

FROM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO: O. A NO. 127 OF 2012

ON THIS 1ST DAY OF NOVEMBER, 2013

CORAM

HON'BLE JUSTICE RAGHUNATH RAY, MEMBER (JUDICIAL)

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

TA-41496, Major Kewal Krishan Chopra (Retired),
Son of Late Pran Nath Chopra, residing at Flat No.2,
1st Floor, P-2, Beliaghata Road, Police Station – Entally,
Kolkata -700 015

.....Applicant

-VS-

1. Union of India, Service through: The Secretary,
Government Of India, Ministry of Defence,
Sena Bhawan, New Delhi -110 105.
2. The Chief of Army Staff, Army Headquarters,
Integrated Headquarters of Ministry of Defence
(Army), Defence Headquarters Post Office,
New Delhi -110 011.
3. The Adjutant General, Adjutant General's Branch,
Integrated Headquarters of Ministry of Defence (Army),
Sena Bhawan, New Delhi -110 001.
4. General Officer, Commanding-in-Chief, Headquarters,
Eastern Command, Fort William, Kolkata -700 021.
5. Additional Director General, Territorial Army General
Staff Branch, Integrated Headquarters of Ministry of
Defence (Army), L-Block, Church Road, New Delhi -110 001.
6. Additional Director General of Manpower, (Policy and Planning),
MP 5 (b), Adjutant General's Branch, Integrated Headquarters
Of Ministry of Defence (Army), Wing No.3, Ground Floor, West
Block-III, R. K. Puram, New Delhi -110 066.

7. The Military Secretary's Branch, MS-14, Integrated Headquarters of Ministry of Defence (Army), New Delhi.
8. The Controller General of Defence Accounts, West Block-V, R.K.Puram, New Delhi-110 066.
9. The Principal Controller of Defence Accounts(Pension), Draupadi Ghat Allahabad -211 014, Uttar Pradesh.
10. 121 Infantry Battalion, (Territorial Army), New Alipore, Kolkata.

.... Respondents.

For the Applicant : Mr. Suman Basu, Counsel

For the respondents : Mr. Souvik Nandy, Counsel

ORDER

PER HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

1. In this application filed under Section 14 of the AFT Act, the applicant, who retired on attaining the age of superannuation from the Territorial Army (TA) in the rank of Major, has prayed for grant of pension by way of extending the benefit of some decisions of the Principal Bench of the AFT as per details given in the application itself.

2. The applicant was born on 9-5-1938. He initially joined the Indian Air Force in the ranks, attained the rank of Corporal and served from 15-6-1955 to 26-9-1963, i.e. for 8 years 102 days. He was then selected as an Emergency Commissioned Officer (ECO) in the rank of 2nd Lieutenant (2/Lt) in the Indian Army with effect from 27-9-1963 i.e. immediately after being released from Indian Air Force and served as a ECO in ASC till 25-5-1967. His total period of service in the Indian Army as an ECO was 3 years and 238 days. Thereafter, he was commissioned in TA on 11.6.1974 and served in 121 Infantry Battalion of Territorial Army from 11-6-1974 to 31.5.1990. He retired from TA commission in the rank of a Major on attaining the prescribed age for superannuation that was 52 years.

3. The total commissioned service of the applicant inclusive of his previous service, as certified by the competent authority is 27 years 10 months and 29 days, out of which his total TA service was for a period of 16 years 6 months and 9 days (Annexure A6). The grievance of the applicant is that even though he rendered more than 15 years of pensionable service, he was not granted any pension after his retirement on superannuation from Territorial Army. He made representations before the PCDA (P), Allahabad after obtaining the necessary service certificate in March 2012, but his prayer was rejected by order dated 15-6-2012 (Impugned Order, Annexure A8). The PCDA (P) vide the impugned order dated 15.6.2012 communicated that the applicant had actually rendered a total of 16 years and 208 days of service including in the ranks plus as ECO and TA, which does not total up to 20 years, which is the minimum qualifying service for an officer to be eligible for pension. Subsequently, the applicant came to know that the Principal Bench of the AFT, by its order dated 18-1-2012 in TA 771 of 2009 (**Lt. Col I.K. Talwar vs. Union of India**) and also by order dated 19-2-2010 passed in TA 46/2010 (**Major S.D. Singh vs. Union of India and others**) directed for grant of Pension in respect of the applicants who were similarly placed like the applicant. The Hon'ble AFT (PB) has quoted two important policy letters by the MoD dated 30 Oct 1987 and 3 Feb 1998 (Page 4 to 7 of the PB AFT order on TA 46/2010 dated 19.2.2010 in the case of Major SD Singh (supra). Fortified with above two court decisions and also the MoD orders as quoted ibid granting pension in favour of those petitioners before the Principal Bench, the applicant made further representation to the PCDA(P) on 2-7-2012 for grant of pension. However, this representation was also rejected by the PCDA (P) by their order dated 30-7-2012 (Impugned order, Annexure A10), by stating that those applicants before the Principal Bench of AFT were granted pension in terms of the Court's order and government sanction; but the applicant was not entitled to any such pension for reasons as submitted in their earlier letter of 15.6.2012 (Impugned order, Annexure A8). The applicant has alleged hostile discriminatory treatment towards him by the authorities and has filed this OA claiming grant of pension for his total combined pensionable service rendered in the Indian Air Force, Indian Army and Territorial Army by way of extending the benefit of the ibid judgements of

the Principal Bench. He has also prayed for quashing of the PCDA (P) orders dated 15.6.2012 (Annexure A8) and dated 30-7-2012 (Annexure A10); vide which his prayer for pension was rejected by the PCDA (P), Respondent No-9.

4. The respondents have contested the claim of the applicant by filing a reply affidavit. It is admitted that the applicant rendered 16 years 208 days of combined qualifying service in the Indian Air Force, Indian Army and Territorial Army. They have, however, stated that the decisions in respect of Major S.D. Singh (supra) and Lt. Col. I.K. Talwar (supra) were implemented by the Government with certain conditions in view of the Court's order, but the case of the applicant was considered on merit in terms of the Government Orders on the subject and he was found not eligible for pension under the extant rules. They have stated that the applicant has in his credit total commissioned service of 27 years 10 months 29 days out of which total embodied service that qualifies for pension is 16 years 6 months and 9 days. It is stated that the applicant was a Commissioned Officer and in his case the minimum qualifying service for earning pension is 20 years and not 15 years as stated by the applicant. They have, therefore, prayed for rejection of the OA.

5. We have heard the learned counsel for both the parties and perused the documents placed on record.

6. Mr. Suman Basu, the learned counsel for the applicant has submitted that admittedly the applicant has rendered total qualifying service of 16 years 6 months and 9 days. As per relevant pension rules/regulations minimum qualifying service for earning pension is 15 years. He has however admitted that in case of officers, such minimum qualifying service is 20 years; but, according to him, in case of "late entrant officers" the requirement is 15 years of service and not 20 years. He has referred to the decisions of the Principal Bench of AFT in the case of **Lt. Col I.K. Talwar vs. Union of India and others** in TA 771 of 2009 decided on 18-1-2010 and that of **Major S.D. Singh vs. Union of India & Others** decided on 19-2-2010 (both unreported) and submitted that identical

benefit should also be extended in the case of the applicant and denial of such benefit will be in violation of Article 14 and 16 of the Constitution of India.

7. Mr. Souvik Nandy, the learned counsel for the respondents, on the other hand, has submitted that "Late Entrants" are those who have retired on reaching the prescribed age limit for compulsory retirement with at least 15 years of commissioned service, but whose total qualifying service is less than 20 years, as defined in Reg. 15 of Pension Regulations for the Army 1961 (Revised) (Annexure D to the A/O). In the instant case, as submitted by the respondents, the total commissioned service of the applicant is 27 years 10 months and 29 days, which is more than 20 years; and therefore, according to them, he does not come within the definition of 'late entrant' clause. He has distinguished the case of **Maj. S.D. Singh (supra)** by contending that he (S.D.Singh) had less than total 20 years of commissioned service and therefore, his case was different and hence, the applicant cannot claim the benefit of the said decisions as his case is distinguishable.

8. We have considered the matter carefully and have perused the service records of the applicant and also of the unreported decisions of the Principal Bench of the AFT which are annexed along with the OA. There are different claims made by both parties while calculating the total service put in by the applicant and total pensionable service put in by him. We rely on the original Record of Service (IAFZ 2041) of the applicant as submitted by the respondent to arrive at the accurate calculation of service.

(a) In IAF as Cpl 15.6.1955 to 27.9.1963 (8 years 100 days). This entire period of service is to be counted as pensionable service, as per MoD policy letter dated 11 Jun 1985 (Annexure C to A/O).

(b) As an ECO commissioned in ASC from 27.9.1963 to 25.5.1967 (3 years 240 days). This entire period is also to be counted as pensionable service as per ibid policy letter of 11 Jun 1985 (Annexure C to A/O).

© As a commissioned officer in TA from 11 June 1974 to 31 May 1990 (15 years 11 months 20 days). Out of this total service, **embodied service that is counted for pension in TA as per ibid policy letter is 4 years and 233 days.**

(d) Total pensionable service thus works out to **16 years and 208 days.**

9. The respondents in Para 6 of their affidavit in opposition (A/O) have also conceded that the applicant had rendered a total 16 years 6 months 28 days of qualifying service for earning pension. It is stated that in the case of the officers, the minimum qualifying service is 20 years. However, for the "late entrants" as defined in Reg. 15 of the Pension Regulations, the requirement for qualifying service is 15 years and not 20 years, provided the officer had to retire on attainment of maximum age for retirement in that rank. In the instant case the applicant retired on 31.5.1990, i.e., on attaining the age of 52, his date of birth as per service record being 9 May 1938. The stipulated age of retirement of a Major is 52 years; therefore the applicant could not have served any longer. The respondents mainly distinguished the case of Major S.D. Singh by stating that the applicant had rendered more than 20 years of "commissioned service", i.e. total 27 years 10 months and 25 days although the entire service was not pensionable, he being a TA officer in whose case rules permit only the embodied service to be counted for pension; whereas Maj. S.D.Singh had rendered less than 20 years of "commissioned service". Therefore, according to the respondents the applicant did not come within the definition of "late entrant"; and as such, he would not be entitled to pension as claimed. They have relied on a MoD letter dated 11th June 1985. It will be appropriate to quote the relevant portion of the letter dated 11-6-85 (Annexure-C to the above A/O), as referred to by the respondents:

"(a) Former qualifying regular service in Army, Navy and Air Force in any rank will be counted to the same extent as admissible to the regular Army personnel.

(b) The weightage added to the qualifying service of regular Army personnel will not be allowed in the case of T.A. personnel.

(c) The qualifying embodied service as mentioned above may be continuous or rendered in broken spells. For calculating the total embodied service, the breaks in

embodied service due to disembodiment, will be treated as condoned by the period of break itself will not be treated as qualifying service for pension, where qualifying embodied service has been rendered in broken spells, five percent cut will be imposed on the pension of those JCOs/Ors who have completed 15 years or more of aggregate embodied service, but have not completed 20 years of aggregate embodied service." (underlining for emphasis)

10. Here it will be appropriate to quote Regulation 15 of Pension Regulations which has defined late entrants as under:

"15. For purpose of the regulations in this chapter, a 'late entrant' is an officer who is retired on reaching the prescribed age limit for compulsory retirement with at least **15 years' commissioned service qualifying for pension** but whose total **qualifying service** is less than twenty years".

11. On a careful reading of this provision of Regulation 15 we find that the late entrants are those who have retired on reaching the prescribed age limit of compulsory retirement with at least 15 years commissioned service but whose total qualifying service is less than 20 years. In this case the applicant has completed 15 years of commissioned service but did not complete 20 years of qualifying service (actual). The case of the applicant, therefore, comes within the four corners of this Regulation because he retired as a Major on attaining the age of compulsory retirement and has rendered 15 years of commissioned service qualifying for pension as agreed by the respondents and his total qualifying service is less than 20 years because as per service certificate, even though he rendered 27 years 10 months and 25 days of commissioned service, his total embodied service is 16 years 6 months and 28 days, which counts for pension; and is also less than 20 years.

12. The respondents in their reply affidavit have submitted that the total service rendered by the applicant starting from his entry in the Indian Air Force and thereafter Indian Army and then Territorial Army is 27 years 10 months and 25 days which is reflected as follows:

a)	Indian Air Force (Corporal)	8 Years 100 days (from 14-6-55 to 27-9-63)
b)	Emergency Commissioned Service	3 Years 242 days (from 27-9-67 to 25-5-67)
c)	Territorial Army service	15 years 11 months 20 days
	Embodied service	4 years 233 days

13. However, we fail to understand as to how the respondents have imported the word 'Commissioned Service of more than 20 years' in their counter affidavit, which is not there in the Regulation 15 of Pension Regulations for the Army. The Ministry of Defence letter dated 11-6-1985 also does not throw any light on this aspect. It is also clearly mentioned, "but have not completed 20 years of aggregate embodied service". Moreover, the applicant was only a Corporal in the Indian Air Force which was not a Commissioned Service. Therefore, this service which is for 8 years and 3 months, cannot be counted as "Commissioned Service" as has been done by the respondents; although the said service would count for qualifying service for pension. If this service is deducted from total service of about 27 years, then the total commissioned service comes to less than 20 years.

14. From the decision of the Principal Bench of the AFT in Maj. S.D. Singh's case (supra), who was also a Territorial Army Commissioned Officer and retired at the age of 54 years as Major like the applicant was initially denied pension although he had put in 18 years of reckonable service. The Principal Bench has relied on MOD letter dated 30-10-1987 which was issued in implementation of 4th CPC recommendation for Army Personnel and also MOD letter dated 8-2-1998 which was issued in implementation of the 5th CPC recommendation. It has been mentioned therein clearly that all the regulations of Indian Air Force and Army Personnel will also be applicable to the Territorial Army Officers for the purpose of determining qualifying service and earlier service rendered in any of the three Armed Forces, i.e. Indian Air Force, Indian Army and Territorial Army have to be taken into account. In the case before Principal Bench the respondents denied the benefit by taking recourse to the definition of late entrants. The Principal Bench in its aforesaid decision has inter-alia observed as under:

"10. A similar case came before us i.e. Lt. Col. I.K. Talwar vs. Union of India and Others (T.A. No.771/2009) and we have also held that the personnel of the Territorial Army for the purposes of pension shall be treated at par with Army Officer. We have been shown the minutes of the note sheet of the Defence Ministry and CGDA (Pension). We regret to say that there is not at all proper application of mind in this case. They are all obsessed with same concept of late entrants and

personnel of the Territorial Army stands differently for the purposes of pension. But the intention of the Government and two orders which have been issued in pursuance of the implementation of Fourth Pay Commission and Fifth Pay Commission leaves no room for doubt.

11. After going through the files we record our great displeasure the way in which the case has been dealt and total non application of mind and this is the complete derogation of the policy decision of the Government. Despite the fact that the Government has already decided on 30th October, 1987 and 03rd February, 1998 still there is a doubt lurking in the mind of CGDA (Pension) and so much so the Defence Ministry who has issued this circular after consultation with the Department of Personnel did not stick to that and wade away by the observations of CGDA (Pension). At least Ministry should have themselves examined orders issued by them on 30th October, 1987 and 03rd February, 1998. Therefore, we are of the opinion that the order passed by the Government dated 10.01.2003 is set aside and respondents are directed to work out the arrears of pension of petitioner and release the same and pay the same with interest @ 12% per annum".

15. That apart, we also find that while calculating the qualifying service, fraction of a year is also to be taken into account in the manner as provided in Note 5 of Ministry of Defence Notification dated 30-10-1987 as incorporated in the judgement of the Principal Bench in Lt. Col. I.K. Talwar's case. It has been stated that while calculating length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service.

16. From the above discussion, we are of the considered view that the applicant has to be treated as a 'late entrant' in the Territorial Army which he joined on 11-6-1974 and retired on 31-5-1990. He, having rendered more than 15 years of commissioned pensionable service by way of adding his past service in the Indian Air Force and Indian Army, but less than 20 years of qualifying service, and calculation having been made in terms of above Note 5 of Ministry of Defence letter of 1987, the applicant should be held entitled to get pension in accordance with the rules.

17. Accordingly, the OA is allowed. The respondents are directed to grant pension to the applicant as per rules along with interest at the rate of 12% per annum, subject to adjustment of any amount of terminal gratuity etc. which he would have received in lieu of pension, within 90 days from the date of communication of this order. It is made clear that the applicant need not be asked

to refund the amount he had already received at the time of retirement as a pre-condition to pay him the pension, gratuity and arrears based on this order; instead payment should be made to him after deducting the gratuity amount already paid when he retired without any pension. There will be no order as to costs.

18. Let the original records be returned to the respondents on proper receipt.

19. Let a plain copy of the order duly countersigned by the Tribunal Officer be furnished to both parties on observance of due formalities.

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

(JUSTICE RAGHUNATH RAY)
MEMBER (JUDICIAL)