

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 53 of 2021**Friday, this the 15th day of July, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

1. Smt. Radha
W/o Late Vishram Singh Rajput
R/o Village – Raupur, Post – Atsu,
District – Etawah (Now Auraiya), UP-206121
2. Shri Abhay Singh
S/o Late Vishram Singh Rajput
R/o Village – Raupur, Post – Atsu,
District – Etawah (Now Auraiya), UP-206121
3. Kalpana, W/o Vivek Kumar
D/o Late Vishram Singh Rajput
R/o Village – Raupur, Post – Atsu,
District – Etawah (Now Auraiya), UP-206121
4. Nirbhay Singh
S/o Late Vishram Singh Rajput
R/o Village – Raupur, Post – Atsu,
District – Etawah (Now Auraiya), UP-206121

..... Applicant

Ld. Counsel for the Applicant : **Shri Vinay Pandey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, DHQ
PO, New Delhi-11.
2. The Chief of the Air Staff, Vayu Bhawan, Rafi Marg, New Delhi
– 110011.
3. The Directorate of Air Veterans, Subrato Park, New Delhi –
110010.
4. Officer Commanding (Unit), No. 5 BRD Air Force Station, Sulur.
5. Air Force Records Office, Subrato Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Shri Kaushik Chatterjee**,
Central Govt Counsel

ORDER (Oral)

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) Issue/pass an order or direction of appropriate nature to the respondents to grant reservist pension and other retiral benefits be given in accordance with the law w.e.f. 28.02.78.
- (b) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (c) Allow this application with costs.”

2. The present O.A. was filed by Vishram Singh Rajput who died on 19.10.2021 during pendency of Original Application and, after his death, his wife Smt. Radha, daughter Kalpana and son Abhay Singh & Nirbhay Singh have been substituted in his place by Tribunal’s order dated 18.02.2022.

3. The factual matrix on record is that deceased soldier was enrolled in the Indian Air Force on 20.02.1969 for a term of 15 years Regular Service and 06 years Reserve Liability. He was discharged from service w.e.f. 28.02.1978 under the clause “on discharge with gratuity otherwise than at own request” after completion of 09 years and 09 days of qualifying regular service. The deceased soldier was not transferred to any Air Force Reserve also. As per Regulation 121, minimum qualifying regular service required to earn service pension is 15 years and as per Regulation 136 (a), the prescribed combined colour and reserve qualifying service for earning Reservist Pension is

15 years. However, the deceased soldier had a total of only 09 years and 09 days of qualifying regular service against 15 years, he was not granted any kind of pension in terms of Regulation 121 & 136(a) of Pension Regulations for the Air Force, 1961 (Part-1). He was eligible only for Service Gratuity in terms of Regulation 127 & 128 and accordingly, he was paid Rs. 2226.20 on account of Service Gratuity for his qualifying service. Now the deceased soldier has filed the present O.A. for grant of reservist pension with all retiral benefits from the date of discharge from service.

4. Learned counsel for the applicant submitted that deceased soldier was enrolled as Airmen in the Indian Air Force on 20.02.1969 and was discharged from the service on 28.02.1978 after rendering 09 years and 09 days of regular service. As per policy, the deceased soldier was initially enrolled for 15 years regular service and 6 years reserve service. As per Air Headquarters letter dated 28.02.2017, the deceased soldier has been discharged from service in terms of subsequent amendment dated 29.03.1969 in AFI 12/S/48 which is not applicable to the deceased soldier because he was enrolled in IAF on 20.02.1969 and subsequent amendment in AFI 12/S/48 took place w.e.f. 29.03.1969. The respondents had never communicated or detailed the deceased soldier for necessary promotional examination for attaining the rank of Corporal to complete the initial period of engagement for 15 years.

5. Learned counsel for the applicant further submitted that since the deceased soldier had completed 9 years qualifying service which is necessary for getting reservist pension, as such, the deceased

soldier is entitled for reservist pension in terms of Regulation 136 of Pension Regulations for the Air Force, 1961 (Part-1). Though the deceased soldier had not been transferred to reservist establishment, however, if he had been transferred to reserve establishment, he would have been clearly covered under Regulations 136 and accordingly, he would have been entitled to reservist pension, however, this has not been done on the part of respondents. The denial of reserve list and consequent denial of reservist pension has been dealt with several judgment passed by the AFT (PB) New Delhi as well as other benches of this Tribunal, therefore, deceased soldier be also granted reservist pension.

6. Learned counsel for the respondents submitted that deceased soldier was enrolled in the Indian Air Force on 20.02.1969 for a term of 15 years Regular Service and 06 years Reserve Liability. He was discharged from service w.e.f. 28.02.1978 under the clause "on discharge with gratuity otherwise than at own request" after completion of 09 years and 09 days of qualifying regular service. The deceased soldier was not transferred to any Air Force Reserve also. As per Regulation 121, minimum qualifying regular service required to earn service pension is 15 years and as per Regulation 136 (a), the prescribed combined colour and reserve qualifying service for earning Reservist Pension is 15 years. However, Airmen who have minimum qualifying regular service of 5 years but less than pensionable service of 15 years are eligible only for Service Gratuity in terms of Regulations 127 & 128 of Pension Regulations for the Air Force, 1961 (Part-1). Since the deceased soldier had a total of only 09 years and

09 days of qualifying regular service against 15 years, he was not granted any kind of pension in terms of Regulation 121 & 136(a) of Pension Regulations for the Air Force, 1961 (Part-1) respectively. He was eligible only for Service Gratuity in terms of Regulation 127 & 128 and accordingly, he was paid Rs. 2226.20 on account of Service Gratuity for his qualifying service.

7. Learned counsel for the respondents further submitted that earlier the deceased soldier had filed CWP No. 37357/1999 in the Hon'ble High Court of Judicature at Allahabad for grant of service pension but it was rejected being devoid of merit vide order dated 20.10.2005. As per Para 12 of AFI 12/S/48, the initial period of engagement of candidates enrolled was 09 years Regular Service and 06 years Reserve Service and thereafter, w.e.f. 05.08.1966, the initial period of engagement was enhanced from 09 years to 15 years and further w.e.f. 20.08.1979, the initial period of engagement was enhanced from 15 years to 20 years. It is evident from record that though the deceased soldier was enrolled for 15 years Regular Service and 06 years Reserve Liability but he was not allowed to complete his initial period of 15 years engagement as he failed to attain the rank of Corporal with 09 years of engagement and thus he was discharged from service w.e.f. 28.02.1978 as per provisions of amended AFI 12/S/48. He also submitted that deceased soldier having served only 09 years and 09 days of service against 15 years is not eligible for Reservist Pension as per rules and pleaded for dismissal of O.A.

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

9. From the perusal of record and provisions of AFI 14/S/48 and Regulations 121, 127, 128 & 136 of Pension Regulations for the Air Force, 1961 (Part-1), we find that deceased soldier had completed only 09 years of qualifying regular service against his enrolment conditions for 15 years Regular Service and 06 years Reserve Liability to make him eligible for reservist pension but neither the deceased soldier completed total service as per his terms of engagement nor he was transferred to reserve liability, hence, he was not meeting the required criteria for grant of reservist pension and therefore, he was denied reservist pension being ineligible in terms of Regulation 121 & 136(a) of Pension Regulations for the Air Force, 1961 (Part-1). The deceased soldier had rightly been paid service gratuity as entitled to him, hence, his claim for grant of reservist pension has rightly been rejected by the respondents as per rules, which needs no interference.

10. In view of the above, we do not find any illegality or arbitrariness in denying reservist pension to the deceased soldier as per rules. The O.A. deserves to be dismissed. It is accordingly **dismissed**.

11. No order as to costs.

12. Pending Misc. Applications, if any, shall stand disposed off.

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

Dated: July, 2022

SB