

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORIGINAL APPLICATION NO. – 25/2017

DATED : EIGHTH DAY OF MARCH, 2019

CORAM

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

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT (S) : Sri Sridhar Kumar Chattopadhyay
Son of Late Satish Chandra Chattopadhyay
Ex-LAC 232359 of 48 Squadron, Indian Air Force
Bamrouli, Allahabad (UP) presently residing at
31/1/A, Sadgope Para Lane, PO–Mahesh
Dist–Hooghly, West Bengal, PIN–712 202.

Versus

RESPONDENT (S) : (1) The Union of India, service through
The Defence Secretary, Ministry of Defence
South Block, New Delhi–110 011
Office at 101-A, South Block, New Delhi-110011

(2) The Air Officer Commanding
Air Force Record Office
Subrata Park, New Delhi–110 010

(3) The Group Captain, Director–III
Air Force Head Quarters, office at
Air Force Record Office, Subrata Park
New Delhi–110 010

(4) The Chief of the Air Staff, Indian Air Force
Air Headquarters, Vayu Bhawan,
New Delhi-110011

Counsel for the applicant (s) : Mr. S. K. Mukhopadhyay
Ms. Kalpita Paul
Mr. Soham Mukherjee
Mrs. Sanjana Pal Choudhury

Counsel for the Respondent (s) : Mr. Tapas Kumar Chattopadhyay

ORDER

PER DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

1. This application has been filed by the applicant for grant of Reservist Pension and arrears under the Head Reservist Pension with interest, etc.,.

2. Heard the Ld. Counsel for both the sides.
3. The facts leading to filing this O.A. are that the applicant was enrolled in the Indian Air Force as an Airman on 07th August, 1961 for a term of engagement of 9 years Regular Service and 6 years in Reserve Service i.e., $9 + 6 = 15$ years and was discharged from Indian Air Force on 25th October, 1970 on completion of 9 year 79 days regular service. The contention of the applicant is that he was under reserve period upto 15 years but he was not called back during 6 years of reserve period. His Reservist Pension was not granted even after several representations made by him.
4. The applicant by filing O.A. No. 55/2015 approached this Tribunal which was disposed of on 26.09.2016 with direction to the applicant to file a Statutory Complaint annexing all the papers relevant to his claim within a period of six weeks and also directed the respondents shall dispose of the same within a period of three months from the date of taking decision. Accordingly, the applicant filed his Statutory Complaint on 07th October, 2016 and the same was disposed of by the Respondent No. 3 vide impugned order dated 12.01.2017 whereby the claim for Reservist Pension was rejected on the ground that the applicant has not completed the prescribed combined colour and reserve qualifying service of 15 years.
5. It transpires from the order passed by the Respondent Authority that the applicant who joined Indian Air Force on 07th August, 1961 was discharged from service w.e.f. 25th October, 1970 on completion of 9 years 79 days of regular service. He was kept in the Reserve for a period of 4 years and 361 days only. Thus, he rendered combined colour and reserve qualifying service of 14 years and 75 days only.

6. It is averred in the impugned order the provision for grant of pension by condonation of deficiency in qualifying service upto maximum period of six months can be condoned by the Service Headquarters for grant of pension. In the same breath, it has also been stated in Para 7 of the Impugned Order that the Regulation 114 has been amended later vide Gol, MoD letter No. 4684/DIR(PENS)/2001 dated 14 August 2001 and executive powers have been delegated to the Competent Authority (i.e., Air Chief-in-Charge Administration at Air Headquarters) for condonation of short fall in qualifying service beyond six months and upto 12 months for grant of pension. According to the respondents as the applicant was discharged from Regular Service w.e.f. 25th October, 1970, the statutory provisions of Regulation 114 are only applicable and the provisions of Regulation 114, amended later vide Gol, MoD letter dated 14th August, 2001 are not applicable in case of the applicant. The short-fall of 290 days, the deficiency in qualifying service is beyond the condonation limit of Service Headquarters.

7. Ld. Counsel for the applicant has cited the judgements of different Benches is O.A. 23/2014, AFT, Regional Bench, Chennai Ex-Capt T.V. Kothadaraman Vs. Union of India & Others, Ganesh Ch. Singh Vs. Union of India & Others, O.A. No. 53/2011, AFT, Regional Bench, Kolkata; Ranendra Kr. Saha Vs. Union of India, O.A. No. 99 of 2012, AFT, Regional Bench, Kolkata; Padua P.C. Vs. Union of India and others, O.A. No. 100 of 2013, AFT, Regional Bench, Kochi.

8. In the cited cases, it was held that the principle of equitable promissory estoppels binds the Government to stand by their promise and not to be unfair and act in disadvantage of other party.

9. This is not in dispute that the applicant herein was discharged from service on completion of 9 years 79 days of Regular Service. He was kept Reserve thereafter only for 4 years and 361 days.

10. Admittedly when the applicant was recruited in the Indian Air Force, he was under obligation to service 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. This issue is no longer res-integra. The respondent authorities are bound to take both periods into consideration for grant of pension. The applicant served 9 years 79 days of Regular Service and thereafter 4 years and 361 days of Reserve Service, after which his appointment was terminated i.e., before the completion of terms of engagement. This is clear breach of terms and conditions of appointment. The respondents have fully utilized all the service of applicant for 9 years 79 days of Regular Service and kept him in Reserve Service for another 4 years 361 days. Now, they cannot say that since the service of petitioner was terminated, he is not entitled to get the benefit of reserve service.

11. In the case of Sadashiv Haribabu Nargund & Others Vs. Union of India 20011 (1) AFIJ 174, Hon'ble AFT, Principle Bench in the similar case condoned the short fall of one year. Here, the short fall is less than one year and in view principle of promissory estoppel it is liable to be condoned and is condoned. The applicant is deemed to have completed 15 years of combined regular and Reserve Service and is, therefore, eligible for Reservist Pension. The pension is to be calculated and paid to the applicant from 3 years prior to the date of filing this appeal (17.02.2017). The pension along with the arrears will be paid to the applicant within 3 months of the receipt of this order, failing which 8% interest will be levied on the arrears.

12. Accordingly, the application is allowed with the directions as above.
13. No order as to costs.
14. A plain copy of this order, duly countersigned by the Tribunal Officer, be furnished to both the sides after observance of all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)

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