

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI**O.A. No. 18 of 2014****Wednesday, the 19th day of August, 2015**

The Honourable Justice V.Periya Karuppiah
 (Member-Judicial)
 and
 The Honourable Lt Gen K Surendra Nath
 (Member-Administrative)

Major (Retd) G.R.Nagabhushana
 Service No.SS-34368 P
 Son of – Mr.G.N.Ramanna, aged about 49 years
 No.2/171 (New No.4/285), Mudalayandavan Nagar
 Agarmel, Post – Nazarathpet, Poonamallee
 Chennai – 602 103

...Applicant

By Legal Practitioners:
 M/s M.K.Sikdar and S.Biju

vs

1. Union of India
 Through The Secretary, Govt.of India
 Ministry of Defence, New Delhi – 110 011
2. The Adjutant General
 Adjutant General's Branch
 IHQ of MOD (Army), Wing No.7
 2nd Floor, West Block-III, R.K.Puram
 New Delhi – 110 066
3. The Air Officer Commanding
 Air Force Records Office
 Subroto Park, New Delhi – 110 011
4. The PCDA (P)
 G-I, Military, Draupadi Ghat
 Allahabad – 211 014

...Respondents

Mr.M.Dhamodharan, SCGSC [for R1, R2 & R4]
 Mr.K.Ramanamoorthy, CGSC [for R3]

ORDER

[Order of the Tribunal made by
Hon'ble Lt Gen K Surendra Nath, Member (Administrative)]

The applicant, Major (Retd) G.R.Nagabhushana has filed this OA challenging the impugned order dated 03.02.2009 by the 2nd respondent and to quash the same and direct the respondents to grant retirement pension to him with effect from 06.04.1995 with all consequential benefits.

2. The applicant submits that he was enrolled in Air Force on 04.11.1981 as an Airman and subsequently he was selected for commissioning (SSC) in the Indian Army. He had served 8 years 4 months and 5 days in the Air Force and was commissioned in the Army on 09.03.1990 for a period of 5 years. The applicant was subsequently released from the SSC on 06 April 1995 and was not granted service / retiring pension. At the time of retirement, the respondents asked the applicant to execute Option Certificate regarding of grant of service pension etc. in terms of Government of India letter dated 30.10.1987. However, he was advised by the CDA, Allahabad that since he was a Short Service Commissioned officer, his case ought to be dealt with vide MOD letter dated 28 June 1985. The applicant states that the Option Certificate was confusing, contrary and applicable for only Emergency Commissioned Officers. He was confused by the printed format that reflects qualifying service for pension as 15 years and misled the applicant and the applicant signed the Option Certificate in terms of para 6 (a) of SAI 6/S/65, i.e., "to accept any pension (including adhoc increase) / gratuity earned for pre-commissioned service under the rules which would have applied had the officer concerned been discharged on the date immediately prior to that on which he was granted emergency commission, and draw terminal gratuity for EC service". On coming to know that

rules for qualifying service for pension were amended to minimum of 12 years service, he had applied for change of option to 6 (b) of SAI 6/S/65 which entitles him to pension and other benefits, as he had more than 13 years of qualifying service.

3. The applicant submits that there was no reply from the respondents to grant retiring pension or even gratuity and, therefore, he applied a number of times before the 3rd and 4th respondents. *Vide* letters dated 12.04.1999 and 18.09.1999, the applicant forwarded to duly completed claim as advised by the 3rd respondent; however, his option dated 24.02.1995 executed by him was wrong and not in consonance with his first option dated 12.12.1993 and, hence, the applicant again represented before the 3rd respondent on 27.10.1999 to reconsider his 1st option dated 12.12.1993 as final option and that he inadvertently opted for the 2nd option dated 24.02.1995 for counting pre-commissioned service towards pension / gratuity.. The applicant submits that though he had forwarded all relevant papers which was subsequently forwarded by the 3rd respondent to the 4th respondent and he waited for a long time, he had not heard anything regarding grant of retiring pension. Therefore, he represented again to the respondents *vide* letters dated 27.12.1999, 26.08.2003 and 15.11.2005. Even though the 2nd respondent had favourably recommended the case stating that the applicant was eligible for service pension and gratuity, the 4th respondent rejected it *vide* letter dated 07.07.2006 stating that the applicant had opted for pension / gratuity for his pre-commissioned service and terminal gratuity for EC service only. The applicant again appealed to Chief of Army Staff, *vide* letter dated 16.01.2009, the 2nd respondent passed the impugned order dated 03.02.2009 stating that *"since you have opted for pensionary benefits as per para 6 (a) of 6 / S / 65 you are not entitled to any pension / gratuity for your pre-commissioned service and terminal gratuity for Short Service Commission service*

only” Even though more than six months have elapsed since he appealed against the impugned order passed by the 2nd respondent before the 1st respondent *vide* his letter dated 16.05.2013, till date no final order has been passed by the 1st respondent. Therefore, the applicant states that he has approached this Tribunal for grant of service pension as is applicable to him with all consequential benefits.

4. The respondent No.3, in his reply statement would submit that the applicant was enrolled in the IAF on 04.11.1981 and was discharged from service with effect from 08.03.1990 on grant of Short Service Commission in Indian Army. He had rendered 08 years and 120 days of qualifying service with the Air Force at the time of discharge from Air Force and joining the Army.

5. Reply statement of respondents 1, 2 & 4 would run as follows. The applicant was commissioned in the Indian Army on 09.03.1990 and was released from service on 06.04.1995. No service gratuity or DCRG was paid by the IAF on his discharge for the service rendered in the Air Force. The applicant had a total combined service of 13 years and 146 days, i.e., 04.11.1981 to 06.04.1995. At the time of discharge from service, he had opted for grant of gratuity in accordance with para 6 (a) of 6/S/65 and hence he is entitled for pension / gratuity for his pre-commissioned service and terminal gratuity for Short Service Commission only. Even though the applicant had later wanted to change his option to para 6 (b) of the said Army Instruction, i.e., grant of service pension for combined service rendered, this was not possible as the Army Instruction has very explicitly stated that “the option exercised will be unconditional and once exercised will be final”. Therefore, his requests for change of option were not acceded to by the PCDA, Chief of Army Staff and finally by the MOD *vide* their letter dated 21.07.2006 and 03.02.2009. They would further state that as he was an SSC officer, he was required to exercise option as per SAI

6/S/65 which regulates the grant of pension / gratuity to EC and SSC officers and the format of the said option is very clear. Option once exercised is final. They would also state that the officer himself had accepted that he had exercised a wrong option. He ought to have exercised the option carefully taking into account the pros and cons of different options. In view of the foregoing, the respondents submit that the application be dismissed being devoid of merit and substance.

6. We have heard the arguments of M/s M.K.Sikdar and S.Biju on behalf of the applicant and Mr.M.Dhamodharan, learned SCGSC assisted by Maj Suchithra Chellappan, learned JAG Officer (Army) appearing on behalf of respondents 1, 2 & 4 and Mr.K.Ramanamoorthy, learned CGSC appearing on behalf of respondent 3.

7. The fact that the applicant was enrolled in the Air Force on 04.11.1981 and after serving for 8 years 4 months and 5 days in the Air Force, was commissioned in the Indian Army as Short Service Commission officer on 09.03.1990 for a term of engagement of 5 years and was subsequently released on 06.04.1995 are not disputed by either side. At the time of his release from the Army, the applicant had a combined total qualifying service of 13 years and 146 days is also not disputed.

8. Prior to his discharge from the Army, the applicant had executed an option for grant of service pension in terms of Government of India letter dated 13.10.1987. However, it was pointed out by the CDA, Allahabad that since he was an SSC officer, he ought to exercise his option under the provisions of MOD letter dated 28 June 1985 and in terms of para 6 of SAI 6/S/65. The learned counsel for the applicant would contend that there were several amendments to the said SAI 6/S/65 which were not available at the Unit where he was serving at that time and hence the applicant was not aware of them. In fact, the form at para 6 of SAI 6/S/65 was

meant for Emergency Commissioned Officers and the format showed that pension was only applicable to personnel who have served for 15 years and since the applicant had only 13 years and 146 days of qualifying service, he was under the impression that he was not eligible for the said pension and, therefore, *per force*, had opted for option (a) which provide for gratuity / pension for the services rendered in the Air Force and SSC separately.

9. On coming to know that there was a Corrigendum No.113/69 which, *inter alia* showed that pensionary benefits are available for minimum qualifying service of 12 years and not 15 years as per original Army Instructions, the applicant again applied for service pension and he was advised to make a statement of case through staff channels for the same. Accordingly, he had opted for counting of his former service for pensionary benefits and necessary documents were sent on 30.06.1996. He was advised to make a statement of case with recommendations of Commanders in chain which were duly recommended and forwarded to PCDA. However, he was advised by the PCDA, Pune that since option once exercised is final, the Government's sanction was required for revocation of the option. He accordingly sought to process the case for revocation of the earlier option and substitute it with the fresh option. However, his representation was rejected by the PCDA *vide* its letter dated 07.07.2006. Ministry of Defence also rejected the applicant's claim through their letter dated 03.02.2009 stating that the change of option is not admissible. The representative of PCDA, Pune and JCDA (AF) in their response before us have admitted that the applicant has not been paid any gratuity or any other retirement benefits due to him since his discharge from service, till date.

10. From the above, we surmise that the applicant had exercised option based on the Option Certificate as given in para 6 (a) of SAI 6/S/65 and on realizing that he

was eligible for service pension in terms of Corrigenda 113/69, he wished to change his option but he was denied the same by respondents on several occasions and he has not received any terminal benefits either under para 6 (a) or 6 (b) of the SAI. For a better understanding, the initial Option Certificate given by the Officer in accordance with MOD letter of 30.10.1987, is reproduced below:

Option certificate submitted by the Officer on 12.12.1993

"In terms of Govt of India, Ministry of Defence letter No.1 (5)/87/D (Pensions/Services) dated 30 Oct 87, I, SS-34368P A/Capt G R Nagabhushana hereby opt for drawal of pension, service gratuity and DCR gratuity on my retirement/release.

*Sd. (SS-34368P A/Capt
G R Nagabhushana)*

*Unit : 7 MAHAR
Station: C/o 56 APO
Dated 12 Dec 93*

11. We observe that the initial Option Certificate submitted by the applicant on 12.12.1993 was based on the implementation of the 4th Pay Commission in which he had opted for drawal of pension and other benefits. The respondents returned the said application unactioned and advised him to give his option in terms of para 6 of SAI 6/S/65. However, from the above option, we note that the applicant intended to opt for drawal of pension on his retirement / release.

12. The applicant's plea is that when he exercised Option in terms of SAI 6/S/65 on 24.02.1995, the applicant was not aware of the Corrigendum No.113/69, which had reduced the qualifying service for combatants regarding pensionary terms of ECOs to a minimum of 12 years qualifying service from a minimum of 15 years service as envisaged in the original SAI 6/S/65. For a better understanding, the Option Certificate exercised by the applicant as available in the Original SAI 6/S/65 and the Corrigenda No.113/69 are reproduced below:

Option certificate furnished by the officer on 24.02.1995:

"OPTION CERTIFICATE"

In terms of para 6 of SAI 6/S/65, I, SS-34368P A Major GR Nagabhushana of 7 MAHAR hereby opt:-

- (a) To accept any pension (including adhoc increase) / gratuity earned for pre-commissioned service under the rules which would have applied had the officer concerned been discharged on the date immediately prior to that on which he was granted emergency commission, and draw terminal gratuity for EC service.
- (b) To forego the terminal gratuity for EC service and count his emergency commissioned service towards service pension / service gratuity in the substantive rank held before grant of emergency commission; in no case, however, will pension be granted at a rate lower than that indicated below:-

xx	xx	xx	xx

Total qualifying service as for a Combatant		Rs	pm
15 years			115
16 years			120
17 years			125
xx	xx	xx	

Station: C/o 56 APO
Dated 24 Feb 95

Sd/-
SS-34368P A/Major
GR Nagabhushana"

The Corrigendum issued reads as follows:

"ARMY INSTRUCTIONS"CorrigendaNos.113/69

11. A.I. 6/S/65 regarding pensionary terms of ECOs is amended as follows:

(a) The table of rates of pension in para 6(b) is reconstructed as under:

Total qualifying service as for combatant	Rs	pm
12 years	91	
13 years	99	
14 years	107	

2. *These amendments will apply to all EC officers commissioned from ranks who have been or may be released / invalidated out of service on or after 1st June 1969. Such of them as had elected to be governed by the provisions of para 6 (b) of AI 6/S/65 will be given a fresh option to elect the terms of Para 6 (b) ibid, if they so desire. The option will be exercised within six months of the date of official communication to them of their eligibility for exercising a fresh option.*

3. xx

xx

xx

xx

Case No.1()/68/D (Pensions/Services)
M of F (D) UO No.7362-Pen of 1969

C.P.Chowla,.
Dy.Secy

13. It is reasonable to assume that many of the Corrigenda issued over a period of 25-30 years are either not known or not easily available in active Units which move every two to three years to field and operational areas and, therefore, such orders/instructions are not always upto date. A bare reading of the initial Option Certificate dated 12.12.1993 even though it was not applicable to him as revealed later, would show that the applicant wanted to opt for pensionary benefits. It is also true that when asked to prefer option under para 6 of SAI 6/S/65, he exercised option 6 (a), which entitled him to drawal of pension / gratuity for his pre-commissioned service only. However, we observe that the said Option Certificate signed by him did not have the amendment, given in Corrigenda No.113/69, which had amended para 6 (b) entitling pensionary benefits for total qualifying service as for combatant of minimum 12 years. We are, therefore, inclined to agree with the learned counsel for the applicant that the applicant was not aware of the said Corrigenda and that he was under the mistaken belief that minimum total qualifying service for pension was 15 years and that since he had only 13 years service, he was not entitled to pensionary benefits and it was for this reason that he had no other choice but to opt for option given in para 6 (a). The learned counsel would also state that on learning of the provisions of the said Corrigendum, entitling pensionary benefits for a total qualifying service of 12 years and above, he had sought to

change his option to 6 (b) which is more beneficial as it entitles him to life long pensionary benefits.

14. On the basis of documents placed before us, and pleadings on either side, we are reasonably satisfied that at the time of exercising option, the applicant was unaware of the liberalizing provisions of pensions in Corrigendum 113/69. The moot question therefore is, whether the option once exercised by the applicant is final and is irrevocable as stated by the respondents.

15. We are of the opinion that it is the duty of the respondents to provide the updated and correct Option Certificate as in vogue, so that the applicant is fully aware of the choices / options available to him before exercising his option. It is clear that the applicant was not provided with the amended Option Certificate which, the respondents were duty-bound to provide. The onus to have knowledge of all amendments to the said SAI 6/S/65 cannot be shifted on the applicant, especially when the respondents are the repository of orders / instructions and they have not provided them to the applicant so that he can make a reasonable choice while exercising the said option.

16. We further observe that the applicant has not been paid / received any benefits under option 6(a) so far as admitted by the respondents. When the respondents have not even given the said benefits to the applicant for 20 long years, they cannot claim that the option exercised is final and irrevocable. When the fruits / benefits of the option have not been received and appropriated in all these years, the applicant cannot be estopped from changing his option, more so, when the applicant had requested for the change of option in the initial stages of his discharge from service. The respondents as a welfare state ought to have applied the principles of natural justice and shown benevolence in accepting the plea of the applicant instead

of sticking to a very narrow interpretation of the provisions of the said Army Instruction 6/S/65. In view of the foregoing, we are inclined to agree with the learned counsel for the applicant that the impugned order dated 03.02.2009 is liable to be set aside and is accordingly quashed.

17. Even though the cause of action is recurring from the date of discharge of the applicant, applying the principles laid down by the Hon'ble Apex Court in the case of Tarsem Singh vs UoI and others reported in (2008) 8 SCC 648, the benefits would be limited to prior to 3 years from the date of filing this application, i.e., 30.01.2014.

18. In fine, the application is allowed. The applicant is entitled to service pension, gratuity and DCRG and all other benefits, if otherwise eligible. The arrears of service pension shall be paid from 31.01.2011, within three months from this date. In addition, he shall be entitled to receive gratuity and other benefits as entitled to him if any, under the said option (6 [b] of SAI 6/S/65 as amended), at the time of his discharge. An interest of 9% shall be paid on such sums from the date of his discharge from service, i.e., 06.04.1995. The above arrears shall be paid within three months. Failing to comply, an interest of 9% on the arrears shall be paid from that date.

19. The O.A. is allowed accordingly. No order as to costs.

Sd/-

Lt Gen K Surendra Nath
Member (Administrative)

Sd/-

Justice V.Periya Karuppiah
Member (Judicial)

19.08.2015
[True copy]

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

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To

1. The Secretary, Govt.of India
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2. The Adjutant General
Adjutant General's Branch
IHQ of MOD (Army), Wing No.7
2nd Floor, West Block-III, R.K.Puram
New Delhi – 110 066
3. The Air Officer Commanding
Air Force Records Office
Subroto Park, New Delhi – 110 011
4. The PCDA (P)
G-I, Military, Draupadi Ghat
Allahabad – 211 014
5. M/s M.K.Sikdar and S.Biju
Counsel for the applicant
6. Mr.M.Dhamodharan, SCGSC
For Respondents 1,2 & 4
7. Mr.K.Ramanamoorthy, CGSC
For Respondent No.3
8. Officer in-Charge, Legal Cell,
ATNK & K Area,
Chennai-600009
9. Officer in-Charge, Legal Cell
Air Force, Avadi
10. Library, AFT/RB, Chennai.

Hon'ble Justice V.Periya Karuppiah
(Member-Judicial)

and

Hon'ble Lt Gen K Surendra Nath
(Member-Administrative)

O.A.No.18 of 2014

Dated: 19.08.2015