ARMED FORCES TRIBUNAL
REGIONAL BENCH
KOLKATA
(Through Video-Conferencing)

O.A. No. 71 of 2016

In the matter of :

Ex Cpl Tapan Kumar Singha ... **Applicant**

Versus

Union of India & Ors. ... **Respondents**

For Applicant : Miss Manika Roy, Advocate

For Respondents : Mrs. Hema Mukherjee, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN P.M. HARIZ, MEMBER (A)

O R D E R

Invoking jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 ('AFT Act' for short), this application has been filed with a prayer that that the applicant may be granted Reservist Pension along with arrears @ 18% per annum and the action of the respondents in denying him the aforesaid pensionary benefits be quashed.

2. Facts in nutshell go to show that the applicant was enrolled in the Indian Air Force on 18.10.1963 as an Airman in Technical Trade. His engagement was for a period of 9 years in Regular Service and 6 years in a Reserve Service. It is the case of the applicant that he served the nation with utmost devotion and to the entire satisfaction of his superiors. From Para 4.2

onwards, the applicant has, in detail, elaborated his career-profile to indicate the trainings undertaken by him, the service done to the nation by participating in 1965 Indo-Pak War, receipt of 'Raksha Medal', his participation in various national and international Football championships etc. He also actively participated in the 1971 Indo-Pak War. However, after having rendered 10 years and 13 days of active service as a regular personnel in the Indian Air Force between 1963 and 1973, the applicant was discharged from service on 30.10.1973. It is an admitted position that after his discharge from service, he was never engaged in the Reserve Service, as indicated in the offer of appointment, for the period of 6 years. Annexure A-1 is the Discharge Certificate and at Page 25 vide Clause 12, it is indicated that he was enrolled in the Indian Air Force on 08.10.1963 to undertake 9 years' Regular Service and 6 years Reserve Service. However, it is indicated and it is also an admitted position that he was discharged from service after completing the regular period of service i.e. 10 years and 13 days, in the Service-Book at Page 29, it is indicated that he was never engaged for any Reserve Service. The period of service rendered in the Reserve Service is indicated as 'NIL'.

3. That being so, the facts that have come on record, indicate that after completing 10 years and 13 days of Regular Service, even though there is a condition stipulated in the offer

of appointment that he can be engaged for 6 years in the Reserve Service, he was never deputed to this service. Grievance of the applicant is that, without prior intimation, without expressing any reason and without taking note of the unblemished services rendered by him to the nation, in a whimsical manner, his services were dispensed with. It is, *inter alia*, contended that in terms of the stipulation contained in the offer of appointment, the applicant is entitled to Reservist Pension treating him to have completed 15 years of service and in support thereof, provisions of Regulation 136 of the Pension Regulations for Air Force, 1961 (Part-I) is referred to to say that an individual on completing 9 years of Regular Service and 6 years of Reserve Service is entitled for pension.

4. It is the case of the applicant that even though his engagement was for 9 years of Regular Service and 6 years of Reserve service, he never expressed his unwillingness to serve the nation, Reservist Pension is denied to him on the ground that he has only served for about 10 years and has not completed 15 years tenure of service required i.e. minimum qualifying regular service of pension under Regulation 121 of the Pension Regulations for the Air Force, 1961 (Part-I).

5. It is the case of the applicant that he was always willing and was ready to work in the Reserve Service also, but the

respondents, without taking any work from him on this count i.e. Reserve Service, discharged him from service. He has also invited our attention to certain judgments rendered by the Hon'ble Supreme Court and the AFT, Regional Benches at Kochi and Kolkata, in detail for emphasising these points. Written arguments have also been filed to say that the applicant is entitled for pension. Article 366 (17) of the Constitution of India is referred to to say that the applicant, as per the definition of 'Pension' is entitled to the pensionary benefits and denying him the same, respondents have committed grave illegality. The judgments relied upon by the applicant are :

1. ***T.S. Das and Ors. Vs. Union of India and Anr.*** **[Civil Appeal No. 2147 of 2011] passed by Hon'ble Supreme Court on 27.10.2016**

2. ***Ex No. 13824888 Gopinathan AK Vs. Union of India & Ors.*** **[O.A. No. 293 of 2016] passed by Armed Forces Tribunal, Regional Bench, Kochi on 07.02.2017**

3. ***Ajoy Kumar Basu Vs. Union of India & Ors.*** **[O.A. No. 63 of 2013] passed by Armed Forces Tribunal, Regional Bench, Kolkata on 22.01.2016**

to indicate that the period of engagement as stipulated in the offer of appointment should be counted as the total period of engagement and that being more than 15 years i.e. 9 years of

regular service and 6 years of Reserve Service, the applicant is entitled to pensionary benefits. In the written arguments, reference is made to certain orders passed by the Kerala High Court in certain cases even though no copy has been filed to show that the applicant is entitled to the pensionary benefits.

6. Respondents have filed a detailed counter affidavit and refute the contentions canvassed by the applicant.

7. It is the case of the respondents that grant of pensionary benefits to Airmen are governed by the provisions of the Pension Regulations for the Air Force, 1961 (Part-I) and as per Regulation 136(a), as amended vide CS No. 95/X/70, an Airman Reservist, who is not in receipt of a service pension may be granted, on completing the prescribed combined colour and reserve qualifying service i.e. 15 years, Reservist Pension @ Rs. 15/- per month on his transfer to the pension establishment. It is submitted by the respondents that in the case of the applicant, the total service rendered by him is only 10 years and 13 days, which is less than 15 years. He is, therefore, not entitled to Reservist Pension. The interpretation of the applicant demanding Reservist Pension on account of his abrupt discharge from service in the year 1973 is said to be unsustainable. Respondents have also referred to the terms and conditions of service of airmen governed under the

AFI 12/S/48 as amended from time to time and the regulations for the Air Force Reserve Service governed by the Reserve and Auxiliary Air Force Act, 1952 and the Reserve and Auxiliary Air Force Rules, 1953 to contend as to what is the meaning of the term 'Reservist' and how the terms and conditions of service of a 'Reservist' are governed. The entire provisions have been brought on record to say that the applicant is not entitled for pension. To earn pension, the combined colour service and Reserve service should together be of more than 15 years and if it is less than 15 years, the incumbent is not entitled to pension.

8. Respondents further submit that the contention of the applicant that the offer of appointment given indicating that the applicant may be put in the Reserve Service List for 6 years, should be treated as Reserve Service as defined in the Act is unsustainable, and inviting our attention to the observations made by the Hon'ble Supreme Court itself in the case of *T.S. Das (supra)* and the AFT, Regional Benches of Kochi and Kolkata in *Gopinathan AK (supra)* and *Ajoy Kumar Basu (supra)*, respectively, relied upon by the applicant so also taking us through another judgment of AFT, Regional Bench, Kochi in ***Ex Cpl Ramdurg Suresh Ramachandra Vs. Union of India & Ors.*** **[O.A. No. 6 of 2015]** dated 20.11.2015, learned counsel for the respondents argues that in this case,

as the applicant does not fulfil the requirement of having a combined period of service of 15 years, he is not entitled to pension. Reliance is also placed on another judgment of Regional Bench, Kochi in the matter of ***Padua P.C. Vs. Union of India & Ors.*** **[O.A. No. 100 of 2013]** dated 16.01.2014 in support of the contentions raised. Accordingly, the respondents contend that the applicant is not entitled to any benefit/pension.

9. Respondents have also submitted written arguments in the matter and have relied on the following judgements passed by Regional Bench of Kochi in support of their contentions :

1. ***Ex 751538F Sgt Jyothish Prabhakaran Vs. Union of India and Ors.*** **[O.A. No. 50 of 2013] passed by Armed Forces Tribunal, Regional Bench, Kochi on 20.05.2013**
2. ***R. Vijayadharan Vs. Union of India & Ors.*** **[OA 96 of 2010, 60/2013, 75/2011, 98/2012 and 99/2012] passed by Armed Forces Tribunal, Regional Bench, Kolkata on 31.05.2013**
3. ***P. Mohammed Meeran Pillai Vs. Union of India & Ors.*** **[O.A. No. 60 of 2014] passed by Armed Forces Tribunal, Regional Bench, Kochi on 27.10.2014**

9. We have heard the learned counsel for both the parties at length and have considered the rival contentions and the judgments relied upon by them are also taken note of.

10. The following facts are admitted and they are not at all in dispute. It is a fact that the applicant was enrolled in the Indian Air Force on 18.10.1963 as an Airman in Technical Trade. In the offer of appointment, his period of engagement was shown as 9 years Regular Service and 6 years Reserve Service. He worked for 10 years and 13 days in the Regular Service between 1963 and 1973 and thereafter he was discharged on 30.10.1973, as is evident from his Discharge Book at Annexure A-1 and in the proposed engagement under the Reservist Category, he was never engaged even for a single day. It is also an admitted position that as per Regulation 121 of the Pension Regulations for the Air Force, 1961, the minimum qualifying service to earn service pension is 15 years and as per Regulation 136 of the aforesaid Pension Regulations, the individual, on completing of 9 years of Regular Service and 6 years of Reserve Service is eligible for Reservist pension. In the backdrop of these admitted facts, the question is as to whether the applicant is entitled for Reservist Pension taking note of all the conditions stipulated at the time of appointment even though he has, in fact, not worked as a Reservist even for a single day.

11. Learned counsel for the applicant relied upon various judgments in support of the aforesaid contentions to say that the applicant is entitled to pension based on the promise

stipulated in his order of appointment and it is the case of the applicant that *promissory estoppel* entitles him to claim the benefit and the action of the respondents in not permitting him to work in the Reservist Category is unsustainable.

12. Before adverting to consider the legal questions, we may take note of the terms and conditions of service of an Airman and the provisions governing Regular and Reservist service. AFI 12/S/48 as amended from time to time and the Reserve and Auxiliary Air Force Act, 1952 together regulate these provisions, and the provisions regulating Reservist Pension as contained in AFI 12/S/48 issued by the Government of India in the year 1948. Para-12 AFI(I)/12/S/48 clearly stipulates that initial engagement period of a candidate would be 9 years of Regular Service and 6 years in the Reserve Service. This was amended in the year 1957 and on 13.04.1957 vide Amendment No. 13 initial period of engagement of 9 years of Regular Service and 6 years of Reserve Service was continued. Subsequently, with effect from 05.08.1966, vide Government of India letter dated 28.07.1966, the period of engagement was enhanced to 15 years as Regular Service and we find that subsequently after 1976, the provision for engagement in the Reservist Category was done away with. The provisions as contained in the Reserve and Auxiliary Air Force Act, 1952, vide Section 2(a) defines an 'Air Force Reserve' Category to

mean 'any Air Force Reserve' raised and maintained under the said Act. Further, sub-section (1) of Section 5 of the said Act contemplates that the Competent Authority may, by general or special order, transfer any Airman of the Air Force to the Regular Air Force Reserve and the Airman so transferred to the Air Force Reserve shall be deemed to be a member of the said Reserve. Further, clause (a) of sub-section (1) of Section 7 contemplates that every member of the Regular Air Force Reserve shall be liable to serve under the Reserve Service for a period stipulated in the order. It is also evident from the material available on record that with effect from 1972, the Reserve Scheme was suspended and subsequently, it was done away with.

13. Based on these statutory provisions, we are now required to consider the case of the applicant and, in our considered view, the issue so far as this application is concerned, stands concluded by the judgment of the Hon'ble Supreme Court in the case of *T.S. Das (supra)* relied upon by the applicant's counsel himself.

14. A complete reading of this judgment of the Hon'ble Supreme Court indicates that the issue before the Tribunal arose after various applications filed before the AFT were decided. Both the applicants before the AFT and the Union of

India were aggrieved by the decisions rendered by the Tribunal. In Civil Appeal No. 2147 of 2011, challenge was made to an order passed by the AFT, Principal Bench, New Delhi in O.A. No. 182 of 2009 decided on 04.02.2010, wherein the Tribunal rejected the claim of the applicants to grant Special Pension to them whereas in Civil Appeal No. 8566 of 2014, the decision of the AFT, Regional Bench at Chennai in O.A. No. 83 of 2013 decided on 22.04.2013 was challenged by the Union of India, wherein the Tribunal acceded to the claim of the applicants for grant of Reservist Pension. It is this second case initiated at the instance of the Union of India in Civil Appeal No. 8566 of 2014 which would be relevant for us in deciding the present application.

15. In cases before the AFT, the applicants were Sailors in the Indian Navy before 1973. In their appointment letter, it was noted that the concerned applicants were engaged as Sailors for 10 years on active Regular Service and 10 years on Fleet Reserve Service if required thereafter. All the applicants were continued for a period beyond the term of Regular Service of 10 years and they were then discharged without drafting them to the Fleet Reserve Service. Each of the applicants therein were, therefore, discharged from the Indian Navy with effect from July, 1976 on completing the active regular service

without drafting them to the Fleet Reserve Service and they were paid gratuity.

16. The 38 applicants in O.A. No. 182 of 2009, which was filed before the Principal Bench of AFT, New Delhi, initially filed a writ petition in the Delhi High Court and they claimed Special Pension under Regulation 95 of the Navy (Pension) Regulations, 1964 and when the Competent Authority rejected the same, the matter was agitated before the Tribunal and when the same was rejected, the matter travelled to the Hon'ble Supreme Court. As the issue in these cases pertains to grant of Special Pension, it may not be relevant so far as the present application before us is concerned.

17. In the second category of cases before the AFT, Regional Bench, Chennai, which was subject-matter of Civil Appeal No. 8566 of 2014 in the Hon'ble Supreme Court, the Tribunal directed the Competent Authority to grant Reservist Pension to each of the applicants and the Tribunal, while dealing with the issue, came to the conclusion that in accordance to the terms and conditions stipulated in the appointment letter, each of the applicant, after expiry of their engagement in active service, ought to have been drafted to Fleet Reserve Service and this having not been done, invoking the principle of

promissory estoppel, the Tribunal granted relief to each of the employees.

18. It was the case of the applicants before the Tribunal that they had signed the contract to serve the Indian Navy for 10 years on active service and 10 years on Fleet Reserve Service and they were under the bonafide belief that they will be allowed to complete pensionable service i.e. 10 years active service and 10 years Fleet Reserve Service and when this was not done on account of various factors indicated, applying the principle of *promissory estoppel*, they claimed the benefits the same having been granted by the Tribunal; Union of India had challenged the issue before the Hon'ble Supreme Court. This second set of case is on facts and the principles of law identical to the issue now being agitated before us.

19. On a complete scanning of the principles considered and laid down by the Hon'ble Supreme Court in the aforesaid judgment, we find that each of the applicants before the Hon'ble Supreme Court, who had initiated the proceedings before the Tribunal, were engaged as Sailors before 1973, they had completed 10 years of service in the regular active service and thereafter their services were discharged as stipulated in their offer of appointment and they were not drafted on the Fleet Reserve Service. They invoked the principle of

promissory estoppel and the Tribunal granted them the said benefit.

20. Hon'ble Supreme Court has referred to various statutory provisions as are applicable in the Indian Navy services including provisions of Regulation 269 of the Navy Regulations and in Para 15, observed that in the absence of an express order of the Competent Authority to take the applicants on the Fleet Reserve service, the moot question is as to whether the applicants can be treated as deemed to be in the Fleet Reserve Service on account of the stipulation in the appointment letter and, therefore, on completing the 10 years of Naval service as Sailors, they are deemed to have remained drafted to the Fleet Reserve Service for another 10 years and entitled for pension. The issue has been discussed in Para 15 in the following manner and in Paras 17, 18 and 20, the observations made by the Hon'ble Supreme Court read as under :

> ***"15. In absence of an express order of the Competent Authority to take the applicants on the Fleet Reserve Service, the moot question is: whether the applicants can be treated as deemed to be in the Fleet Reserve Service on account of the stipulation in the appointment letter - that on completion of 10 years of Naval Service as a Sailor, they may have to remain on Fleet Reserve Service for another 10 years. That***

condition in the appointment letter cannot be read in isolation. The governing working conditions of Sailors must be traced to the provisions in the Act of 1957 or the Regulations framed thereunder concerning service conditions. From the provisions in the Act of 1957, there is nothing to indicate that the Sailor after appointment or enrolment is 'automatically' entitled to continue in Fleet Reserve Service after completion of initial active service period of 10 years. The provisions, however, indicate that on completion of initial active service of 10 years or enhanced period as per the amended provisions is entitled to take discharge in terms of Section 16 of the Act. The applicants assert that none of the applicants opted for discharge. That, however, does not mean that they would or in fact have continued to be on the Fleet Reserve Service after expiration of the term of active service as a Sailor. There ought to have been an express order issued by the competent Authority to draft the concerned applicant in the Fleet Reserve Service. In absence of such an order, on completion of the term of service of engagement, the concerned sailor would stand discharged. Concededly, retention on the Fleet Reserve Service is the prerogative of the employer, to be

exercised on case to case basis. In the present case, however, on account of a policy decision, the Fleet Reserve Service was discontinued in terms of notification dated 3rd July, 1976. The said notification reads thus:

"No.AD/5374/2/76/2214/S/D (N.II),
Government of India,
Ministry of Defence,
New Delhi, the 3rd July, 1976.

To,

The chief of the Naval Staff (with 100 spare copies)

Sub.:- CONDITIONS OF SERVICE OF SAILORS

Sir,

I am directed to state that the President is pleased to approve the following modifications in the conditions of Service of sailors:-

a) Initial Period of Engagement:- Be enrolled for 15 years.

b) Educational Qualification at Entry :- Be raised to Matriculation or equivalent in the case of Direct Entry sailors of Seaman and Marine Engineering branches and Bo Entry sailors of all branches.

c) Ages of Entry :- The age of entry for Boys be revised to 16-18 years and that for Direct Entry sailors to 18-20 years.

d) Compulsory Age of Retirement:- Subject to the prescribed rules, the age of compulsory retirement for sailors of all ranks upto and including CPO rank will be 50 years. The compulsory retirement age of MCPO I/II will remain 55 years.

e) Time Scale Promotion to Leading Rank:- Seaman First Class and equivalents will be promoted to the Leading rank on completing of 5 years service in man's rank subject to passing the prescribed examination. The date of implementation of this provision will be promulgated by Naval Headquarters.

f) Transfer to Current Fleet Reserve:- Transfer of sailors into the Fleet Reserve to be discontinued. The Existing Fleet Reservists will not be required to undergo refresher training but will be paid the retaining fee till they are wasted out.

g) Recall to Active Service:-(i) All new entrants with 15 years initial engagement and such of the existing

sailors, who re-engage to complete time for minimum pension, to sign a declaration that they will be liable to recall to active service, after release upto two years in case of Non-Artificers and three years in case of Artificers. During this period they will not be required to undergo refresher trainings or be entitled to any retaining fee, but when recalled they will be entitled to normal pay and allowances. If recalled they would be liable to serve for so long as their services are required.

(ii) Sailors released prematurely from Service at their own request will also be liable to recall to active service upto the period stated above.

h) Regrouping and Remustering of sailors:- Future entrants (Both Boy and Direct Entry) in Seamen and ME Branches will be on Group 'B' Scale of Pay. Serving sailors in these branches including Regulating Branch, who are matriculate or equivalents will also be remustered to Group "B" scale pay with effect from 1st April, 1976. Those, who attain this qualification later, will also be remustered to Group 'B' scale of pay, as and when they so qualify. Remustering will invariably be effective from the first of the month in which it occurs.

2. Administrative instructions, if any, will be issued by the Naval Headquarters.

3. Appropriate Government Regulations/ Orders will be amended in due course.

4. This issues with the concurrence of Ministry of Finance (Def) vide their u.o. No.452/NA/S of 1976.

Yours faithfully,
Sd/-
(P.S. Ahluwalia)
Under Secretary to the Gov. of India"

17. As noted hitherto, none of the relevant provisions even remotely suggest that the Sailor is 'automatically' transferred to the Fleet Reserve Service. Whereas, it is expressly provided that on expiration of the term of service of engagement the Sailor would be placed on Fleet Reserve Service only if an express order in that behalf is passed by the Competent Authority to draft him on the Fleet Reserve and not

otherwise. Section 16 of the Act, merely gives an option to the Sailor to take a discharge after expiration of term of service of engagement. It is not a deeming provision that if such option is not exercised by the concerned Sailor, he would be treated as having been drafted on the Fleet Reserve Service for another 10 years 'automatically'.

18. Regulation 269, spells out the conditions of service. It reinforces the position that the services of a Sailor would be continued 'so long required' or 'if required'. The second part of Clause (1) of that Regulation uses the expression 'if required', for further 10 years service in the Indian Fleets Reserve, subject to the provisions of the Regulations for the Indian Fleet Reserve. This view taken by the Tribunal (Principal Bench, New Delhi) in T.A. No.492 of 2009 commends to us.

19. xxx xxx

20. The quintessence for grant of Reservist Pension, as per Regulation 92, is completion of the prescribed Naval and Reserve qualifying service of 10 years 'each'. Merely upon completion of 10 years of active service as a Sailor or for that matter continued beyond that period, but falling short of 15 years or qualifying Reserve Service, the concerned Sailor

cannot claim benefit under Regulation 92 for grant of Reservist Pension. For, to qualify for the Reservist Pension, he must be drafted to the Fleet Reserve Service for a period of 10 years. In terms of Regulation 6 of the Indian Fleet Reserve Regulations, there can be no claim to join the Fleet Reserve as a matter of right. None of the applicants were drafted to the Fleet Reserve Service after completion of their active service. Hence, the applicants before the Tribunal, could not have claimed the relief of Reservist Pension. The Tribunal (Regional Bench, Chennai) in O.A. No. 83 of 2013, however, granted that relief by invoking principle of equitable promissory estoppel and legitimate expectation in favour of the applicants. The Tribunal, in our opinion, committed manifest error in overlooking the statutory provisions in the Act of 1957 and the relevant Regulations framed thereunder, governing the conditions of service of Sailors. The fact that on completion of 10 years of active service, the Sailor could be taken on the Fleet Reserve Service for a further period of 10 years cannot be interpreted to mean that the concerned Sailor had acquired a legal right to join the Fleet Reserve Service or had de jure continued on Fleet Reserve Service for a further 10 years after expiration of the initial term of

active service/engagement. There is no provision either in the Act of 1957 or the Regulations framed thereunder as pressed into service by the applicants, to suggest that drafting of such Sailors on Fleet Reserve Service was 'automatic' after expiration of their active service/enrolment period. Considering the above, it is not necessary to burden this judgment with the decisions considered by the Tribunal on the principle of equitable promissory estoppel and legitimate expectation, which have no application to the fact situation of the present case."

[Emphasis supplied]

21. A complete scanning of the aforesaid would go to show that the Hon'ble Supreme Court, after analysing various provisions of the Statute as applicable in the Indian Navy came to the conclusion that the provisions referred to indicate that after completing the initial active service period of 10 years or any enhanced service, the employee is entitled to take discharge but under the Statute, there has to be an express order issued by the Competent Authority to draft the concerned applicant to the Fleet Reserve Service. It has been held by the Hon'ble Supreme Court that in absence of such an order, on completing the terms of service of engagement as a Regular Sailor and when the services are discharged without

issuing any order specifically by the Competent Authority, the employee is not entitled to have been discharging any service in the Fleet Reserve Service. The principles canvassed by the Supreme Court, as reproduced hereinabove, clearly indicate that merely upon completing of 10 years active service as a Sailor or for that matter, continued beyond that period, but falling short of 15 years qualifying regular service of Reserve Service, the concerned Sailor cannot claim benefit of Reservist Pension. For him to qualify for Reservist Pension, he must be drafted to the Fleet Reserve Service for a period of 10 years and until and unless he has rendered a combined service of 10 years each in both the Regular Service and Reserve Service, he is not entitled to pension.

22. That is the ratio of law laid down by the Hon'ble Supreme Court, in our considered view. This judgment of the Hon'ble Supreme Court was subject-matter of consideration before the Regional Bench, Kochi in the case of *Gopinathan A.K. (supra)*, decided on 07.02.2017. Here also the employee was discharged after completing 12 years 03 months and 23 days of colour service in the Air Force. He had not completed 15 years' colour service required for earning pension. In the offer of enrolment given to him, his term of engagement was shown as 10 years Regular Service and 10 years Reserve Service. After completing 10 years of Regular Service, he was

discharged in June, 1973. Even though he was retained in Reserve liability for some period, but he was discharged finally on 30.09.1975 after completing 12 years 3 months and 23 days of colour service. Placing reliance on the judgment rendered by the Regional Bench, Chennai of AFT, benefit was claimed and the Regional Bench, Kochi, after taking note of the law laid down by the Hon'ble Supreme Court in the case of *T.S. Das (supra)* came to the conclusion that the terms of engagement of active service and reserve service cannot be interpreted to mean that a person has acquired a legal right to join Reserve Service on completion of the active service and, therefore, unless a person is transferred to Reserve Service list, he is not entitled to Reservist Pension.

23. In the case of *Ajoy Kumar Basu (supra)* also the Regional Bench, Kolkata had considered the case of an employee of Indian Air Force, Ajoy Kumar Basu, who was enrolled in the Indian Air Force on 22.09.1960 and after completing 9 years and 71 days of regular service, he was transferred to the Regular Air Force Reserve and there, he worked for 5 years and 294 days. When Reservist pension was denied to him, he was granted pension after considering that he had actually worked for more than 15 years together both in Regular Service and the Reserve Service. That being so, we find that it is only in those cases the benefit of Reservist Pension has been

granted where the employee has, in fact, actually worked both in the Regular service and Reserve service and together the period is 15 years or more. In all such cases, where the period has fallen short of 15 years or the employee has not at all worked in the Reservist category, merely on the basis of some stipulations contained in the appointment letter or offer of engagement, benefit had been denied to them. Similar is the principle laid down by the Kochi Bench of AFT in O.A. No. 6 of 2015 *Ex Corporal Ramadurg Suresh Ramachandra (supra).* This case is identical to the case that is before us. In that case, the employee was enrolled in the Indian Air Force on 25.09.1961 as an Airman. His term of engagement was indicated as 9 years Regular Service and 6 years Reserve Service. He was discharged from service after completing 9 years and 90 days of regular service on 24.12.1970. He was thereafter recalled to active service and served up to 11.04.1972 and it is only when he had total period of 15 years together in Regular Service and Reserve Service that he was granted pension.

24. If we analyse the cases cited before us, particularly in the backdrop of the principles laid down by the Hon'ble Supreme Court in the case of *T.S. Das (supra)*, we find that in the Reserve and Auxiliary Air Force Act, 1952 and the Reserve and Auxiliary Air Force Rules, 1953 as was provided in the

statutory provisions governing appointment of Sailors in the Indian Navy, there is a specific and clear stipulation that a Reservist is a person who is, by a general or special order issued by the Competent Authority, transferred or appointed in the Air Force Reserve Service. This is the condition stipulated in sub-section (1) of Section 5 of the Reserve and Auxiliary Air Force Act. As in the Navy also, merely on the basis of the stipulation contained in the offer of appointment, on completing the term in the Regular Service, the incumbent is not drafted or taken into the Reserve Service list to discharge Reserve duty automatically. On the contrary, the Competent Authority has to, by a general or special order, transfer his service to the Air Force Reserve Service by a specific order and when such an order is passed, the Airman is deemed to have been a member of Reserve Service.

25. In the case in hand, it is an admitted position that this applicant was never transferred to the Air Forces Reserve Service and there is no order specifically so directing and even in the Service Discharge Book, it is clearly indicated that he was never drafted to or enrolled or directed to work in the Air Force Reserve Service. That being the position, it is a case where the applicant had only worked for about 10 years and 13 days and he was never ordered to work in the Air Force Reserve Service and having not completed the combined

service of 15 years taken together on the basis of services rendered by him on Regular Service and the Reserve Service, he does not fulfil the statutory stipulation contained in Regulation 136 of the Pension Regulations for the Air Force and, therefore, we are of the considered view that no relief can be granted to the applicant.

26. Accordingly, in the facts and circumstances, as detailed and discussed hereinabove, finding no merit in the contentions advanced before us, we dismiss the application.

27. OA stands disposed of in terms of the above. However, there is no order as to costs .

Pronounced in open court on this 24th day of February, 2021.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[LT GEN P.M. HARIZ]
MEMBER (A)

/ng/