

**FORM NO – 21**

**(See Rule 102 (1))**

**ARMED FORCES TRIBUNAL, KOLKATA BENCH**

**APPLICATION NO : O.A. 53 OF 2011**

**FRIDAY, THIS TWENTYTHIRD DAY OF MARCH, 2012**

**CORAM : Hon'ble Mr. Justice Sadhan Kumar Gupta, Member (Judicial)  
Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)**

Ganesh Chander Singh son of late Harihar Prasad Singh, resident of village Manopali, PO Sahjeetpur, P S Baniapur, Dist. Chapra at Present resident of 109, P C Colony, Kankerbagh, Patna service no. Ex260871 Rank, ACI, Place of Last posting 403, AIR Force Station, Kumbhigram.

..... Petitioner

-VS -

1. Union of India, through Secretary Ministry Of Defence Delhi.
2. Chief of the Air Staff, Ministry of Defence Service, New Delhi.
3. OIC, Air Force Record Officer, Subarto Park, New Delhi.
4. Director of Personnel (Air Men) , Subarto Park, New Delhi.
5. Commanding Officer, Indian Air Force, Subarto Park, New Delhi.

..... Respondents

For the applicant : Mr. Abhishek, Advocate

For the respondents : Mr. D.K.Mukherjee, Advocate  
Mr. Rajib Mukherjee, Advocate

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## O R D E R

**Per Lt. Gen. K.P.D.Samanta, MEMBER (Administrative)**

Applicant, Shri Ganesh Chandra Singh, was enrolled in the Indian Air Force on 15<sup>th</sup> October 1963 in the trade of Clerk. According to the terms of engagement, he was to serve 9 years of regular service followed by 6 years of reserve liability. He retired on 17<sup>th</sup> February 1973 after completing 9 years and 126 days of regular service.

2. Thereafter, as submitted in his original application, the applicant did not take any step till February 2001 for agitating his grievance for pension. The applicant made a representation before the Air Force Authorities in February 2001 for sanction of pension by counting his regular service plus reserve liability, which totalled to 15 years, which was the required qualifying service for being eligible for pension. The applicant sent a reminder to the Air Force Records in May 2001 on the same issue agitating for service pension since the authorities did not respond to his earlier representation. Since he did not get any reply, he again represented on 25.10.2010 on the subject before the Air Force authorities. (All his representations are annexed in Annexure-1 series to the OA).

3. When the applicant did not get any response from the concerned authorities with regard to his grievance for pension, he approached the Hon'ble Patna High Court by filing a writ petition in the year 2011 being CWJC 8718 of 2011. However, since in the meanwhile, Armed Forces Tribunal was established, the applicant prayed for withdrawal of the said writ petition and the Hon'ble High Court by order dt. 13.5.11, allowed the writ petition to be withdrawn with liberty to



avail other remedy. Accordingly, the present original application has been filed before this Bench on 24.8.2011.

4. While praying for grant of service pension by counting 9 years of regular service and 6 years of reserve liability, the applicant has brought to our notice the following documents, which are annexed to the rejoinder to the reply affidavit filed by the respondents :-

a) Annexure -1 which is a copy of discharge book. In page 8 of the above document (running page 14), it is clearly mentioned that the applicant was enrolled with terms of engagement as 9 years of regular service. The authenticity of this document has not been contested by the respondents.

b) In the last page of the above discharge book (running page 18) the Commanding Officer of the Unit has clearly certified that –

“You are liable to be inducted into Reserve Service at any time during the stipulated period of reserve liability (as per provisions of reserve Auxiliary Air Force Act, 1952) depending on service requirements.”

5. Besides the above documents, the Id. advocate for the applicant, Mr. Abhishek has also drawn our attention to the Principal Bench decision in a similar case in TA 564 of 2010 (**Sh. Sadhashiv Haribabu Nargund & Ors –vs- UOI & Ors**) decided on 12.1.2011. (copy annexed at annexure-2 to the rejoinder). The Id. advocate has submitted during the course of oral argument, that in this decision, the Principal Bench has relied on various decisions of different High Courts as also the decisions rendered by the Kolkata Bench, Jaipur Bench and Kochi Bench of the AFT and held that the applicants therein were entitled to get

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pension by way of counting both regular service as well as reserve service, even though the applicants there were stated to be discharged after regular service. He pointed out that the facts of the above cited case are similar to those of his client (applicant herein) and therefore, the ratio of this decision is very much applicable to the present case as well. Concluding his argument, the Id. advocate for the applicant prayed that the present case should be allowed at the earliest considering the fact that the applicant has been suffering for a long time without pension and every day's delay would add to his misery.

6. The respondents in their reply affidavit have not denied the facts stated in the application with regard to regular service, the date of enrolment and discharge of the applicant. It is admitted that the applicant did put in a total of 9 years and 126 days of regular service in the Air Force. The respondents have, however, in their reply affidavit contested that the applicant was not at all in reserve liability.

7. It is submitted by the respondents that the case is very old and since the applicant was discharged way back in 1973, therefore, all documents relating to his service record have been destroyed by burning as per extant rules. The destruction certificate to support the above statement has been attached as annexure to the reply affidavit. However, the respondents do concede that the long roll with some service records with regard to the applicant is available with them, which they have appended as an annexure to the reply. This document is described as "Record of Service".

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8. As per the only available document, which is the long roll in respect of the applicant, it appears that Shri Ganesh Chandra Singh (applicant) was enrolled on 15.10.1963 and discharged on 17.2.1973 under the clause "with gratuity otherwise than at his own request". The respondents have further submitted that the applicant was not transferred to reserve service. Accordingly, he was paid his entitled DCRG of Rs. 3457.55p at the time of discharge.

9. The respondents have further submitted that as per provision of Pension Regulations, in order to be eligible for reservist pension, an individual is required to serve for 15 years (regular plus reserve). Since the applicant had only served for 9 years and 126 days of regular service and nothing as a reservist, he, according to the respondents, did not complete 15 years of service and thus, was not eligible for reservist pension under regulation 136 of Air Force Pension Regulation, 1961.

10. Ld. advocate, Mr. D.K.Mukherjee representing the respondents, during the course of hearing, stressed upon the point that the claim of the applicant is hopelessly barred by limitation. He submitted that the applicant has agitated his grievance for pension at a much belated stage. He retired in the year 1973 and made his first representation before the authorities for pension only in 2001. Not only that, he filed the writ application before the Patna High Court in the year 2011 and there is no satisfactory explanation for such inordinate delay. His next point was that all the connected service records in respect of the applicant have been destroyed long back in accordance with rules and therefore, the respondents are handicapped in contesting the matter properly.

11. We have heard the submissions of the Id. advocates for both sides at length and given our careful consideration to the facts and circumstances of the case.

12. We may first consider the question of delay and limitation, as raised by the Id. advocate for the respondents. It has been argued that although the applicant was discharged from service in the year 1973, he did not take any step for a long time and made his first representation only in the year 2001. It is submitted that even if it is admitted that the applicant was in reserved list for 6 years followed by his discharge from regular service in 1973, the cause of action arose in the year 1980 and this application having been filed in the year 2011, it is hopeless barred by limitation. The applicant has tried to explain the delay by stating that he was not aware of the rule position and came to know about it only after some of his colleagues got the benefit of pension and only thereafter, he filed his representation for extending same benefit in the year 2001 and followed the matter up by filing successive reminders. When nothing was heard from the respondents, he was compelled to approach the Hon'ble Patna High Court in the year 2011. Despite the delay, the petition was admitted in the Hon'ble High Court, justifiably after considering all aspects including the delay aspect. Further agitation by the respondents at this stage just after few months on the same issue does not appear appropriate. We also take note of the fact that even though the applicant filed a representation in 2001, the respondents authorities sat tight over it (for more than 10 years) and did not care to respond to the applicant's representations. However, since this is a claim for pension for past

service rendered by the applicant, we are of the opinion that the cause of action is a continuing one as claim for pension arises every day it is denied. In this context, it will be pertinent to refer to a decision of the Hon'ble Supreme Court in the case of **Union of India –vs- Tarsem Singh** reported in 2009 (1) AISLJ page 371 {2008 (8) SCC 648} where the Hon'ble Apex Court has graphically stated the circumstances under which the delay should be condoned.

“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ Petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. *For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted inspite of delay as it does not affect the rights of third parties.* But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment arrears relating to sixteen years and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of the writ petition, or from the date of demand to day of writ petition, whichever was lesser. It ought not have granted interest on arrears in such circumstances.

(italics for emphasis)

13. In view of the law laid down by the Hon'ble Apex Court and considering the fact that the applicant is seeking grant of pension and pensionary benefits,

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we are inclined to condone the delay. Accordingly, the delay in filing the original application is condoned at this stage.

14. Now, we may come to the merit of the case. We have perused the documents annexed with the case record. Our perusal of the available record reveals that the applicant was indeed enrolled in 1963 and discharged in 1973 after putting in 9 years and 126 days of regular service. The plea of the applicant is that he was enrolled under terms and conditions that he was to serve for 9 years of regular service followed by 6 years of reserve liability. This aspect of the claim has not been denied by the respondents in their reply affidavit. No documentary record has been produced before us by the respondents in this regard. To the contrary, the discharge book that has been produced by the applicant in annexure 1 series to the rejoinder, clearly indicates that he was enrolled under terms to serve for 9 years in regular service (page 8 of the discharge book). Further, the last page of the discharge book also contains a certificate duly authenticated by one Group Captain, S.K.Roy, Commanding Officer of the Air Force Station to the effect that the applicant was liable to be inducted into reserve service at any time during the period of reserve liability. A perusal of the said discharge book also brings to our notice the contents of page 17 according to which the discharge of the applicant was on completion of regular service that was carried out under Air Force Rules 1969, Chapter III, Rule 15, para 2(d) and it was noted therein that his "discharge with gratuity otherwise than at his own request."

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15. All these endorsements that have been made in the discharge book of the applicant, have been carefully analyzed by us, especially in the absence of any other documents, which could not be produced by the respondents, perhaps, because they were destroyed. Having analysed all these documents, we are of the view that the applicant was indeed enrolled under terms and conditions as prevalent at that point of time, which allowed 9 years regular service followed by 6 years of reserve liability. In the circumstances, an airman remains in reserve liability and could be called to serve either in air force or in Auxiliary Air Force on "as and when required basis". Therefore, it is not proper for us to disbelieve the applicant's plea that he did remain in reserve liability after his 9 years of regular service. Hence, such reserve service rendered by the applicant while remaining as a reservist, would count towards qualifying service for pension in accordance with Pension Rules as well as regulation 136 of PR 1961.

16. We have gone through the decision of the Principal Bench in TA 564 of 2010 (**Sadhashiv Haribabu Nargund & Ors** (supra) and we are of view that the ratio decided therein to be relevant and applicable to the present case. In this connection, we would like to quote some relevant portion of para 6 of the *ibid* judgement as follows :-

"6. It is the 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 purpose of qualifying service. The qualifying service for PBOR is 15 years.....

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.....As a matter of fact, in the initial appointment given to the petitioner it was clearly mentioned that petitioner will have to serve 9 years 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 year reserve service.....

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.....We fail to appreciate that once the appointment has been given and petitioners have as per the terms of the appointment given their services to the respondents how can now they back and say that since we have terminated the services of the petitioners, we will not give them benefit of reserved service. This cannot be accepted and respondents cannot be permitted to take this plea.”

17. In view of the facts discussed above and interpretation of rules that has been made by us and applying the ratio of the decision of the Principal Bench as quoted above, we are of the considered view that the present original application should succeed.

18. For the reasons stated above, the application is allowed on contest but without any cost. However, since the applicant has approached this Tribunal belatedly, we propose to restrict the benefit of arrears of pension to three years preceding the date of filing of the writ petition before the Hon'ble Patna High Court.

19. In the result, the original application stands disposed of with the following directions :-

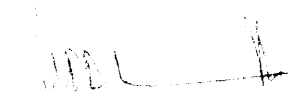
- a) The respondents are directed to work out the pension of the applicant by taking into account the fact that the applicant has rendered 9 years and 126 days of regular service followed by 6 years of reserve service and issue necessary orders for grant of pension accordingly. However, the amount of gratuity that was paid to the applicant at the time of his discharge may be adjusted against his pension arrears.
- b) The applicant shall not be entitled to entire arrears except last three years preceding the date of filing of the writ petition before the High



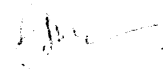
Court. The applicant will also not be entitled to get any interest on the arrear pension.

- c) Considering the fact that the applicant is well into his old age, and is without pension for a long time, we direct that the above order be complied within three months from the date of receipt of a copy of this order.

20. Let plain copy of the order be handed over to the Id. advocates for both the parties.



(LT. GEN K.P.D.SAMANTA)  
MEMBER(ADMINISTRATIVE)



(JUSTICE S.K.GUPTA)  
MEMBER (JUDICIAL)