

Court No. 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 291 of 2019

Tuesday, this the 10th day of August, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 7041104, Ex Sep (Reservist) Jagdish Prasad Mishra
S/o Ram Naresh Mishra
R/o Shakoon Nagar, Civil Lines,
District – Fatehpur, Pin – 212601 (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Pankaj Kumar Shukla**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, South Block, New Delhi-110011.
3. The Officer-in-Charge, EME Records, Secunderabad-500021, Andhra Pradesh.
4. The PCDA (P), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri Asheesh Agnihotri**,
Central Govt Counsel.

ORDER

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- "A. To issue/pass an order to set-aside/quash the letter dated 14.08.2018 passed by respondents.
- B. To issue/pass an order or directions to the respondents for grant of Regular Service Pension (Reservist Army Person) and grant all the retiral benefits and sanction

entire due amount of regular pension to the applicant alongwith 12% interest from date of discharge i.e. 30.01.1980.

- C. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- D. To allow this original application with costs."

2. The factual matrix on record is that the applicant was enrolled in the Army on 08.01.1960 with period of engagement 10 years in colour and 10 years in reserve. The applicant was transferred to Reserve list w.e.f. 20.03.1970. The applicant has rendered colour service of 10 years, 02 months and 12 days. Thereafter, the applicant had undergone the reservist training from 10.09.1971 to 07.10.1971 (28 days), from 05.08.1974 to 01.09.1974 (28 days), from 08.11.1996 to 05.12.1976 (28 days) and from 05.10.1978 to 01.11.1978 (28 days), total 112 days. Thereafter, the applicant was transferred to pension establishment on completion of his terms of engagement both colour and reserve service w.e.f. 31.01.1980 under item II (i) to Rule 13 of Army Rules, 1954. The applicant had rendered total qualifying service in both the colour and reserve for 20 years and 24 days (10 years, 06 months and 04 days of colour service and 09 years, 06 months and 20 days of reserve service. Consequent upon his discharge from service, the applicant was granted reservist pension w.e.f. 01.02.1980 for life vide PCDA (P) Allahabad PPO dated 24.05.1980. The applicant had made a representation dated 12.05.2018 for grant of regular service which was suitably replied by the respondents vide

letter dated 28.08.2018. In reply to representation dated 12.05.2018, PCDA (P) Allahabad also informed applicant vide letter dated 14.08.2018 that '*you are entitled for reservist pension @ Rs. 9000/- per month which is being granted to you and if there is any discrepancy in payment of pension, you may approach to this office i.e. PCDA (P) Allahabad*'. Now the applicant has filed the present O.A. for grant of regular service pension with all retiral benefits from the date of discharge i.e. 31.01.1980.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Army on 08.01.1960. The applicant's total colour service is 10 years and 24 days excluding 150 days of colour service in the year 1972, 1974, 1976, 1978 and 1980) and thereafter, applicant was transferred to reserve service which works out to 09 years and 07 months. As per rule, half of reserve service of applicant comes to 04 years, 09 months and 15 days which counts as colour service. Thus, total colour service of the applicant comes to 15 years, 03 months and 09 days (10 years & 24 days + 150 days + 04 years, 09 months & 15 days). Being aggrieved by non grant of regular service pension, applicant sent a representation dated 13.05.2018 which was rejected vide PCDA (P) Allahabad vide letter dated 13.05.2018. He further submitted that SAI 13/S/1962 and para 132 of Pension Regulations for the Army, 1961 (Part-1) indicates essentially two conditions; firstly, need of 15 years colour service for earning normal pension and, secondly, half of the reserve service could be added to the total service for purpose of pension. The key words of SAI 13/S/1962 are very clear and self explanatory:

“..... in the event of their being discharged from the colour, be eligible to receive the same ordinary pension and invaliding gratuity, as would have been admissible for their total colour and the reserve service, if they had been discharged from their service. They may, where it is favourable, be allowed to combine half of their qualifying service, with their total qualifying colour service for the purpose of grant of colour pension”

He further submitted that extract of Special Army Instruction 17/S/1968 is also relevant for Regular Service Pension to Reservist Pensioner which is reproduced as under :

“1. OR reservist who are transferred to the pension establishment on or after 01st April 1968, will be granted reservists pension at a uniform rate of Rs. 15 p.m., irrespective of their terms of engagement. The adhoc increment in pension will be paid in addition.

2. Regulation 156, Pension Regulations Part-1 (1961), will be amended in due course”.

4. Learned counsel for the applicant further submitted that applicant's case is fully covered with the judgments passed by AFT (RB) Lucknow in T.A. No. 1320 of 2010, ***Brahm Deo Mandal vs. Union of India & Ors***, decided on 05.10.2016 and T.A. No. 28 of 2013, ***Jagdish Singh Yadav vs. Union of India & Ors***, decided on 12.01.2017 and the Hon'ble Apex Court judgment in Civil Appeal No. 5591 of 2006, ***K.J.S. Buttar vs. Union of India and Anr***, decided on 31.03.2011 and pleaded that applicant should be granted regular service pension instead of reservist pension.

5. Learned counsel for the respondents submitted that It is worthwhile to mention that as per para 132 of pension Regulations for the Army, 1961 (Part-1), minimum 15 years colour/qualifying service is mandatory requirement to earn service pension. Since, the applicant had rendered only 10 years and 06 month colour/qualifying

service, therefore, applicant was not entitled for service pension but he was entitled for reservist pension as per para 155 of Pension Regulations for the Army, 1961 (Part-1) which has been granted to him. It is also pertinent to mention here that Special Army Instruction (SAI) 13/S/1962 was applicable to the Army Reservists, who were recalled for the colours in connection with the Emergency in the year 1962. In the instant case, since the applicant was in colour service at that time and transferred to reserve list w.e.f. 20.03.1970 and pension establishment w.e.f. 31.01.1980 (AN), the provisions of SAI are not applicable to him. Hence, the relief sought by the applicant is not tenable. He pleaded to dismiss the O.A.

6. We have heard learned counsel for the parties and have perused the record.

7. From the perusal of record and para 132 and 155 of Pension Regulations for the Army, 1961 (Part-1) and SAI 13/S/1962, we find that applicant was not recalled for the colour service in connection with the Emergency as it was applicable in the year 1962 whereas the applicant was transferred to reserve list w.e.f. 20.03.1970, hence, the provisions of SAI 13/S/1962 for counting half of the reserve service period for pensionary benefits is not applicable in the instant case and therefore, applicant being not recalled for 'Emergency', he is not eligible for regular service pension. His claim for the grant of regular service pension in place of reservist pension has rightly been rejected, which needs no interference.

8. Judgments relied upon by the applicant are of no help to him as for giving benefit of SAI 13/S/1962, it is mandatorily required that

reservist was recalled to colour service in connection with the Emergency which is admittedly not in the case of applicant.

9. In view of above, O.A. has no merit, deserves to be dismissed and is accordingly **dismissed**.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: August, 2021
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