

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.139 of 2014

Friday, the 19th day of June 2015

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

AND

THE HONOURABLE LT GEN K. SURENDRA NATH
(MEMBER – ADMINISTRATIVE)

L. Yasodha (aged 73 years)
Widow of Ex Cpl (No.206656)
Narain Swamy Naidu Laxman
Door No.3A, II Cross Street
Easwari Nagar Extension
East Tambaram, Chennai-600 059.

..Applicant

By Legal Practitioner:
Mr. SP Ilangovan & B.A.Thayalan

vs.

1. Union of India
Ministry of Defence
Rep. by The Defence Secretary
Ministry of Defence
South Block, DHQ Post,
New Delhi-110 011.

2. The Chief of the Air Staff
Air Force Head Quarters
Vayu Bhavan, DHQ Post,
New Delhi-110 011.

3. Director of Air Veterans
Air Force Record Office
Subroto Park, New Delhi-110 010.

4. Jt Controller of Defence Accounts (AF)
Subroto Park, New Delhi-110 010.

...Respondents

By Mr. E. Arasu, CGSC

ORDER:

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

1. The applicant has filed this application to call for records relating to the impugned order of the respondents vide letter No.Air HQ/99798/3/SP/DAV, dated 03.07.2014 and quash the same and also to direct the respondents to grant the eligible Reservist Service Pension and benefits due to the applicant's husband from the date of his discharge till his death and for Family Pension to the applicant from the date of her husband's death and also for arrears with 12% interest.

2. The factual matrix of the applicant's case would be as follows:

The applicant's husband Late Ex Cpl (No.206656) Narain Swamy Naidu Laxman was enrolled in the Indian Air Force on 06.06.1950 on the terms of engagement of 9 years in Regular Service and 6 years Reserve liability. On completion of 9 years Regular Service, he was transferred to Reserve Service, but was recalled from Reserve and did called-up service from 01.12.1962 to 22.08.1963. Instead of transferring him back to Air Force Regular Reserve as per the initial engagement, he was discharged

from Regular Air Force Reserve on 23.08.1963 under Rule 38(a) (iv) of Reserve & Auxiliary AF Act 1953 on the ground that "Service no longer required". He rendered Regular and called-up service of 13 years 2 months 16 days and his character was "very good". He had also applied for Reservist Pension, but in vain. After the death of applicant's husband on 24.08.1996, the applicant suffered due to abject poverty and with great difficulty, she brought up her two sons. When the applicant approached Ex Servicemen Welfare Board for Family Pension, she was informed that she was not eligible for Family Pension, since her husband was not a pensioner. Through the Tamil Nadu State Legal Services Authority, she served a notice dated 30.05.2014 on the 3rd respondent seeking Reservist Pension, but it was rejected. The applicant submits that her husband was entitled to Special Pension in terms of Paras-144 and 147 of Air Force Pension Regulations, 1961 which stipulates that the Special Pension or Gratuity may be granted to individuals who are not transferred to Reserve and are discharged in large numbers in pursuance of Government Policy to reduce the strength of establishments of the Armed Forces which resulted in disbandment of any unit or formation. The applicant submits that since the pension is a valuable right earned by her husband, it cannot be denied by an executive to the applicant's husband and the applicant. Therefore, the applicant requests that this application may be allowed.

3. The respondents filed a reply statement which would be as follows:

The record copy of Sheet Roll of the husband of the applicant (206656 Ex Cpl Narain Swamy Naidu Laxman) has been destroyed after its stipulated period of 25 years of retention. As per the limited single sheet of information available in the form of Long Roll, the applicant's husband was enrolled in the IAF on 06.06.1950 and was discharged from service on 06.06.1959 on completion of 09 years Regular Service and thereafter he was transferred to the Regular Air Force Reserve. The applicant's husband was called up for active service on 02.12.1962 and finally discharged from the Reserve Service on 22.08.1963. Thus he had a combined colour and reserve service of 13 years (Regular + Reserve + Re-call service). He had been paid Rs.770/- as Service Gratuity. The respondents admit that the name of the applicant has been mentioned in the Long Roll as "Smt Yashoda". The respondents submit that as per para 121 of the Pension Regulations for the Air Force 1961, the minimum qualifying service required for Service Pension is 15 years. The applicant's husband had a total qualifying service of 13 years and 78 days (Regular + Reserve + Recalled) against 15 years of combined colour and reserve qualifying service. As per the records, the husband of the applicant was transferred to the reserve service and did not fulfill the condition of Para 144 of Pension Regulations for the Air Force 1961 and

therefore, he is not eligible for grant of Special Pension or Gratuity. The respondents therefore request that this application may be dismissed.

4. On the above pleadings, we find the following points emerged for consideration:

(1) Whether the impugned order of the respondents in No. Air HQ/99798/3/SP/DAV, dated 03.07.2014 is liable to be quashed ?

(2) Whether the husband of the applicant Ex Cpl Narain Swamy Naidu Laxman is entitled for Reservist Pension posthumously and the applicant is entitled for arrears of such pension from the date of his discharge till his death ?

(3) Whether the applicant is entitled for Family Pension payable on the death of her husband Ex Cpl Narain Swamy Naidu Laxman with effect from 24.08.1996 ?

(4) To what relief the applicant is entitled for ?

5. Heard Mr. B.A. Thayalan, learned legal aid counsel appearing for Mr. SP Ilango, learned Legal Aid counsel for the applicant and Mr. E. Arasu, learned CGSC assisted by JWO M.Tiwari, Legal Cell, Air Force, Chennai appearing for the respondents.

6. We have given our anxious thoughts to the arguments advanced on either side. We have also perused the written submissions filed on the side of the applicant.

7. **Point Nos.1 to 3:** The facts that the applicant's husband Late Ex Cpl Narain Swamy Naidu Laxman was enrolled in IAF on 06.06.1950 on the terms of the engagement for 9 years Regular service and 6 years Reserve service and he was transferred to Regular Air Force Reserve and accordingly he was called upon for active service on 02.12.1962 and was finally discharged from Reserve service on 22.08.1963 and thereby he had a combined Colour and Reserve service of 13 years (Regular + Reserve + Re-called service) are all admitted by the respondents. The applicant's Long Roll was produced in support of the said facts by the respondents. The Discharge Certificate of the applicant's husband produced by the applicant would also confirm the husband of the applicant was discharged from Regular AF reserve under rule 38(a) (iv) of Reserve and Auxiliary Air Force Act 1953.

8. The case of the applicant would be that the applicant's husband was not granted any Reservist Pension despite he was transferred to Air Force Reserve service and was called upon for active service from 01.12.1962 to 22.08.1963 and the applicant's husband should have been considered for Reservist Pension since he was discharged against his will. The learned counsel for the applicant would submit in his argument that the denial of Reservist pension made in the impugned order was unjust and it should have been set aside as it is against the principles laid down by the Hon'ble Apex Court and various High Courts and AFTs. He would

also submit that this Tribunal had granted Family Pension to a widow on the basis of the grant of Reservist pension to her husband posthumously vide O.A.No.44 of 2013, dated 24.09.2013. He would further submit that the respondents are promissory estopped from discharging the applicant's husband before the completion of the reserve service and it would be amounting to breach of contract of employment and the Government is promissory estopped from doing so. He would also bring it to the notice of this Tribunal a judgment made by the Hon'ble AFT Principal Bench in **T.A.No.564 of 2010** in the case of **Shri Sadashiv Haribabu Nargund and Ors. vs. UOI and Ors.** Quoting the judgment of the Hon'ble AFT Principal Bench and the similarly ordered cases of this Regional Bench, the learned counsel would submit that the applicant's husband was entitled for Reservist pension for the service rendered by him and consequently the applicant being the widow is entitled to Family Pension payable to her on the death of her husband with effect from 24.08.1996.

9. Per contra, the learned Central Government Standing Counsel would submit in his argument that the applicant's husband was governed by the Pension Regulations for the Air Force 1961, Part-I and as per Regulation 136 of Pension Regulations for the Air Force 1961, he should have served for 15 years in Regular + Reserve + Re-called service, but the applicant's

husband had served for 13 years and 78 days of qualifying service only therefore he is not entitled for Reservist Pension. He would also submit in his argument that the applicant's husband did not have 15 years of service as Corporal for the grant of Reservist Pension and the deficiency in service for more than one year cannot be condoned and be considered as 15 years for pensionable service. He would therefore request this Tribunal to dismiss the claim for Family Pension of the applicant as her husband himself was not entitled to any Reservist Pension.

10. Considering the submissions made by both, we could understand that there was no dispute in respect of the terms of the engagement of the applicant's husband as 9 years Regular service and 6 years Reserve service. There is no dispute that he was transferred to Reserve service and he was called upon for active service during war time in between 01.12.1962 and 22.08.1963. Whether the respondents could deny Reservist Pension by saying that he had not completed 15 years service since he was discharged from the Reserve service after the active service was terminated by 22.08.1963 or whether the applicant's husband was entitled to any pension upon his discharge from service or not are to be pondered over in this application. Regulation 121 of Pension Regulations for the Air Force 1961 stipulates that minimum qualifying Regular service for

earning Service Pension is 15 years. The applicant's husband thus is clearly not covered under this Regulation and therefore, he is not entitled to any Service Pension. Regulation 136 deals with Reservist Pension which reads thus:

"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. "

11. Admittedly, the applicant's husband had been transferred to Reserve Establishment and he took part in active service when called upon to do so.

12. Now, the question that needs our attention is whether the reserve liability period of the applicant's husband is to be taken into consideration thus making him eligible for pension under Section 136(a) of the Pension Regulations of 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."

13. The detailed discussion held by the Hon'ble Principle Bench towards the application of doctrine of "Promissory Estoppel" against the Government was followed by this Tribunal in a number of judgments, viz., **O.A.No.17 of 2013, O.A.39 of 2013** and **O.A.43 of 2013**. The applicant's case is fully covered by the judgments quoted above and therefore, the applicant's husband is entitled to Reservist Pension under Regulation 136 (a) of the Pension Regulations for the Air Force 1961. However, since no steps agitating for this Reservist pension during his life-time had been taken, the same should not be paid to him.

14. The next question that confronts us is whether or not his widow is entitled to Family Pension. Award of Family Pension is covered by Regulation 192 of Pension Regulations for the Air Force 1961. According to which

"widow, lawfully married" is eligible for grant of Family Pension provided they are otherwise qualified. Regulation 195 stipulates that relative specified in Regulation 192 shall be eligible for grant of Family Pension provided he or she is not in receipt of another pension from Government. Regulation 195 reads,

" Conditions of eligibility for a family pension

195. *A relative specified in regulation 192 shall be eligible for the grant of family pension, provided—*

General

(a) he or she is not in receipt of another pension from Government;

(b) he or she is not employed under Government. (But see regulation 198).

Widow

(c) a widow has not remarried.

This condition shall not apply to a widow who remarries her deceased husband's brother, and continues to live a communal life with and/or contributes to the support of the other living eligible heirs. "

15. No evidence has been brought before us which indicates that the applicant is attracted by any of the above exceptions. Therefore, the applicant is clearly found entitled to Family Pension from the date of the death of her husband, i.e., 24.08.1996. However, for the purpose of reckoning the date of adjudication it would be the date on which this Original Application was filed, which is 18.09.2014. As held in the case of ***Union of India and others Vs. Tarsem Singh*** reported in **(2008) 8 SCC 648**, the

applicant be entitled to arrears of Family Pension with effect from date three years prior to the date of filing of this Original Application which would be 18.09.2011. All the three points are ordered accordingly.

16. **Point No.4:** In fine, the application is allowed and the Air Headquarters letter dated 03.07.2014 is quashed. The applicant's husband though entitled to Reservist Pension from the date of his discharge till his death, cannot be paid with Reservist Pension for the reasons mentioned above. The respondents are directed to pay the arrears of Family Pension payable to the applicant from 18.09.2011 onwards and shall pay Regular Family Pension to her with immediate effect. Time for implementation is three months. Failure on the part of respondents will make them to pay arrears with interest at 9% p.a. from this date till the date of payment. No order as to costs.

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

Sd/
LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

19.06.2015
(True copy)

Member (J) – Index : Yes/No

Internet : Yes/No

Member (A) – Index : Yes/No

Internet : Yes/No

vs

To:

1. The Defence Secretary
Representing the Ministry of Defence
South Block, DHQ Post, New Delhi-110 011.
2. The Chief of the Air Staff
Air Force Head Quarters
Vayu Bhavan, DHQ Post, New Delhi-110 011.
3. Director of Air Veterans
Air Force Record Office
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5. M/s SP Ilangovan & B.A.Thayalan
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6. Mr. E.Arasu, CGSC
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9. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
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AND
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