

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

ORIGINAL APPLICATION : O.A. NO. – 22/2016

DATED : 05 JUNE, 2018

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)
HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT (S) : Shri Amitava Gupta
Ex Corporal – Service No. 282692
s/o Late Pravanshu Kumar Gupta
residing at 22, Sriram Siromony Road
PO – Makhla, PS – Uttarpa
Dist – Hooghly (WB) – PIN - 712245

Versus

RESPONDENT (S) : (1) The Union of India, service through
The Defence Secretary, Ministry of Defence
South Block, New Delhi – 110 011

(2) The Chief of the Air Staff
Vayu Bhawan, New Delhi-110011

(3) Officer-in-Charge
Pension and Welfare Department (DP)
AOIC, AF, Record Office, Subroto Park
New Delhi – 110 010

(4) The Director of Air Veterans
Subroto Park, New Delhi – 110 010

(5) The Section Officer
Govt of India, Ministry of Defence,
Pension, A & AC, New Delhi

(6) The Principal Controller of Defence Accounts
(Pension), Drapaudi Ghat
Allahabad (UP) – 211 014

(7) The Deputy CDA (AF), Subroto Park
New Delhi – 110 010

Counsel for the applicant (s) : Mr. Jagadish Ranjan Das

Counsel for the Respondent (s) : Mr. Satyendra Agarwal

ORDER

PER LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

1. This is a case filed by the applicant under Section 14 of the AFT Act, 2007 praying for grant of pro-rata pension including arrears with interest for the services rendered by the applicant in the Indian Air Force.
2. Earlier the delay has been condoned vide order Serial No. 11 dated 01.05.2017 in M.A. No. 21/2016.

Facts of the Case

3. The applicant joined the Indian Air Force on 17.11.1965 and was discharged on 31.03.1976 in the rank of Corporal after completion of 10 years and 136 days of colour service.
4. As per the applicant, his terms of engagement in the rank was for a period of 9 years of Regular Service and 6 Years of Reserve Service and accordingly he is entitled to grant of pro-rata pension including all arrears and interest.
5. The Respondents have stated that since the applicant was a non-pensioner, his records have been destroyed after 25 years under Section 6, Chapter 28, of Regulations for the Air Force. However, important details have been transcribed from it to the Long Roll. As per the discharge documents the reasons for discharge which have been transcribed into the Long Roll are as ***“having failed in special test for re-classification to AC and unwilling to serve***

in other trade." Therefore, he was paid his service gratuity as well as Death-cum-Retirement Gratuity for the services rendered rendered by him. The respondents have stated that the minimum qualifying service for earning service pension is 15 years of combined colour service and 6 years of reserve service in the Indian Air Force. However, since the applicant had put in only 10 years and 135 days of regular service, he was not entitled to get reservist pension.

6. The applicant had earlier approached the concerned authorities quoting the reference of various Judgements including that of the Hon'ble Apex Court in MC Dhingra Vs UOI & Ors in C.A. No. 3317/1996 and 4th CPC provisions of 18.03.1987 as passed in Resolution dated 18.03.1987 in Para 2 (i) of the Annx. The applicant has also produced a letter of the Directorate of Air Veterans, Subroto Park, New Delhi vide No Air HQ/99798/1/10/SP/DAV dt. 05.11.2015; wherein the Air Force Authorities have re-iterated that he was not entitled to pro-rata pension. Relevant extracts of the letter are set out as under –

"3. As per Regulation 136 (a) of Pension Regulation for Air Force 1961 (Part-I) as amended vide CS No. 95/X/70, an individual on completion of the prescribed combined Colour and Reserve qualifying service, of not less than 15 years, is eligible for Reservist Pension. As per Regulation 121 of the ibid regulations, the minimum regular qualifying service to earn service pension is 15 years.

4. Since, you have rendered 10 years and 136 days of total qualifying service only, you do not fulfill the minimum eligibility criteria required under the Pensions Regulations for the Air Force, for grant of pension. Further, it is informed that no provision exists in the ibid Regulations for grant of pro-rata pension to those not eligible for Service/Reservist Pension. It is also intimated that judgement given by various Courts of Law are case specific and, therefore, not applicable to you. Moreover, the GOI policies on grant of pension have not undergone any change subsequent to the judgements awarded by the Courts of Law.

5. In view of the above, it is intimated that your case for grant of pro-rata pension cannot be processed, being not in consonance with extant Regulations”.

7. A document dt. 02.02.2013 submitted by the Counsel for the applicant relating to ***Reservist Pension to Reservists Released from service compulsorily prior to completion of pensionable colour + Reserve Service reads as under : -***

”Prior to coming into force of the current system of recruitment of full physical terms of engagement, personnel of the defence services were recruited as per the Colour + Reserve scheme. After completion of combined Colour and Reserve Service of 15 years, such individuals were entitled to “Reservist Pension”. For example, in the Air Force, individuals were recruited under the 9 + 6 system wherein they were meant to serve for 9 years in colours (physical service) and then 6 years in reserve wherein they could indulge in any vocation of their choice but were liable for a call-out on mobilization in an emergency.

Due to service constraints of those times, many of such individuals were released in large numbers with gratuity after completion of their colour service but prior to completion of the terms of their reserve service thereby resulting in denial of “Reservist Pension” to them.

This led to a spate of litigation wherein it was held by Courts and Tribunals that based on the principles of promissory estoppels, such individuals could not be denied the benefit of “Reservist Pension” since they were unilaterally released without letting them complete their service as was promised at the time of recruitment.

Many of such cases have attained finality including an appeal filed by an affected reservist whose case were initially dismissed by the AFT, that is, ***Civil Appeals 4787/2012 Cpl Baldev Singh Vs Union of India*** decided on 06.01.2015 wherein the Supreme Court had held the affected reservist entitled to reservist pension with a restriction of financial benefits for three years prior to filing the petition.

No policy decision has been taken by the Ministry till date on the subject despite a positive proposal to the effect by the Air HQ.”

8. The applicant had referred to an order in TA 09/2012 dt 25.02.2013 by AFT, Regional Bench, Chennai in Ex AC NT Pannikar Vs UOI wherein the applicant was granted reservist pension on the ground that *"he was enrolled for 9 years of regular service followed by 6 years of reservist service. But, wherein the had served only for 9 years and 291 days. He ought to have been transferred to reserve service which the Government failed to do so and thus going back on their promise."*

9. The Counsel for the applicant, quoted another case, in which the Hon'ble High Court, Kerala at Enrakulam has passed the judgement on 31.05.2007 in WP (C) No. 29497 of 2004, wherein the applicant Shri KG Thomas, Ex-Corporal who was enrolled in the Indian Air Force on 23.08.1951 was released with reserve liability period w.e.f. 23.08.1960 but, he was called back to serve in the Indian Air Force during Chinese Operations. He had joined the duty on 18.10.1962 and he was finally released on 01.12.1964 but since, he did not qualify 15 years of qualifying service, pension was not granted by the Air Force Authorities/Pension Authorities. However, the Hon'ble High Court at Kerala directed inter-alia, *"that this is no longer res-integra covered by two Bench decisions in WA No. 1392 of 1997. In both decisions, it has been held that reserve period is also liable to be counted for the purpose of pension and accordingly granted the pension to the applicant and the respondents have been directed to pay the full pension within 3 months, counting the Reserve liability period of 6 years and failing which the petitioner shall be entitled to get interest @ 18%."*

10. In TA 09/2012, the moot point was that the IAF authorities suppressed the reserve scheme unilaterally and thus deprived the petitioner of his position and, therefore, the principle of '**promissory estoppel**' was applicable. In the other case, viz., Shri KG Thomas Vs UoI (Supra), it was clear that the applicant, Shri KG Thomas served during the reservist period from 18.10.1962 to 01.12.1964 and hence both these Judgements were based on condition which are quite different from that of the applicant.

11. The Counsel for the Respondents have stated that the case of the applicant is quite different from the rule position as well. While admitting that applicant had a reserve liability, the applicant was neither eligible for the same as he did not qualify in the requisite re-classification test nor was willing to accept another trade. The respondents have also produced Govt. of India, Ministry of Defence letter No. LHQ/23997/3/PP& RR/6800/D (A-III) dt. 28.07.1966, AFT Wel/S/46 which was amended vide Corrigendum No. 7 dated 29.03.1969 wherein the provisions of 15 years of engagement to be counted from the date of enrolment subject to the condition that those who fail to attain the rank of Corporal within 9 years of engagement will be discharged. The Respondents have quoted from the Long Roll "**as having failed in special test for re-classification to LAC and unwilling to service in other trade,**" thereby emphasizing the fact that the applicant was not eligible to continue in service as he not only failed to attain the rank of Fitter-II Air Frame Gp-I but also was unwilling accept any other trade.

13. With regard to the pro-rata pension, the Respondents submitted that there was no provision in the Pension Regulations for the Air Force 1961 (Part I & II) for grant of pro-rata pension benefit to the Air Veterans.

14. The Respondents have also produced a number of judgements. In O.A. 113/14 dt 28.10.2015 in AFT, Regional Bench, Kochi SLSV Rama Linga Sharma Vs UOI; the Bench ruled –

“In the instant case the applicant has relied on the discharge certificate wherein his period of reserve liability has been entered as two years. Nothing has been placed on record by the applicant that he had been transferred to regular Air Force Reserve in terms of Section 5 of the Act. Even in the copy of his record of service placed before us by the respondents there is no entry to his being transferred to Reserves. Therefore, in our view, the liability period indicated in applicant’s discharge certificate merely conferred an eligibility under Section 5 (1) (a) of the Act for being transferred to reserve service during the reserve liability and does not in any way give the meaning that the applicant was transferred to Air Force reserve. Similar views were taken by this Bench in OA No. 88/2010 and 96/2010 and were find no reason to disagree.”

15. In another case, O.A. 1602/2012 Gopi Ram Vs UOI at AFT, Regional Bench Chandigarh dt. 07.04.2014; the Bench ruled –

“In view of the fact that the petitioner has not completed 15 years qualifying service and he was not placed in reserve service after completion of 9 years colour service, neither the principle of estoppels nor equity nor law supports the petitioner’s case. We, therefore, hold that the petitioner is not entitled to get any pensionary benefit as he has not completed 15 years of qualifying service and was never put in reserve pool after completion of active service.”

16. In yet another case, OA 60/2014 P. Mohammed Meeran Pillai Vs UOI at,

AFT, Regional Bench, Kochi dt. 20.10.2014; the Bench ruled –

“19. We have to see as to what promise had been made to the applicant and if any promise had been made, whether the same was sufficient to attract the doctrine of promissory estoppels. What is stated by the applicant is that he was enrolled for 9 years regular and 6 years reserve service and were made to understand that he had to serve for 15 years, therefore, by this fact itself, the respondents were bound by the doctrine of promissory estoppels and had no justification to withdraw therefrom. In our view, the enrolment of the applicant in the aforesaid manner was nothing except that in terms and conditions of service were such as to make him liable to serve in the Air Force Reserve on completion of regular service and to make him eligible under section 5(1) (a) of the Act for being transferred to regular Air Force Reserve. Mere recruitment/enrolment for regular as well as reserve service without making any order of transfer to regular Air Force Reserve under Section 5 of the Act cannot be treated to be a complete promise to treat in the applicant in reserve service. Mere enrolment was only a part of the entire promise. Had the respondents’ promised that the applicant would be transferred to the Regular Air Force Reserve under Section 5 of the Act, the position would have been different. For arguments sake, even if it is assumed that the respondents made any such promise, even then the promise was not valid because it was made de hors the provisions of Section 5 of the act, because the condition regarding the transfer to Air Force Reserve was not a part of the promise. The question of transfer to Air Force Reserve arises only on completion of regular service and not prior to that, therefore, whatever promise was made at the time of enrolment of the applicant was merely a promise to put the applicant on reserve liability so as to make him eligible for being transferred to Air Force Reserve under Section 5 of the Act and nothing more.

20. For the reasons stated above, we do not agree with the submissions that the enrolment of the applicant for both regular and reserve service was a promise made by the respondents for transferring him to Air Force reserve service, without due observance of the requirements of the various relevant provisions of the Act.”

17. Lastly, in another O.A. No. - 139/2016 dt. 17.08.2016 in Y. Geevarghese. Y in AFT, the Regional Bench, Kochi held –

"10. In the instant case, the applicant has relied on his discharge certificate wherein his terms of engagement has been shown as 9 years regular and 6 years reserve. The discharge certificate also indicates that he was not transferred to reserve as he was not required to serve in the reserve. In our view, the initial enrolment which had 06 years of reserve liability merely conferred a liability under Section 5 (1) (a) of the Reserve and Auxiliary Air Force Act for being transferred to reserve service during reserve liability and does not in any way give meaning that the applicant should be transferred to Air Force reserve. Similar view were taken by this Bench in OA Nos. 88/2010, 96/2010 and in 113/2014 and we find no reason to disagree. Without conversion of reserve liability to actual reserve service, the applicant has reckonable service of only 10 years and 307 days. This falls well short of the period required for grant of reservist pension."

18. It is very evident, therefore, that the applicant too was not transferred to reserve list, although a liability existed since neither did he attain the necessary qualification to be eligible for transfer nor was he willing to accept another trade.

19. Hence, he is not eligible for any pro-rata pension for the facts stated above herein and was correctly denied the same by the authorities.

20. This OA (O.A. 22/2016) is accordingly dismissed.

21. No order as to cost.

22. A plain copy of this order will be supplied to both the parties by the Tribunal Officer after observance of all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)