

FORM NO. 21
(SEE RULE 102(1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH

OA No.8/2018 with MA No.6/2018 and MA No.50/2019.

Wednesday, the 12th day of June, 2024.

401838 Ex AC Tapan Kumar Guha..
... Applicant.

-Vs-

Union of India and others. Respondents.

Advocates:

For the applicant,

Mr Bisikesan Pradhan.
Ms Sonali Das.

For the respondents,

Mr Ajay Chaubey, Sr. Panel Counsel.

CORAM:

HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).
HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (ADMINISTRATIVE).

O R D E R(ORAL)

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

Heard.

(2) In this application filed under Section 14 of the Armed Forces Tribunal Act, 2007, order dated 05.07.2017(Annexure A/11) conveying thereby the applicant the rejection of his claim for pension has been sought to be quashed and set aside with a further direction to respondent No.3, the CDA(AF), to grant pension to the applicant with effect from the date of his discharge from service i.e. 01.06.1979 together with

interest. Any other or further order as deemed fit and proper in the given facts and circumstances of the case has also been sought to be passed in favour of the applicant.

(3) The applicant is an ex-serviceman, retired from the Indian Air Force in the rank of Air Craftsman(AC) on 31.05.1979. He was enrolled in the Air Force on 25.11.1961 as Airman(Airframe fitter) for a term of 15 years. On successful completion of 27 months' training he was assigned the duties of his trade. While in service he was trained MIG-21 and Aloutte aircraft, and also actively participated in Indo-Pak War during his posting in Udhampur and Ambala Cantonment. On completion of the regular term of engagement he was transferred to regular Air Force Reserve on 01.06.1979 vide order dated 12.10.1978. His character and proficiency in trade were assessed excellent and exemplary, respectively, at that time. His term of engagement was extended by 2 years. He was discharged from service on 31.05.1979, when 17 years and 186 days' service was at his credit as is apparent from the discharge certificate(Annexure A/1).

(4) At the time when discharged he was neither informed about his entitlement to pension nor granted service pension and other retiral benefits. Being penniless he could not pursue the matter qua his entitlement for pension and rather was in quest of service for his livelihood and that of his parents. He was also not aware of pension regulations, etc. In the second week of June 2016 when came in contact with the South 24-Parganas Ex-servicemen Coordination Committee, he came to know that he is entitled to service pension. Fellow ex-servicemen advised him to submit a representation to the Director, Air Veterans, for grant of service pension. He accordingly made a representation dated 14.06.2016(Annexure A/2) through the said coordination committee. In response, the

Director AV-III(SP) vide letter dated 12.08.2018(Annexure A/3) forwarded the case to PCDA(P) Allahabad for obtaining time-barred sanction. A reminder dated 13.11.1016 (Annexure A/4) was also sent to respondents. In response, the PCDA(P) requested the coordination committee vide letter dated 16.01.2017(Annexure A/5) to approach the CDA(AF), respondent No.3, for needful as the matter did not pertain to it. Being so, the said committee vide letter dated 31.01.2017(Annexure A/6) requested the Director Air Veterans to proceed with the matter in terms of the letter dated 16.01.2017 without further delay. In response, respondent No.5 informed the coordination committee vide its letter dated 29.03.2017(Annexure A/7) that though the applicant was eligible for the grant of service pension by virtue of his length of service, no information regarding service pension to the applicant was available with the directorate. Therefore, PCDA(P) is stated to have rejected all such cases in the absence of original records because service records after the stipulated period of 25 years were destroyed.

(5) The coordination committee solicited an early reply from respondent No.5 vide letter dated 13.04.2017(Annexure A/8) because in view of the communication dated 16.01.2017(Annexure A/5) the matter was to be dealt with by CDA(AF), respondent No.3. Respondent No.5, in turn, informed the applicant vide letter dated 11.05. 2017 (Annexure A/9) with reference to letter dated 21.03.2017 that his case for the grant of service pension cannot be considered as his original records are not available with the Ministry of Defence. Therefore, his case was rejected being time-barred and the decision conveyed to him vide letter dated 11.05.2017 which is under challenge in this application.

(6) On receipt of Annexure A/9 the coordination committee made a representation to respondent No.5 on 01.06.2017(Annexure A/10) with a request to prepare pension records of the applicant from the long-roll and then forward to PCDA(P) Allahabad for pension to the applicant with effect from 01.06.1979. The respondents, however, have rejected the representation and the decision conveyed to the applicant vide letter dated 05.07.2017(Annexure A/11) by respondent No.4.

(7) The complaint is that the applicant having rendered 17 years and 186 days' service in the Air Force has been discharged from service on 31.05.1979 on completion of his term of engagement coupled with the factum that he was transferred to regular Air Force on 01.06.1979 as evident from the discharge certificate he is stated to be entitled to service pension with effect from 01.06.1979 in terms of Regulation 121 of the Air Force Pension Regulations (Part I), 1961. Irrespective of his service record having been destroyed after the stipulated period of 25 years, relevant entries in this regard might be available in the long-roll. The denial to service pension to him is stated to be illegal, arbitrary, and whimsical. The impugned order as such has been sought to be quashed and set aside and the respondents directed to grant service pension to the applicant with effect from 01.06.1979, the day next to the date of his discharge from service.

(8) Respondents when put to notice have not denied the facts of the case at all. However, the claim of the applicant for the grant of service pension has been sought to be rejected on the sole ground that his service records were destroyed after the statutory period of 25 years. It is admitted that the applicant who has rendered 17 years and 186

days' qualifying regular service is eligible for service pension in terms of Regulation 121 of the 1961 Regulations. It is also admitted that on the basis of entries in the long-roll his claim for the grant of service pension was processed with the pension sanctioning authority i.e. PCDA(P) but rejected on the ground that there was no pension rate for Air Craftsmen of 15 years qualifying service in the year 1979.

(9) Applicant has filed rejoinder, reiterating to what is set out in the OA and denying the contentions to the contrary in the reply being wrong.

(10) On the completion of records we have heard learned counsel on both sides and also gone through the records.

(11) The only point in issue in this application is as to whether the applicant, who has retired from service after rendering 17 years and 186 days' service on 31.05.1979 in the rank of Air Craftsman without pension and other retiral benefits irrespective of being legally entitled thereto under Regulation 121 of the 1961 Regulations, has rightly claimed the same by filing this OA or not. The answer to this poser in all fairness and in the ends of justice would be in affirmative for the reason that the respondents cannot be permitted to take undue benefit of their own wrong at the cost of just and legal right of the applicant to receive pension.

(12) As a matter of fact, in the reply filed the respondents have admitted that keeping in view the applicant has rendered 17 years and 186 days' service on the date of his

retirement he should have been granted service pension. The relevant extract of para 8 of the reply is reproduced below:

“It is admitted that the applicant is eligible for Service Pension in terms of Regulation 121 of Pension Regulations for the Air Force, 1961 (Part I) as he has rendered a total of 17 years and 186 days of qualifying regular service.”

(13) The reply further reveals that PCDA(P) has expressed their inability to sanction pension on the ground that in the year 1979 there was no pension rate for the rank of Air Craftsmen having rendered 15 years' qualifying service.

(14) As a matter of fact, while submitting so, PCDA(P) has made an effort to mislead this Bench intentionally and deliberately to mar the just and legitimate claim of the applicant. Not the least because at the time of his discharge from service the applicant was in the rank of Air Craftsman and there is no denial to his having rendered 17 years and 186 days' service on the date of his discharge and the qualifying service for the purpose of pension was 15 years as provided under Regulation 121 of the 1961 Regulations. We reproduce Regulation 121 for the sake of convenience, which reads as follows:

“121. Unless otherwise provided for, the minimum qualifying regular service for earning a service pension is 15 years.”

(15) It was for the respondents to have settled the claim of the applicant for the grant of service pension in terms of Regulation 121 supra, including the rate of pension in the rank of Air Craftsmen he was holding at the time of his discharge. Respondents may have destroyed the service records of the applicant on the expiry of the statutory period

of 25 years, but as pointed out hereinabove, he was entitled to service pension and the respondents should have taken a decision to grant the same well before the day of his discharge from service.

(16) It is the respondents who are at fault, hence they cannot be permitted to take undue advantage of their own wrong, that too, to deny the just and legitimate claim of the applicant. Admittedly, the long-roll containing necessary entries of the services rendered by the applicant is available, and it is on the basis thereof that the claim of the applicant was processed with PCDA(P); however, rejected and the decision conveyed to him vide letter dated 05.07.2017, which is under challenge in this application.

(17) We find the present a case which is squarely covered by the judgment of Regional Bench Chandigarh of this Tribunal passed in OA No.1651 of 2017 titled *Bhoom Singh v. Union of India* dated 22.01.2019 and also the judgments of the Hon'ble Apex Court in *Dharamvir Singh v. Union of India* (2013) 7 SCC 316 and *Sukhvinder Singh v. Union of India* Civil Appeal No.5605 of 2010 decided on 25.06.2014.

(18) As a matter of fact, the case of *Bhoom Singh* is identical to the present one because in that case also service record/medical record was not available with the respondents but he was found to have been discharged from service after having been placed in low medical category and held entitled to the grant of disability pension on the basis of the discharge certificate he placed on record.

(19) Although learned Sr. Panel Counsel did not agree with the submissions so made on behalf of the applicant, yet without assigning any reason as to why the law laid down by this Tribunal and by the Hon'ble Apex Court in the judgments cited supra is not applicable in this case. The only stand in the reply that the original record pertaining to the service of the applicant is not available is hardly of any help to the respondents for the reason that the applicant having otherwise made out a case for the grant of service pension in terms of the law laid by the judgments cited supra the same cannot be declined. When the respondents did not have the record of this case, allegedly destroyed on completion of the period prescribed for retention thereof, on what basis the plea that the applicant is not entitled to the service pension has been raised. The ground that due to destruction of his service record the applicant is not entitled to the grant of service pension is also not available to respondents for the simple reason that the Hon'ble Apex Court in the judgments cited supra has held that for want of service record also if it is otherwise established that an individual is entitled to the grant of pension but has not been granted, the same can be granted by taking into consideration the available record such as long-roll entries as in the case in hand.

(20) Now coming to the question of limitation it is revealed that the respondents have considered the representations submitted by the applicant, of course, rejected and the decision conveyed to him vide letters dated 29.03.2017, 11.05.2017 and 05.07.2017. Therefore, the respondents when entertained the representations filed by the applicant and informed him about the rejection of his claim in the year 2017, the OA which has been filed on 15.01.2019 cannot be held to be time-barred.

(21) True it is that as per own case of the applicant it is in the year 2016 that he came to know from the coordination committee about his right to seek the service pension. However, in the intervening period i.e. 01.06.1979 to the first representation he made on 14.06.2016 he could not pursue this matter for want of financial resources. His only concern was to get himself employed somewhere for his livelihood and that of his parents.

(22) Now if we come to the question of limitation raised by the respondents it is worthwhile to mention here that in a matter of this nature where the dispute relates to pension a claim based on continuous wrong the delay can be condoned. It is held so by the Hon'ble Apex Court in Shiv Das vs. Union of India and others AIR 2007 SC 1330 and Union of India and others vs. Tarsem Singh (2008) 8 SCC 648, and 2013 AIR SCW 4749. Reliance has also been placed on the judgment of the Hon'ble Apex Court in Kerala Road Transport Corpn. vs. K.O. Varghese and others decided on 17.04.2003 AIR 1985 SC 356 to submit that pension and gratuity are no longer any bounty to be distributed to the govt. employees but a valuable right and property in their hands.

(23) Therefore, we are not satisfied with the arguments addressed on behalf of the respondents that the OA is barred by limitation and that the same should be dismissed on this score alone. On the other hand, finding that the applicant has shown sufficient cause qua the delay occurred in filing the OA the same is ordered to be condoned. MA No.6/2018 is accordingly allowed.

(24) For all the reasons hereinabove this application succeeds and the same is accordingly allowed. Consequently the applicant is held entitled to service pension with effect from the day next to the date of his discharge from service i.e. 01.07.1979 for life. Arrears up to date be calculated accordingly and released to the applicant within 3 months from the date of receipt of certified copy of this order by learned Sr.PC/OIC Legal Cell failing which together with interest @8% per annum from the date of this order till the entire amount is realized.

(25) Miscellaneous application(s) if any pending will also stand disposed of. No order as to costs.

LT GEN SHASHANK SHEKHAR MISHRA
HON'BLE MEMBER(A)

JUSTICE DHARAM CHAND CHAUDHARI
HON'BLE MEMBER(J)

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