

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI

O.A.No.44 of 2013

Tuesday, the 24th day of September 2013

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

AND

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

M. Latha, aged 63 years
Widow of Ex-LAC (No 353987)
S. Muthumariappan
Door No.4/110, NS Nagar
Salaiyur, Dindigul District
Tamil Nadu 625 008.

.. Applicant

By Legal Practitioner:
Mr. S.P. Ilangovan

vs.

1. Government of India,
Ministry of Defence, rep. by
The Defence Secretary
Ministry of Defence, South Block
DHQ Post, New Delhi-110011.

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.

.. Respondents

By Mr. B.Shanthakumar, SPC

O R D E R

(Order of the Tribunal made by
Hon'ble Lt Gen Anand Mohan Verma,
Member-Administrative)

1. This application has been filed by widow of Ex-LAC S. Muthumariappan praying for quashing the impugned order of the respondents vide their Letter No. Air HQ/99798/3/SP/DAV, dated 07 March 2013, for directing the respondents to grant the eligible Reservist Service Pension and benefits due to the husband of the petitioner from the date of his discharge till his death and pay the Family Pension to the petitioner from the date of her husband's death and pay arrears with 12% interest.

2. The petitioner through her application and pleadings of her learned counsel Mr.S.P.Ilangovan and Mr.B.A.Thayalan, learned counsel representing the counsel for the petitioner would state that the husband of the petitioner was enrolled on 17th November 1962 on the terms of engagement of 9 years in colour service and 6 years reserve liability. On completion of 9 years of colour service, he was not transferred to Reserve service, but was retained till 25th July 1973 and was discharged on completion of 10 years and 251 days of Regular service without being transferred to Reserve List. On discharge from Air Force, he did not receive any pension though he applied for pro rata Service pension. The petitioner's husband died on

30th October 2001 due to poor health. Consequent to his death, the petitioner would claim, she has been running from pillar to post seeking family pension without success. After learning about the award of Reservist Pension by this Tribunal in newspapers, she with the help of Tamil Nadu State Legal Services Authority sent a legal notice to the respondents on 30th January 2013 which was rejected by the 3rd respondent in a routine manner. The petitioner would submit that had her husband been allowed to continue in the Reserve List as per initial terms of engagement, he would have completed his Reserve service and earned his service pension. The petitioner would submit that even if her husband was not transferred to Reserve List due to the fault of Air Force authorities, he is entitled to Special Pension in terms of Regulation 144 and 147 of Air Force Pension Regulations 1961 which states that '*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 of reducing the strength of establishments of the Armed Forces and of reorganization which results in disbandment of any unit or formation*'. The petitioner would pray that she be granted Family Pension after the death of her husband and her husband be granted pension from the date of his discharge till the death of his death.

3. The respondents through their reply-statement and pleadings of the learned Senior Panel Counsel Mr. B.Shanthakumar would state that the Service Number of the petitioner's husband is 252987 and not 353987 as mentioned in the O.A. The original service records in respect of the petitioner had been destroyed after the stipulated period of 25 years in accordance with Section 6, Chapter XVIII of Regulation 1026 of Regulations for the Air Force. Important details are retained in the form of Long Roll which the respondents produced and according to which Smt. Latha is the legally wedded wife of the late S.Muthumariappan and he was enrolled on 17th November 1962 and was discharged from service on 25th July 1973 on fulfilling the conditions of his enrolment. He was not kept in Reserve Service and since he had not completed minimum qualifying service of 15 years, he was not granted any pension. He was paid the entitled Service Gratuity of Rs.2064.40 and Death-cum-Retirement Gratuity of Rs.1955.35. The terms and conditions of service of engagement of personnel enrolled in the IAF as 'Airman' are governed by Air Force Instructions (India) No.12/Special/48(AFI 12/S/48), dated 24th July 1948 as amended from time to time. According to this AFI the initial period of engagement of candidates enrolled was 9 years Regular Service and 6 years in the Reserve. AFI 12/S/48 was amended by an amendment No.13 dated 13th April 1957 according to which the future

entrants would be liable to serve in the Regular Air Force Reserve for a period of 6 years. With effect from 05 August 1966, the initial period of engagement of airmen was enhanced from 09 years to 15 years regular service vide Government of India MoD letter No.Air HQ/23997/3/PP&R/6800/D(A-III), dated 28th July 1966 and the AFI 12/S/48 was accordingly amended. During Air Force Commanders' Conference held from 21-23 August 1972, it was decided that the Reserve Scheme should be suspended without abrogating the Reserve and Auxiliary Air Force Act, 1952 and consequently Air Force Record Office circulated its order vide their letter No.RO/S 2502/ERW(DIS), dated 31st October 1972 according to which, no airman would be transferred to the Regular Air Force Reserve Service with immediate effect. Since the husband of the petitioner was enrolled on 17th November 1962, his initial term of engagement was governed by the amended provision, i.e., 9 years of Regular Service and 6 years in the Reserve Liability. The proviso contained in Amendment No.7 to AFI 12/S/48 dated 29th March 1969 was applicable to the case of the petitioner's husband in that *"those airmen who fail to attain the rank of Corporal within 09 years are to be discharged"*. The respondents would submit that the petitioner's contention that her husband was discharged without being transferred to Reserve Service is not correct. According to Air Force Record Office letter dated 31st October

1972, no airman was to be transferred to the Reserve Service. Also, the respondents would plead that there is no mention of his Reserve Service in the Discharge Certificate and the Long Roll. Since the petitioner's husband had rendered 10 years and 251 days of Regular Service, he was not entitled to pension and consequently, Family Pension cannot be granted to the petitioner.

4. Heard both sides and perused all the documents.

5. The points that need be determined are, whether or not the petitioner's husband was entitled to pension consequent to his discharge from service and if so, is the petitioner entitled to Family Pension?

6. The initial terms of engagement of the Airmen are governed by AFI 12/S/48 the relevant extracts of which are,

"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. "

This was amended by Amendment No.13 in 1957 as follows:

"83. A.F.I. No. 12/S/48, regarding terms and conditions of service of Regular Airmen, amended as follows:

(Amendment No.13)

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.

Case No.Air HQ/24III/12/PP&R/D(A/III)
M.of F(D) Dy.No.1340-B/AF of 1956.

New Delhi, the 13th April 1957. N.A.PADMANABHAN,
Dy. Secy. "

7. Corrigendum No.7, dated 29th March 1969 further amended this AFI 12/S/48, according to which the candidates are to be engaged initially for 15 years of regular service but those who fail to attain the rank of Corporal within 9 years would be discharged.

8. The Air Force Record Office circulated an order dated 31st October 1972 with regard to Regular Air Force Reserve which reads thus:

"REGULAR AIR FORCE RESERVE: AIRMEN

In the Air Force Commanders' Conference held on 21-23 Aug 72, it was decided that the Reserve scheme should be suspended without abrogating the Reserve and Auxiliary

Act 1953. In pursuance of this decision, the CAS has approved as a progressive measure, that with immediate effect, no airman is to be inducted into Regular Air Force Reserve.

- 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. Instead, they will be discharged on completion of their regular Engagement, if unwilling for extension of service. However, it may be noted that through they are not being transferred to the Reserve at the discharge stage, "they are liable to be inducted into Reserve Service at any time during the stipulated period of reserve liability (as per provisions of Reserve and Auxiliary Air Force Act 1952) depending on service requirement.*
- 3. Suitable instructions on this aspect will henceforth be incorporated in the relevant discharge orders issued by this office.*
- 4. An endorsement on these lines is to be included by the units in the discharge certificates issued by the units.*

*Sd/
(CI NEDUNGADI)
Group Captain
Officer i/c A F Records. "*

9. According to the Discharge Certificate produced by the petitioner, her husband was enrolled on 17th November 1962 and terms of engagement was 9 years regular and 6 years reserve. He was discharged on 25th July 1973 "ON FULFILLING THE CONDITIONS OF HIS ENROLMENT ON COMPLETION OF NINE YEARS SERVICE AND NOT BEING REQUIRED TO SERVE IN THE RESERVE." His total service according to the Discharge Book was 10 years and 251 days. The Discharge Book mentions that he was married with two children though the name of his wife has not been mentioned. In the Long roll produced by the respondents confirms the date of enrolment and discharge of the petitioner's husband as also it shows that his term of service as 09/06 meaning 9 years of Regular service and 6 years of Reserve service and he was discharged on fulfilling the conditions of his enrolment. The Long Roll indicates that the service in Reserve was 'Nil' and name of his next kin has been mentioned as Mrs. Latha (wife) and the name of the two children are mentioned as Mariammal and Nagarani.

10. Now the issue before us is whether the petitioner's husband was entitled to any pension upon his discharge from service or not? Regulation 121 of Pension Regulations for the Air Force 1961 stipulates that minimum qualifying Regular service for earning Service

Pension is 15 years. The petitioner'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. "

Had the petitioner's husband been transferred to Reserve Establishment, he would have been clearly covered under Regulation 136 and therefore would have been entitled to Reservist Pension. This was not done. Denial of transfer to Reserve List and consequent denial of Reservist Pension has been dealt with in several judgments passed by the Principal Bench AFT and this Tribunal. In the order T.A.No.9 of 2012 passed by this Tribunal on 25th February 2013, this issue has been examined in great detail and it has been held,

"18.The issue of taking into reckoning the promised reserve service has been addressed conclusively in the above mentioned order to the benefit of the petitioner. The petitioner was enrolled for 9 years regular service followed by six years reserve service. He served for 9 years 291 days. He ought to have been transferred to reserve service which the Government failed to do so and thus going back on their promise. Therefore, in accordance with the provisions outlined in the above quoted order of the Principal Bench AFT, period of reserve service needs to be taken into reckoning for

making him eligible for pension under Section 136(a) of the Pension Regulations for Air Force 1961. The amount paid as gratuity would be liable to be recovered from or adjusted in the pension payable to the petitioner. The point is accordingly answered."

While arriving at this position, the Tribunal had been guided by the order of the Principal Bench in **T.A.No.564 of 2010** in the case of **Shri Sadashiv Haribabu Nargund and Ors. Vs. UOI and Ors.** Wherein the Principal Bench held,

"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."

Similar positions have been held 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 petitioner's husband's case is fully covered by the judgments quoted above and therefore, the petitioner'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 pension during his life-time had been taken, the same could not be paid to him.

11. 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. "

12. No evidence has been brought before us which indicates that the petitioner is in receipt of another pension from the Government or is employed by the Government or has remarried. Therefore, the petitioner is clearly entitled to Family Pension from the date of the death of her husband, i.e., 30th October 2001. Though the petitioner did produce copies of letters sent by her to the respondents in the years 2004 and 2006, for the purpose of reckoning the date of adjudication it would be the date on which this Original Application was filed, which is 10th April 2013. As held in the case of ***Union of India and others Vs. Tarsem Singh*** reported in **(2008) 8 SCC 648**, the petitioner would be entitled to arrears with effect from date three years prior to the date of filing of this Original Application which would be 10th April 2010.

13. In fine, the petition is allowed and the Air Headquarters letter dated 7th March 2013 is quashed. The petitioner's husband though entitled to Reservist Pension from the date of his discharge till his death, cannot be ordered Reservist Pension for the reasons mentioned

above. The respondents are directed to pay the arrears of Family Pension payable to the petitioner from 10th April 2010 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.

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

LT GEN ANAND MOHAN VERMA
MEMBER (ADMINISTRATIVE)

JUSTICE V. PERIYA KARUPPIAH
MEMBER (JUDICIAL)

24.09.2013

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

VS

To:

1. The Defence Secretary
Ministry of Defence, South Block
DHQ Post, New Delhi-110011.
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-100 010.
4. Mr. S.P. Ilangovan,
Counsel for Petitioner.
5. Mr. B. Shanthakumar, SPC
Counsel for respondents.
6. The Secretary
High Court Legal Services Committee
Satta Udhavi Maiyam Buildings
North Fort Road
High Court Campus
Chennai-600 104.
7. OIC Legal Cell, Air Force,
Avadi, Chennai.
8. Library, AFT, Chennai.

HON'BLE JUSTICE V. PERIYA KARUPPIAH
(MEMBER-JUDICIAL)
AND
HON'BLE LT GEN ANAND MOHAN VERMA
(MEMBER – ADMINISTRATIVE)

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Dt: 24.09.2013