

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION : O.A. : 27/2016

DATED : THE *Seventh* DAY OF SEPTEMBER, 2018

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,
MEMBER (ADMINISTRATIVE)

APPLICANT (S) : No. 246303 Ex-CPL
DAMODAR NATH CHAKRABORTY THAKUR
Resident of G/3, Maa Sarada Complex,
109, Aghore Sarani, PO – Rajpur
PS – Soharpur, Kolkata – 700 149 (WB)

Versus

RESPONDENT (S) : (1) The Union of India, service through
The Defence Secretary
Ministry of Defence
South Block, DHQ, PO,
New Delhi – 110 011

(2) The Secretary
Deptt. of Ex-Servicemen
Welfare & Pension
Ministry of Defence
South Block, New Delhi - 110011

(3) The Jt. CDA (Air Force)
Air Force Station, Subroto Park
New Delhi – 110 010

(4) The Director – III
Directorate of Air Veterans
Air Headquarters
Subroto Park, New Delhi – 110 010

(5) The Air Officer Commanding (AOC)
Air Force Station
Subroto Park, New Delhi – 110 010

Counsel for the applicant (s) : Mr. Bisikesan Pradhan, Ld. Advocate

Counsel for the Respondent (s) : Mr. Tapas Kumar Chatterj  , Ld. Adv.

ORDER

PER LT GEN GAUTAM MOORTHY, PVSM, AVSM, VSM, ADC,
MEMBER (ADMINISTRATIVE)

1. This is an application filed under Section 14 of the Armed Forces Tribunal Act, 2007 (The Act) by No. 246303 Ex-Cpl Damodar Nath Chakraborty Thakur praying for reservist pension with effect from 22.05.1977.

2. This is a second round of litigation. The applicant had earlier filed an O.A. being No. 14/2015 which was disposed of by this Tribunal with liberty to the applicant to approach the competent authority in terms of Section 26 of the IAF Act and had directed the Respondents to dispose off his application within 3 months from the date of receipt of his application by a speaking and reasoned order. The applicant, accordingly, preferred such application which was disposed of by Air HQ (Directorate of Air Veterans) vide their letter No. Air HQ/99798/246303/SP/DAV dt. 19.10.2015 (Annexure : A-8 of O.A.), stating that since the applicant had only 10 years and 256 days of qualifying service (Regular + Reserve), he was not eligible for grant of reservist pension. The Ld. Counsel had invoked the principle of promissory estoppels and stated that while the terms of engagement of the applicant was for 9

years Regular Service and 6 years of Reservist Service, he had served for 9 years of Regular Service and one year 256 days of Reservist Service since he was discharged for the reason "Service No Longer Required" invoking Rule 38 (a) (iv) of the Reserve and Auxiliary Air Force Act Rules, 1953.

3. We have noted that the applicant was enrolled in the Indian Air Force on 22 May 1962 as an Airman (Turner – II). The applicant had also participated in the Indo-China War 1962, Indo-Pak War 1965, and in the Indo-Pak War 1971. The applicant was discharged on 06 Feb 1973 after completion of 9 years Regular and 1 year 256 days Reserve Service invoking the above Air Force Act. The applicant was willing to serve even beyond his reserve liability but was discharged as his services were no longer required.

4. Ld. Counsel for the Applicant has quoted various judgments in support of his case. In Shri Ajoy Kumar Basu, Ex Sergeant, Service No. 236038 in O.A. 63/2013 dt. 22.01.2016, this Bench ruled –

"7. Before adverting to the facts of the case, it would be appropriate to deal with certain orders passed by the Principal Bench of Armed Forces Tribunal and Regional Benches of Armed Forces Tribunal, Kolkata and Kochi. By applying the doctrine of estoppels and holding once respondents availed the Services of Petitioners for nine years as active & kept them on Reserve Service for six years they cannot go back. The Principal Bench in T.A. No. 564 of 2010 (Sh. Sadasiv Haribabu Nargund & Ors Vs. Union of India and others) allowed the petition, and observed in paragraph 6 as under : -

"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 T.A. No. 564 of 2010 (Writ Petition (Civil) No. 6458 of 2009) Page 4 of 9 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 that 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 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. Once respondents availed the services of petitioners for 9 years as active service and kept them on reserved service for 6 years they cannot go back. During the reserve period, the petitioners were called in 1962 emergency i.e., at the time of China War and all the petitioners alleged to have offered their services at the disposal of the respondents. Therefore, the respondents have fully utilized all the services of these petitioners i.e., 9 years T.A. No. 564 of 2010 (Writ Petition (Civil) No. 6458 of 2009) Page 5 of 9 regular service and summoned them during the 1962 China War also. Now it does not lie in the mouth of the respondents to turn back and say that since they have been terminated they are not entitled to get the benefit of reserved service. This is immoral and unjustified view and against the canons of principles of natural justice. We fail to appreciate that once the appointment has been given and petitioners as per the terms of their appointment have given their services to the respondents how can they now go back and say that since we have terminated the services of the petitioner, we will not give them benefit of reserved service. This cannot be accepted and respondents cannot be permitted to take this plea."

8. Vide Order dated 17-5-2010, this Bench in the case of Nripati Bhusan Sengupta vs UOI and Ors (TA No. 7 of 2010) placing its reliance upon a decision of High Court of Kerala in W. P. (c) 29497/04 dated 31-5-2006 and also a

decision passed by the Division Bench of High Court of Kerala in W. A. No. 1392 of 1997 allowed the reservist pension. The relevant paragraphs of 9 & 10 of the Orders are as under : -

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"9. Under such circumstances, we are of the opinion that the petitioner did not lose his six years reservist service simply because he was called again by the Air Force authority and in the process rendered further 332 days of service. In our considered opinion the authority should consider that the petitioner completed fifteen years of qualified service after the expiry of six years reservist period and the authority should allow the pension to the petitioner accordingly as per Rules. 10....."

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9. This Bench in O.A. No. 53 of 2011 – Ganesh Chander Singh vs. Union of India dated 23.03.2012 also reiterated the same view.

5. Ld. Advocate for the Respondents has stated that since the applicant had rendered only 10 years and 256 days of Reserve plus Regular Service, the applicant cannot not be entitled to reservist pension.

6. The Respondents have also quoted Regulations 136 (a) of Pension Regulations for Air Force 1961 – Part – I as amended vide C.S. No. 95/X/70 w.e.f. 01 April, 1968 and cited orders of different Benches of the Armed Forces Tribunal on the subject matter with regard to the grant of Reservist Pension to the similarly placed airmen. The orders are appended below : -

- (a) Order dt. 07.01.2013 passed by the Hon'ble AFT, Regional Bench, Kochi, in O.A. No. 88 of 2010 titled Ex-Cpl K. Sasidharan Vs. UOI.
- (b) Order dt. 20.05.2013 passed by the Hon'ble AFT, Regional Bench, Kochi, in O.A. No. 50 of 2013 titled Ex-Sgt Jyotish Prabhakaran Vs. UOI.
- (c) Order dt. 28.05.2014 passed by the Hon'ble AFT, Regional Bench, Chandigarh, in O.A. No. 1925 of 2011 titled Ex-Cpl Raj Kumar Chibber Vs. UOI.

(d) Order dt. 07.04.2014 passed by the Hon'ble AFT, Regional Bench, Chandigarh in O.A. No. 1602 of 2012 titled Gopi Ram Vs. UOI.

(e) Order dt. 27.10.2014 passed by the Hon'ble AFT, Regional Bench, Kochi in O.A. No. 60 of 2014 titled P. Mohammed Meeran Pillai Vs. UOI.

(f) Order dt. 10.04.2015 passed by the AFT, Regional Bench, Chennai in OA No. 09 of 2014 titled M. Arivarasu Vs. UOI.

7. We have heard both parties on the issue. In this connection, our reference is made to our Judgment in O.A. 63/2013 dated 22.01.2016 in Ajoy Kumar Basu vs. UOI, which reads as under:-

.....

"16. We are of the considered opinion that the applicant is entitled for the Reservist pension. Accordingly, the application is allowed. The respondents are, therefore, directed to work out the pension of the applicant by taking into account the fact that the applicant has rendered 9 years 71 days regular service following by 5 years and 294 days of reserve period and necessary orders be issued for grant of pension accordingly. The applicant has not been entitled to entire arrears except last three years preceding the date of filing this application before this Bench. The arrears of pension shall carry an interest of 12% per annum. The order is required to be complied with within 3 months from the date of receipt of the order.

....."

8. We are of the considered opinion that the applicant is entitled for Reservist Pension from the date of his retirement i.e, 22 May, 1977. However, the applicant shall not be entitled to complete arrears. His arrears will be restricted preceding to 3 years from the date of filing this Original Application (O.A. No. 27/2016).

9. The application is therefore allowed on contest.

10. The Respondents are directed to work out the pension of the applicant taking into his 9 years Regular Service and 1 year and 256 days of Reserve Service.

12. No order as to cost.

13. A plain copy of this order shall be supplied to both the sides by the Tribunal Officer on compliance of all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)