

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A. No.72 of 2014

Friday, the 21st day of November 2014

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

AND

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

Rank-Ex-Cpl, Name-Sushyamal Kundu
Service No.210366,
S/o Late Shambhu Nath Kundu
aged about 82 years
No.3/E 47, 20th Cross
Besant Nagar, Chennai-600 090.

... Applicant

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

vs.

1. Union of India
Rep. by The Secretary
Government of India
Ministry of Defence
New Delhi-110 011.

2. Chief of the Air Staff
Rep. by The Director
Directorate of Air Veterans
Subroto Park
New Delhi-110 010.

3. The Air Officer Commanding
Air Force Record Office, Subroto Park
New Delhi-110 010.

4. The JCDA (Air Force)
Subroto Park, New Delhi-110 010.

... Respondents

By Mr. B. Shanthakumar, SPC

ORDER

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

1. This is an application filed by the applicant for the grant of Reservist Pension for life with effect from three years prior to the date of filing of this Original Application with interest and costs and consequential monetary benefits.

2. The facts as stated in the application would be as follows: The applicant was enrolled in Indian Air Force as an airman on 11.04.1950 and the term of engagement was 09 years regular service and 6 years reserve service. He was promoted to the rank of Corporal and completed the term of 9 years regular Air Force Service and was transferred to reserve service on 11.04.1959. He was recalled for active Air Force Service on 27.11.1962, during China War and the applicant was released and discharged from Regular Air Force Reserve on 19.04.1963 under the caption, "Services are no longer required." Subsequently, the applicant was denied the Reservist Pension by the respondents by stating that he did not serve for 15 years of qualifying service for getting Reservist Pension. The claim of the applicant through various requisitions was also refused on the ground that the applicant had served only 13 years and 9 days of qualifying service

and the mandatory requirement of 15 years for the eligibility of getting Reservist Pension was not complied with and therefore, he was not eligible for Reservist Pension. The applicant and his spouse who are aged more than 76 years are failing in their health and they are suffering without ECHS facility as he was not granted any Reservist Pension. The respondents having engaged the applicant for 9 years Regular Service and 6 years Reserve service and after transferring the applicant to Reserve Service, are estopped from denying a Reservist Pension for no fault of the applicant. The respondents are also barred by the doctrine of "Promissory Estoppel" from contending so, since the applicant was discharged from service as his service was no longer required despite the original engagement was for 9 years regular service and 6 years reserve service. The principles laid down in the judgment of Hon'ble AFT Principal Bench, New Delhi reported in **2011 (1) 174** between **Shri Sadashiv Haribabu Nargund and UOI & Others** and the judgment of the AFT Regional Bench, Chennai made in **N.T. Panicker vs. UOI & Ors.** and **R. Vasudevan vs. UOI & Ors.** would apply to the case of the applicant. Therefore, the applicant be granted with Reservist Pension in terms of the principles laid down by the aforesaid AFT Benches and accordingly, the application may be allowed.

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

The records relating to the applicant have been destroyed after the stipulated period of 25 years of retention and the limited single sheet information in the form of Long Roll alone is available. According to the Long Roll of the applicant, the applicant was enrolled in IAF on 11.04.1950 and on completion of 9 years regular service, he was discharged and transferred to regular Air Force Reserve with effect from 11.04.1959. He was called up for active service on 27.11.1962 and finally was discharged from the reserve service on 19.04.1963 under the Clause, "Service no longer required". Thus he had a combined colour and reserve service of 13 years and 09 days. The payment of pension to the applicant is governed by Pension Regulations for the Air Force 1961, Part-I. The qualifying service required for the payment of Service Pension is 15 years as per Regulation 121 of the said Regulations. Furthermore, Regulation 136 would state that 15 years of regular, reserve and recalled service is required for the grant of Reservist Pension. Since the applicant had only a total qualifying service of 13 years and 09 days out of those categories and it was short of 15 years and therefore, the applicant was not eligible for the grant of Reservist Pension. The judgments of the Principal Bench, New Delhi passed in **T.A.No.564 of 2010** and the

judgments of this Tribunal in **T.A.No.09 of 2012** between **N.T. Panicker and UOI & Ors.** and **O.A.No.17 of 2013** between **R.Vasudevan and UOI & Ors.** cannot be applied to the case of the applicant, since the orders passed in those applications were implemented by the respondents' conditional sanction. Therefore, the application filed by the applicant cannot be sustained since the grant of Reservist Pension would be governed within the framework of relevant rules meant for the Reservist Pension. Therefore, the application has to be dismissed as being devoid of merit.

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

1. Whether the applicant is entitled for the grant of Reservist Pension?

2. To what relief the applicant is entitled for?

5. Heard Mr. M.K. Sikdar, learned counsel for the applicant and Mr. B.Shanthakumar, learned Senior Panel Counsel assisted by JWO M.Tiwari, Legal Cell, Air Force, Chennai appearing for the respondents. We also perused the documents produced on either side as well as the written arguments submitted on behalf of the applicant.

6. According to the learned counsel for the applicant, the facts in respect of his enrolment, terms of engagement, transfer of the

applicant to reserve service after his completion of colour service for 9 years have been admitted by the respondents and the claim of Reservist Pension was rejected by the respondents only on the ground that the applicant did not have a qualifying service of 15 years, he had served for 13 years and 09 days only. He would also submit that the applicant had completed 9 years of Regular Service and was transferred to reserve service for 6 years and was also called for Active Service during China War and after the completion of Active Service, he was discharged from Air Force Reserve service on 19.04.1963 against his will under the caption, "Service no longer required". He would also submit that the Government having agreed to engage the applicant for 9 years Regular Service and 6 years Reserve Service and transferred the applicant from Regular Service after he had completed 9 years of service to Reserve Service for 6 years as per the terms of the engagement, he should not be discharged under the caption, "Service no longer required". The rule of Promissory Estoppel would certainly act against the Government in discharging the applicant under the caption, his service is no longer required. He would also submit that the discharge was made by the respondents (Government) at their own will and did not act on the request of the applicant. Therefore, he would request that the Government is estopped from saying that the applicant did not complete the full term of 15 years

engagement as entered into between the applicant and the Government. He would also draw our attention to a judgement of Hon'ble Principal Bench made in **Sh. Sadashiv Haribabu Nargund & Ors. v. UOI & Ors.** in **T.A.No.564 of 2010** as reported in **2011 (1) AFTLJ 174**). He would also rely upon two judgments of this Tribunal invoking the principle of Promissory Estoppel against the Government as made in **N.T. Panicker vs. UOI & Ors.** and **R. Vasudevan vs. UOI & Ors.** by this Tribunal. He would further submit that the applicant had also rendered Active Service after he was transferred to Reserve Service during Indo-China War. The applicant and his wife are very much aged and are now suffering. Unless they are granted with Reservist Pension on par with the applicants of the cases in the AFT Principal Bench, New Delhi and this Regional Bench, he will be put to hardship.

7. Per contra, the learned Senior Panel Counsel appearing for the respondents would argue that the applicant did not complete 15 years of qualifying service for the grant of Service Pension as per the provisions of Para-121 of Pension Regulations for the Air Force 1961, Part-I and also for the Reservist Pension in consonance with Para 136 of the Pension Regulations for the Air Force 1961. He would also submit that the judgments of Hon'ble AFT Principal Bench and this Regional Bench relied upon by the learned counsel for the applicant

were implemented only on conditions that those amounts will be recovered in case the appeals preferred against those judgments are allowed by the Hon'ble Apex Court and therefore, those judgments would not be made applicable to the present case. He would insist in his arguments that the payment of Service Pension or Reservist Pension are strictly within the rules provided in the Pension Regulations for the Air Force 1961, Part-I and the said rules do not permit the grant of Reservist Pension to the applicant and therefore, the claim of the applicant is liable to be dismissed.

8. We have given our anxious thoughts to the arguments advanced on either side.

9. **Point No.1:** The case of the applicant that he was enrolled in the Air Force on 11.04.1950 with the terms and conditions that his service would be 9 years towards Regular Service and 6 years for Reserve service and the applicant had served the said full term of 9 years Regular Service and thereafter, he was transferred to Reserve service with effect from 11.04.1959 and he was called upon for active service on 27.11.1962 during China War and he did not get any more active service till he was discharged on 19.04.1963 under the caption, "Service no longer required" have not been disputed by the respondents. The total service of the applicant in Regular, Reserve and Recalled Service were 13 years and 9 days and it is also admitted

by the respondents. The only objection raised by the respondents is that the claim of the applicant towards Reservist Pension cannot be granted as Regulation 136 of Pension Regulations for the Air Force 1961, Part-I does not permit grant of Reservist Pension who has not fulfilled 15 years of qualifying service.

10. No doubt the Regulation 136 of Pension Regulations for the Air Force 1961 stipulates 15 years of total service for the grant of Reservist Pension. The said provisions are necessarily to be extracted for better understanding which reads as below:

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. It is true that the applicant had completed only 13 years and 09 days of service. It is also true that the applicant had been transferred to reserve service and was called to active service, and participated in the China War; But he was discharged against his will as his service was not required before completion of 15 years of qualifying service. In the backdrop of the case, the applicant is relying on the principle of Promissory Estoppel against the Government as followed by the AFT Hon'ble Principal Bench, New Delhi in **T.A.No.564 of 2010** between **Sh. Sadashiv Haribabu Nargund & Ors.** and **UOI & Ors.** and also the judgments passed by this Tribunal in **N.T. Panicker vs. UOI & Ors.** and **R. Vasudevan vs. UOI & Ors.** The principle of "Promissory Estoppel" as laid down by the Hon'ble AFT Principal Bench, New Delhi in the above said case has been followed by this Tribunal in those judgments. The difference between **Sh. Sadashiv Haribabu Nargund & Ors.** and **UOI & Ors.** and **N.T. Panicker vs. UOI & Ors.** and **R. Vasudevan vs. UOI & Ors.** case would be that the individual in the first mentioned case was transferred to reserve service and he served in Active Service also and thereafter he was discharged from service before completing 15 years of qualifying service. In the latter two

cases, the individuals were not even transferred to reserve service and this Tribunal had applied Promissory Estoppel towards not transferring them to reserve service and found that they are also eligible for the payment of Reservist Pension.

12. In the case of **Sh. Sadashiv Haribabu Nargund**, the Hon'ble AFT Principal Bench, New Delhi has come to the conclusion that the applicants in cases where they were transferred to reserve service from regular service and denied reservist pension for the reason they did not complete 15 years of qualifying service to earn pension was unfair and the doctrine of "Promissory Estoppel" would act against Government. The relevant passage reads as under:

11. In the present case, when all the incumbents were appointed it was clearly understood that these incumbents will have 9 years of active service and 6 years of reserve service. That means it will make 15 years of qualifying service for pension. These petitioners worked for 9 years and kept reserved for 6 years. Subsequently, government terminated this understanding and deprived them to count their reserved liability for the purposes of fulfilling 15 years qualifying service. The representation made by the government was acted upon by petitioners. They served the nation for 9 years and they were kept from reserve liability for 6 years. This is evident from the

fact that these people were called for 1962 China War, but subsequently, the Government disowned them and terminated their services. That shows the Government having represented to these citizens on which they acted upon and thereafter they terminated this appointment to the disadvantage of the petitioner. This cannot be permitted in view of the promissory estoppels as the other party has acted on the representation made by the government and they have altered their position and on account of that respondents' stand to suffer as they have been denied the pension. This is totally immoral and cannot be accepted. Similarly, in the case of **S.P.Dubey Versus M.P.S.R.T.C. (AIR 1991 SC 276)**, the State Government took over the MP State Road Transport Corporation with specific assurance that the service conditions of Company's employees will not be adversely affected. Subsequently, under Section 34 of the Road Corporation Act, 1950, the State Government issued a direction that such employee will be subject to 'such assurance as may have been given to them by State Government'. However, under Regulation 59 of the MP State Road Transport Corporation Employees Service Regulations, the age of superannuation was fixed at 58 years instead of 60 years. It was held that State Government's assurance incorporated in the direction under Section 34 was

binding and hence the age of superannuation cannot be altered to the detriment of its employees. In fact the doctrine of principle of promissory estoppels is a doctrine evolved by equity to prevent injustice.

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. Therefore, it is the function of the Courts to see that the citizens rights should be protected against the mighty state and state should be forced to abide by the promises made to its citizens. Lord Denning has very succinctly put it:*

"It (Crown) can, however, be stopped when it is not properly exercising its powers, but is misusing them; and it does misuse them if it exercises them in circumstances which work injustice or unfairness to the individual without any countervailing benefit to the public" (Laker Airways, (1977) QB 643 606)

13. *Therefore, respondent cannot be hard to say that we terminated the services of the petitioner, therefore, they are*

not under obligation to grant them pension taking into consideration the reserve liability.

13. The aforesaid judgment of Hon'ble Principal Bench would clearly show that the termination of service of the applicants in those cases (which is akin to the case of the applicant herein) to their disadvantage which should not be permitted in view of the doctrine of "Promissory Estoppel" since the applicant had acted upon the promise made by the Government, but was discharged from service for no fault of theirs were made to suffer as they were denied the reservist pension. The facts of the case dealt with in that judgment are identical to the present case and therefore, the *ratio decidendi* expressed in said judgment is applicable to the present case than the judgments of this Tribunal made in **N.T. Panicker vs. UOI & Ors.** and **R. Vasudevan vs. UOI & Ors.** cases.

14. The dictum laid down by the Hon'ble Principal Bench which followed the judgments of the Hon'ble Apex Court made in **Union of India v. Anglo (Indo)-Afghan Agencies Ltd. (AIR 1968 SC 718)** and **Motilal Padampet Sugar Mills v. State of Uttar Pradesh (AIR 1979 SC 621)** when applied to the facts of this case would show that the discharge of the applicant effected on 19.04.1963 under the caption, "Service no longer required" will not affect the right of the applicant to claim reservist pension on the principle of Promissory

Estoppel against the Government for not keeping the applicant in reserve service for his full tenure. It is also that the applicant is entitled to be recalled to active service once again even after his discharge on 19.04.1963 since reserve liability is always existing in between the applicant and the Government. Therefore, we are of the considered view that the applicant should have been granted reserve pension on par with the applicant in **Sh. Sadashiv Haribabu Nargund's** case, on the ground of principle of Promissory Estoppel. Accordingly, this point is decided in favour of the applicant.

15. **Point No.2 :** In view of the decision in Point No.1, we find that the applicant is entitled for Reservist Pension from the date of completion of his service, as per the engagement. The applicant did not claim for the payment of reservist pension all these years, but had come forward only now by filing Original Application on 2nd June 2014. In the relief paragraph, he has also asked for the grant of Reservist Pension with effect from three years prior to the date of filing of the Original Application. The claim for pension is certainly a recurring and continuous cause of action and the Courts can grant such pension claims for three years prior to the date of claim, if found entitled to. The said principle has been laid down by the Hon'ble Apex Court in **Tarsem Singh's** case. Since we find that the applicant is entitled for Reservist Pension, it can be granted only from 02.06.2011 which is

three years prior to the date of filing of the present Original Application. Therefore, the claim of the applicant has been allowed accordingly and the Point No.2 is decided in favour of the applicant.

16. In fine, the application is allowed as prayed for. The applicant is an aged person who participated in the China War and he is spending the evening of his life with his aged wife. Therefore, the respondents are directed to expeditiously pass an order sanctioning the grant of Reservist Pension as per rules with effect from 02.06.2011 within a period of three (3) months. The reservist gratuity, if any received by the applicant shall be adjusted in the arrears of Reservist Pension. In the event of failure of the respondents to sanction within the time frame, the applicant shall be entitled to an interest at 9% p.a. on the outstanding arrears of pension till the said amount is paid. With the above said direction, the application is allowed. No order as to costs.

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

Sd/
JUSTICE V.PERIYA KARUPPIAH
MEMBER (JUDICIAL)

21.11.2014
(True copy)

Member (J) – Index : Yes/No
Member (A) – Index : Yes/No
vs

Internet : Yes/No
Internet : Yes/No

.To:

1. The Secretary
Government of India
Ministry of Defence
New Delhi-110 011.
2. Chief of the Air Staff
Rep. by The Director
Directorate of Air Veterans
Subroto Park
New Delhi-110 010.
3. The Air Officer Commanding
Air Force Record Office, Subroto Park
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4. The JCDA (Air Force)
Subroto Park, New Delhi-110 010.
5. M/s. M.K. Sikdar,
and S.Biju
6. Mr. B. Shanthakumar,
For respondents.
7. OIC, Legal Cell, Air Force, Chennai.
8. Library, AFT, Chennai.

HON'BLE MR.JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)
AND
HON'BLE LT GEN K. SURENDRA NATH
MEMBER (ADMINISTRATIVE)

O.A. 72 of 2014

Dt: 21.11.2014