable. Accordingly this point is decided.

18. **Point No.2:** 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 applicant has laid his claim before the Tribunal by filing this application only on 11.3.2013. As per the principles laid down in **Tarsem Singh's case** by the Hon'ble Apex Court, the applicant shall be entitled to the claim only from 11.3.2010 (i.e.) the date three years prior to the date of the application. The amount paid as gratuity shall be liable to be recovered from or adjusted in the pension payable to the applicant.

19. Therefore, we are of the firm view that the applicant is entitled for the Reservist Service Pension to be calculated in accordance with rules and the respondents are directed to pay the arrears of pension on and from 11.3.2010, after adjusting the gratuity amount already paid to the applicant and pass a Pension Payment Order to that effect. The non-compliance of which will entertain the respondents to pay interest at 9% per annum from today over the arrears. Accordingly, these points are decided in favour of the applicant.

20. In fine, the applicant is entitled for Reservist Service Pension to be calculated as per rules and the said pension shall be paid on and from 11.3.2010, 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.

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

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

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

19.8.2013
(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,
DHQ Post, South Block,
New Delhi-110 001.
2. The Chief of the Air Staff,
Air Force Head Quarters,
Vayu Bhavan, DHQ Post,
New Delhi-110 011.
3. Officer In-Charge,
The Air Force Pension & Welfare (SP)
Air Force Record Office, Subroto Park,
New Delhi-110 010.
4. The PCDA (Pension),
Draupathighat,
Allahabad, UP 211014.
5. Mr. SP Ilangovan,
Counsel for applicant.
6. Mr. B. Shanthakumar, SPC
Counsel for respondents.
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)

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