

E-Court
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

Original Application No. 111 of 2016

Tuesday, this the 18th day of October, 2022

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

PDK Rao, Ex-L/Tel, Navy, No. 86309
Residing at HIG, Plot No. 186, Flat No. 102, VI-Phase
Anand Nilayam, KPHB Colony,
Hyderabad – 500085 (Telengana)

.... **Applicant**

Ld. Counsel for the Applicant : **Mr. A. Ojha**, Advocate

Versus

1. Union of India (Through Secretary, Ministry of Defence),
Aayakar Bhavan, New Marine Lines, Mumbai – 400021.
2. The Chief of the Naval Staff, Integrated Headquarters,
Ministry of Defence (Navy), Sena Bhawan, New Delhi –
110011.
3. The Commodore Bureau of Sailors (For Officer-in-Charge),
Naval Pension Office, C/o INS Tanaji, Sion-Trombay Road,
Mumbai – 400088.

... **Respondents**

Ld. Counsel for the Respondents : **Mr. G.R. Mishra**,
Central Govt Counsel
Assisted by **Lt. Cdr. Mohsin Adawadkar**, OIC Legal Cell

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

“A. The Hon'ble Tribunal be pleased to call for the records of the case from the Respondents and after examining the

same, quash and set aside the impugned order (Annexure-1), and thereafter direct the respondents to release service pension for 20 years, counting 10 years of Colour/pensionable service and 10 years of Reservist/Fleet Reserve Service in favour of the petitioner, along with 12% interest on arrears, and other consequential benefits.

B. For exemplary damages/compensation for unlawful discharge, non release of disability pension, loss of honour and harassment.”

2. Succinctly stated, applicant was enrolled in the Indian Navy as a boy entry on 21.12.1959 and thereafter as Regular Sailor on 31.03.1961. On completion of engagement of 10 years, applicant retired from service on 30.03.1971 in the rank of L/Tel after rendering 10 years, 7 months and 9 days service. After discharge from active service, applicant was drafted into Fleet Reserve and was discharged on 31.03.1981. Subsequently, he was sanctioned Reservist Pension as per Navy Pension Regulations, 1964. The applicant submitted a letter of grievance dated 21.04.2016 to the respondents requesting counting of his 10 years Reservist service towards service pension so as to make him eligible for service pension adding his earlier colour/active service of 10 years which was rejected by the respondents. Being aggrieved, the applicant has filed the present Original Application for grant of Service Pension instead of Reservist Pension.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Navy as a Boy entry on 21.12.1959 and

thereafter as Regular Sailor on 31.03.1961. On completion of engagement of 10 years, applicant retired from service on 30.03.1971 in the rank of L-Tel, however he was not eligible for pension having less than 15 years of minimum pensionable service. He further submitted that applicant was engaged as a Reservist in Fleet Reserve from 31.03.1971 to 31.03.1981, thus the applicant served for 10 years as Reservist. The applicant submitted a letter of grievance dated 21.04.2016 to the respondents requesting counting of his 10 years Reservist service towards service pension so as to make him eligible for service pension adding his earlier colour/active service of 10 years in view of AFT (PB), New Delhi judgment in TA No. 564 of 2010, *Sadashiv Haribhau Nargund & Ors.*

4. Learned counsel for the applicant further submitted that respondents have rejected claim of the applicant for grant of service pension vide impugned order dated 03.06.2016. The applicant participated in Goa Liberation Operation on 1961 and Indo-Pak War in 1965 and was honoured with Medals. As per Navy Pension Regulations, 1964, applicant is eligible to count 10 years Fleet Reservist service towards Service Pension, thus having served in Indian Navy for more than 20 years (10 years & 7 months in Indian Navy and 10 years in Fleet Reserve under Navy Rules & Navy Act), he is eligible for service pension. Denial of service pension because is absolutely against the rule of basic principles of law of the promissory estoppels.

5. Learned counsel for the applicant further submitted that this Tribunal after considering the different judgments passed by other Regional Benches of AFT including Principal Bench in the case of **Sadashiv Haribhau Nargund & Ors** (TA No. 564/2010, WP No. 6458/2009) dated 12.01.2011 in which Principal Bench relied on the case of **Deokinandan Prasad vs. State of Bihar** (AIR 1971 SC 1409) and the judgment of Hon'ble Kerala High Court in WP No. 29497/2004, decided on 31.05.2006 have extended the benefit to similarly situated personnel. The respondents are bound by the principles of promissory estoppels as they engaged the applicant for the period of regular service and reserve service. The applicant was willing to continue in reserve service but he was terminated from service without any notice and opportunity of being heard. The law is settled that once the terms and conditions of service entered at the time of enrolment with regard to regular service + reserve service, the said period cannot be withdrawn by the respondents. He pleaded for grant of service pension in place of reservist pension by counting his 10 years regular service as well as 10 years reservist service to the extent of 20 years, in view of judgments passed by the Hon'ble Kerala High Court in **The Secretary to Government vs. K.G. Radhakrishnan Nair**, decided on 09.03.2011 and the various Regional Benches of the AFT as well as by the Hon'ble Supreme Court on the subject.

6. Submission of learned counsel for the respondents is that applicant joined the Indian Navy as Boy on 21.12.1959 and was discharged from active service on 30.03.1971 on expiry of engagement with qualifying service 11 years, 3 months and 8 days including 'Boy's' period. After discharge from active service, applicant was drafted into Fleet Reserve w.e.f. 31.03.1971 and on completion of Fleet Reserve period, he was discharged on 31.03.1981 and was sanctioned Reservist Pension w.e.f. 01.04.1981 as per Navy Pension Regulations, 1964 vide PPO dated 16.11.1981.

7. Learned counsel for the respondents further submitted that as per Regulation 78 of Navy Pension Regulations, 1964, the minimum qualifying service for earning service pension is 15 years and as per Regulation 92 of Navy Pension Regulations, 1964, a reservist who is not in receipt of a service pension may be granted reservist pension or gratuity in lieu of pension on completion of prescribed Naval and reserve qualifying service of ten years each. Since the applicant was discharged on compassionate ground after completion of 10 years, 7 months and 9 days of service which is not pensionable service in terms of Regulation 78 and after discharge from active service, applicant served as Fleet Reserve for a period of 10 years, accordingly, on completion of his reserve tenure, applicant was sanctioned Reservist Pension under the provisions of Regulation 92 of Navy Pension Regulations, 1964. There is no provision of counting 10 years Fleet Reserve service in active

service (10 years) for purpose of earning service pension as Service Pension and Reservist Pension are two different types of pension and Navy Pension Regulations, 1964 provides two separate regulations to specify the terms and conditions for granting the same.

8. Learned counsel for the respondents further submitted that with regard to the case of **Sadashiv Nargund** (supra), he was an Airman in the Air Force and pension policy of Naval personnel is governed by Navy Pension Regulations, 1964 which is statutory. There is no provision in the Navy Pension Regulations, 1964 for counting of Fleet Reserve period as weightage for Service Pension. In this regard, IHQ of MoD (Navy) letter dated 24.06.2016 is relevant wherein it is clarified that *“in Air Force individuals were recruited under 9 + 6 system and they were meant to serve for 9 years in colour (physical service) and then 6 years in reserve. In Navy 10 + 10 system is followed. Hence, the judgment passed in the case of **Sadashiv Nargund** (supra) is not applicable to the Reservist Pensioners of the Indian Navy”*.

9. Learned counsel for the respondents further submitted that applicant's case is not similar to the case of **KG Radhakrishnan Nair** (supra), since KGR Nair had not completed his reserve tenure and therefore, he was not sanctioned Reservist pension. The Hon'ble High Court of Kerala had considered his case for grant of Reservist

Pension and not for Service Pension. In the instant case, the applicant is already in receipt of Reservist Pension.

10. Learned counsel for the respondents further submitted that applicant having served only for 10 years, 7 months and 9 days of active service against 15 years, which is not a pensionable service as per Regulation 78 of Navy Pension Regulations, 1964, the applicant has rightly been granted Reservist Pension in accordance with Regulation 92 of Navy Pension Regulations, 1964, hence, relief claimed by the applicant cannot be acceded to and therefore, applicant is not eligible for service pension. He pleaded for dismissal of Original Application.

11. We have heard learned counsel for the parties and have also perused the record.

12. In the present case, applicant's claim is with regard to grant of Service Pension whereas he has been granted Reservist Pension by counting his 10 years regular service as well as 10 years reservist service to the extent of 20 years. The question of granting Reservist Pension and Special Pension has been dealt with elaborately in the cases of similarly placed personnel of the Navy by the Hon'ble Apex Court in ***T.S. Das and Ors. vs. Union of India and Another*** (Civil Appeal No.2147 of 2011, dated 27.10.2016). The Hon'ble Apex Court in the above judgment has concluded that transfer to Reserve is not a matter of right and principle of promissory estoppel cannot be invoked to further the claim. Hence, applicant has been correctly granted

Reservist Pension as held in the case of **T.S. Das** (supra) and he is not entitled for Service Pension.

13. From the above, it is clear that a service person is expected to complete Colour Service before he is transferred to Reserve Service and that he may be required to be retained in the Colour Service so long as a War is imminent or existing or the Establishment to which he belongs is short of the required strength. It also states that on completion of his minimum period of colour service or an extension of Colour Service, service personnel may be transferred to Reserve, if a vacancy exists, otherwise he will be discharged.

14. Resultantly, we find that applicant does not fulfill the requisite conditions for grant of service pension. Since the applicant has served only 10 years, 7 months and 9 days of active service against 15 years of qualifying service to earn service pension as per Regulation 78 of Navy Pension Regulations, 1964, the applicant has rightly been granted Reservist Pension in accordance with Regulation 92 of Navy Pension Regulations, 1964, and thus, applicant is not eligible for service pension. Hence, his claim for grant of Service Pension has rightly been rejected by the respondents as per rules/regulations, which needs no interference by this Tribunal.

15. In view of the above, we do not find any illegality or arbitrariness in denying service pension to the applicant who is already in receipt of Reservist Pension as per rules. The O.A. deserves to be dismissed. It is accordingly **dismissed**.

16. No order as to costs.

17. Pending Misc. Application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 18th October, 2022
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