

ARMED FORCES TRIBUNAL REGIONAL BENCH, KOCHI  
O.A.NO. 14 OF 2012  
THURSDAY, THE 3RD DAY OF JANUARY 2013/13TH POUSHA, 1934  
CORAM:

HON'BLE MR. JUSTICE SHRIKANT TRIPATHI, MEMBER (J)  
HON'BLE LT.GE.THOMAS MATHEW, PVSM, AVSM, MEMBER (A)

APPLICANT:

JAMES JOSEPH (EX NO.7339)  
RANK CPO OF INDIAN NAVY,  
AGED 87 YEARS,  
S/O.LATE VICTOR JOSEPH,  
MISSION QUARTERS,  
URAKAM.P.O.,  
THRISSUR – 680 562.

BY ADV.SRI.T.R.JAGADEESH.

VERSUS

RESPONDENTS:

1. THE UNION OF INDIA,  
REPRESENTED BY IT SECRETARY,  
MINISTRY OF DEFENCE,  
SOUTH BLOCK, NEW DELHI – 110 011.
2. THE CHIEF OF THE NAVAL STAFF,  
INTEGRATED HQRS.,  
MINISTRY OF DEFENCE (NAVY),  
SOUTH BLOCK, NEW DELHI – 110 011.
3. THE COMMODORE, BUREAU OF SAILORS,  
CHEETAH CAMP,  
MANKHUND, MUMBAI – 88.
4. THE PRINCIPAL CONTROLLER OF DEFENCE  
ACCOUNTS (PENSION), OFFICE OF THE PCDA (P),  
DRAUPADI GHAT,  
ALLAHABAD,UTTARPRADESH – 211 014.

BY ADV.SRI.TOJAN J VATHIKULAM, CENTRAL GOVT. COUNSEL

O R D E R

Shrikant Tripathi, Member (J):

1. Heard Mr.T.R.Jagadeesh for the applicant and Mr.Tojan J Vathikulam for the respondents and perused the record.

2. The applicant has filed the instant Original Application for a direction to the respondents to sanction him service pension and alternatively invalid pension, as he had rendered 15 years of qualifying service inclusive of service rendered as Apprentice.

3. It seems to be highly belated claim, but since we have condoned the delay and entertained the matter for hearing, therefore, we do not give much significance to the delay occurred in moving the Original Application and praying for the relief.

4. The applicant Mr.James Joseph, Ex No.7339 was admittedly enrolled in the Royal Indian Navy on 6<sup>th</sup> August

1941 and was discharged on 27<sup>th</sup> June 1942 on the ground that his services were no longer required. The applicant was re-enrolled on 26<sup>th</sup> October 1942, the same year, and was invalided out of service on 5<sup>th</sup> October 1956 due to a disability. It is said that the applicant had served as Apprentice upto 1943. His entire service of both the spells excluding apprentice, if taken together, would be only 13 years 11 months and 9 days and if the period spent as Apprentice is also taken into account, the total service comes to 14 years and 10 months, which was less than the minimum qualifying service of 15 years to earn pension, therefore, denial of service pension to the applicant was just and proper.

5. The applicant was invalided out of the service on account of a disability which was assessed below 20%, therefore, he was not granted any disability pension. More so, the disability was neither attributable to nor aggravated by Naval service, according to the opinion of the Invaliding Medical Board.

6. The learned counsel for the applicant submitted that the applicant was entitled to invalid pension in view of the fact that the disability was less than 20% and he had served more than 10 years. In our opinion, the provision for invalid pension came into being for the first time in the year 1964 much after the retirement of the applicant. More so, Regulation 113C of the Pension Regulations for the Navy was not made applicable to the persons who had been invalided out of service due to any disability prior to the enforcement of the said regulation.

7. Mr.T.R.Jagadeesh next submitted that Regulation 153 of the aforesaid Regulations empowers the Central Government to relax any of the provisions of the Regulations with respect of any class or category of persons. He further submitted that a direction may be issued to the Government to relax the Regulation 113-C with regard to the applicant. Mr.T.R.Jagadeesh further submitted that the short fall of the applicant's qualifying service may also be directed to be condoned.

8. In our view, no direction either for relaxation of any Regulation or condonation of the short fall can be issued. It is a matter of the discretion of the Central Government to relax requirements of any regulation or condone the short fall. The proper course for the applicant is to move the Central Government for relaxation of the relevant Regulation and the condonation of the short fall of the qualifying service.

9. Without condonation of the short fall of the service, the claim for the service pension is not entertainable. The claim for the invalid pension is also not entertainable without relaxation of the provisions of Regulations 113 C of the Pension Regulations for the Navy.

10. In view of the aforesaid, the Original Application is disposed of with the direction that the applicant may within two months from today move appropriate representation to the Central Government for relaxation of Regulation 113-C, condonation of the short fall of the qualifying service. If any such representation is preferred by the applicant, the

same may be given due consideration in accordance with law, keeping in view also the nature of injuries the applicant had sustained while in service and his financial condition and old age.

11. There will be no order as to costs.
12. Issue copy of the order to both side.

Sd/-

LT.GEN.THOMAS MATHEW  
MEMBER (A)

Sd/-

JUSTICE SHRIKANT TRIPATHI  
MEMBER (J)

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