

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION NO: O.A. 99 OF 2012

WEDNESDAY, THIS 13th DAY OF FEBRUARY, 2013

CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)
Hon'ble Lt. Gen. K.P.D.Samanta, Member (Administrative)

Ranendera Kumar Saha, Son of Late Dr. Radhasyam Saha aged
about 79 year, Ex. Instrument Repairer-I (Ex Cpl. 209416) residing
at Flat No.A/6, Udichi Co-op. Housing Society Ltd., P-27/1, CIT
Scheme VII(M), Kolkata-700 054.

..... Applicant

- Versus -

1. Union of India
Service through the Secretary,
Ministry of Defence, South Block,
New Delhi – 110 011.
2. Chief of the Air Staff, Vayu Bhavan,
New Delhi – 110 011.
3. Officer-in-charge, Pension and Welfare, (DP), AOIC,
AF, Record Office, Subroto Park,
New Delhi – 110 010.
4. Master Warrant Officer-In-Charge, P&WW(SP)
Air Force Record Office, Subroto Park,
New Delhi – 110 010.
5. Group Captain, Officer-In-Charge, P&WW(SP),
Air Force Record Office, Subroto Park,
New Delhi – 110 010.
6. Principal of Defence Accounts (P),
Draupadi Ghat, Allahabad.
7. Dy. Controller of Defence Accounts (AF),
Subroto Park, New Delhi – 110 010.

.....Respondents

For the applicant : Mr. Chirandip Sinha, Advocate
Ms. Salma Sultana Shah, Advocate

For the respondents : Mr. Mintu Kumar Goswami, Advocate

O R D E R

Per Hon'ble Lt. Gen. K.P.D.Samanta, Member (A) :

1. In this O.A., the applicant has prayed for a direction on the respondent authorities to grant him pension for his service rendered in the Indian Air Force by taking into account the service as a reservist also.
2. The applicant was enrolled in the Indian Air Force on 25.08.1951 as an Airman in the trade of Instrument Repairer. After enrolment, he had undergone requisite training for one and a half year and thereafter served in different Air Force units. According to the applicant, in his appointment order it was clearly stipulated that he was liable to serve in the Air Force on active duty for a period of 9 years and for 6 years as reserve. The applicant was discharged from Air Force service on completion of 9 years' of active service with effect from 24.08.1960 and thereafter he was kept in reserve list. While he was in the reserve, he was called upon for active service during Indo-China war for the period from 04.12.1962 to 26.05.1963 whereafter he was released with a direction that his services were no longer required.
3. The applicant was not paid any service pension for his active service as it was less than 15 years as required under the rules for entitlement of pension although the it was held in various judicial decisions that reserve service for 6 years should also be taken into account for the purpose of calculation of 15 years. The applicant made a representation on 16.03.2012 to the respondent authorities praying for grant of pension by taking into account his reserve service for 6 years. The said representation was rejected by letter dated 17.04.2012 (Annex. A2) wherein it was stated that the applicant had rendered 12 years and 87 days of total service and, therefore, he did not qualify for award of reservist pension. The applicant thereafter also made further representation in May, 2012, which was also rejected by letter dated 28.05.2012 (at page-14). Being undeterred, the applicant filed yet another representation which was also rejected on 20.07.2012 (Page-15). Having failed to get any redress from the concerned authorities, the

applicant has filed this O.A. praying for setting aside the impugned letters dated 17.04.2012, 28.05.2012 & 20.07.2012 and for a direction to the respondents to grant him reservist pension with effect from 26.08.1965 with consequential benefits by way of extending the benefits of the judgement of the Hon'ble Kerala High Court, Principal Bench of AFT and Kolkata Bench of AFT. He has also prayed for interest @ 12% p.a. on delayed payment.

4. The respondents have contested the application by filing a reply affidavit. It is not denied that the applicant was enrolled in the Air Force on 25.08.1951 with terms of engagement for 9 years' active service and 6 years in the reserve. On completion of 9 years' of active service he was discharged from service on 25.08.1960. However, he was kept in reserve for 2 years and 275 days. On 04.12.1962 he was recalled for active service and was finally released from Indian Air Force on 26.05.1963 under the clause "service no longer required". Thus, he has rendered a total service of 12 years 87 days inclusive of active + reserve + recalled service. As such, he is not entitled to any pension. However, he was paid service gratuity of Rs.1302/- at the time of his discharge. It is contended that since the applicant did not complete 15 years' service he was not entitled to pensionary benefits, as claimed.

5. We have heard the ld. counsels for both the parties. During the course of argument Mr. Sinha, ld. advocate for the applicant has drawn our attention to the decision of this Bench of the Tribunal in O.A. 13/2010 (Asim Majumdar Vs. Union of India & Ors), a copy of the same has been annexed in Annex. A4. He has also referred to a decision of the Principal Bench of AFT in T. A. 564/2010 (Sadashiv Haribabu Nargund & Ors. Vs. Union of India & Ors.) decided on 12.01.2011, a copy of which is also at Annex. A3. It is submitted by the ld. advocate for the applicant that the present applicant is exactly similarly situated with the applicants of the aforesaid O.As. and, therefore, the said decisions should also be applicable to the present applicant.

6. Mr. Mintu Goswami, Id. counsel for the respondents has not disputed that the facts of the present case are more or less similar like the cases of the above two O.As. He has, however, submitted that the applicant having not rendered 15 years' of service, he is not entitled to any pensionary benefit.

7. We have carefully considered the facts and circumstances of the case and perused the decisions of the Principal Bench and also of Kolkata Bench of AFT, as referred to above. We find that the aforesaid two decisions were rendered on the basis of unreported decision of the Hon'ble Kerala High Court dated 31.05.2006 passed in WP(C) No.29497/04, which was quoted in para 7 of the Kolkata Bench decision (supra) wherein it has been held as below :-

“That issue is no more *res integra* covered by two bench decisions of this Court, one in WA 1360 of 1999 and the other in WA 1392 of 1997. In both decisions, it has been held that the reserve period is also liable to be counted for the purpose of pension”

In the writ petitions before the Hon'ble Kerala High Court, the applicants were also initially appointed in the Indian Air Force for 9 years of active service and were kept in reserve for 6 years according to their terms of appointment. During the reserve period they were also called to participate in the 1962 War with China and subsequently were released as their services were no longer required. They were also not granted any pension. The Id. Single Bench of the Hon'ble Kerala High Court allowed the writ petitions in their favour, which was appealed against and the Hon'ble Division Bench of the said Hon'ble High Court upheld the decision of the Hon'ble Single Bench and held that both active and reserve services i.e. total $9 + 6 = 15$ years of service should be taken into account for grant of pension. It will be beneficial to quote from the observations of the Hon'ble High Court in WA 1392 of 1997 (unreported) (reproduced in the Kolkata Bench decision at para 7) as follows:

“The minimum qualifying period of eligibility to pension is 15 years of service (9 regular and 6 reserve with the Air Force). Therefore, the respondent is entitled to get pensionary benefits. As rightly contended by learned counsel for the respondent, the action of the appellants is violative of the principles of natural justice and that the refusal of the

appellants to grant pension to the respondent after he completed the minimum period required to get pension is discriminatory and untenable in law. The learned Judge, on a careful consideration of the records placed before him in original, came to the conclusion that the respondent herein is entitled to get pensionary benefits. We are not persuaded to take a different view than the one taken by the learned Judge.”

8. The Kolkata Bench decision (supra), relied on by the applicant, relates to a similarly situated petitioner and it also relied on the decisions of the Hon'ble Kerala High Court. It was, inter alia, observed in para 8, as follows:

“ Learned Advocate for the respondent argued that the petitioner is not entitled to get pension because after 1 year and 135 days of the service, so rendered by him while in the reserve, he was discharged from the service on the ground that his service was no longer required. Accordingly, the position stands that the petitioner actually rendered 10 years 135 days service to the Air Force thereby not acquired the prescribed period of 15 years of qualified service. This argument, which is supported by the department, appears not only to be unjust but also against the principle of natural justice. It is difficult to accept the argument that a person who had come forward to render service in the interest of the Nation, could not be given the benefit of pension, which is not a big amount, whereas if he did not join the force after completion of the nine years regular service, then he would have been granted the pension by way of calculating his service to fifteen years (9years + 6 years). Another issue that needs to be highlighted is that the applicant served for one year and 135 days during the reserve period liability. He was discharged since the war situation no longer existed and his services was not required. So far so good, but it no way cancelled or over ruled the six years reserve liability which the applicant had undertaken. The reserve liability of six years remained operative. This is an argument that is not acceptable. This view is not expected from the authority who are in the helm of the defence affairs. If such a plea is allowed to be continue, it will certainly demoralize the forces. Exactly same position was considered by the Division Bench of the Kerala High Court in WA No.1439 of 2006 wherein Their Lordships observed to the effect –

“if we accept the interpretation given by the appellant, Union of India, it will give rise to an anomalous situation where a person who had been kept as reservist and was not called to serve again will be entitled to get pension, whereas a person who had been serving the Nation for a second time will be at loss”

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 1 year and 135 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 and as per Rules.”

9. The Principal Bench of the AFT in TA 564 of 2010 (Sadhashiv Haribabu Nargund & Ors) also decided the same issue based on the judgement of the Hon'ble Kerala High Court and that of the Kolkata Bench of AFT (supra). It was, inter alia, observed as follows “

“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 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 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 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 petitioner, we will not give them benefit of reserved service. This cannot be accepted and respondents cannot be permitted to take this plea.” (underlining for emphasis)

10. In view of the above decisions, which are not disputed by the respondents, we are of the clear opinion that the applicant cannot be denied reservist pension for his entire service of 9 years as active + 6 years as reserve. The contention of the respondents that the applicant had rendered only 12 years and 87 days including active + reserve + recalled service, cannot be accepted as that would give rise to anomalous position where a person who has served for 9 years and was kept for 6 years as reserve, would be entitled to pension whereas in the case of the present applicant, who was also similarly in active service for 9 years and thereafter during reserve service called to join active service during Indo-China War to serve the Nation and was released midway before completion of 6 years reserve service. This point was also considered in the decisions of the Principal Bench as well as the Kolkata Bench. We respectfully agree with the above decisions and hold that the applicant is entitled to reservist pension by taking into

account his active service for 9 years and entire reserve service for 6 years irrespective of the fact that he had been discharged/released under the clause - "his services no longer required" during his recalled service during Indo-China War. In other words, his total 6 years' reserve service in terms of the condition of appointment be taken into account for calculation of his qualifying service for pension. In this context we may also observe that as a model employer like the Union of India, they ought to have extended the benefit of the judicial pronouncements on the subject to all similarly situated persons like the applicant instead of compelling them to knock at the door of courts to seek redress.

11. However, we note that even though the applicant was discharged in 1962-63 and was not granted any pension, he kept quiet for all these years and filed his first representation in the year 2012 presumably after being fortified with the decisions of the Hon'ble Kerala High Court as also of AFT, Kolkata Bench and the Principal Bench and his representations were rejected in 2012 itself. In this connection, we follow the decision of the Kolkata Bench, as stated in Paras 13 & 14 thereof wherein it was held that due to delay and laches on the part of the applicant in approaching the court of law, the payment of pension will be restricted from 3 years prior to the filing of the petition.

12. In the result, this application is allowed. The respondents are directed to grant reservist pension in favour of the applicant by taking into account his active service for 9 years and also reserve service for 6 years subject to adjustment of the amount of gratuity already paid to him. However, the payment of pension will be restricted from 3 years prior to the filing of this application i.e. such pension will be payable from 01.09.2009.

13. This order be implemented within 90 days from the date of communication of this order, failing which, the arrear amount will carry interest @12% p.a.

14. The original application stands disposed of in the light of the above observation/direction. There will be no order as to costs.

15. Let a plain copy of the order be supplied to both the parties after observance of usual formalities.

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

(JUSTICE RĀGHUNATH RAY)
MEMBER (JUDICIAL)