

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Transferred Application No. 1320 of 2010**Reserved**
Court No. 2Wednesday, the 05th day of October, 2016**“Hon’ble Mr. Justice D.P. Singh, Member (J)**
Hon’ble Air Marshal Anil Chopra, Member (A)”Army No 6594552 Ex Sep Driver Brahm Deo Mandal,
Son of late Mishri Prasad Mandal, Village - Barateni,
Post Office – Uda Kishan Ganj, Tehsil & District - Madhepura (Bihar)

.....Petitioner

Learned Counsel appeared : Shri J.N. Rai, Advocate
for the petitioner

Versus

1. Union of India through the Secretary Ministry of Defence, Government of India, New Delhi.
2. Chief of Army Staff, Army Headquarters, New Delhi.
3. Commandant, Record Office, Army Medical Corps, Lucknow-2.
4. Principal Controller of Defence Account, (Pension), Allahabad.

..... Respondents

Learned Counsel appeared : Shri Rajiv Pandey,
for the Respondents Central Govt. Counsel

ORDER

“Hon’ble Air Marshal Anil Chopra, Member (A)”

1. The petitioner had filed Civil Writ Petition No.18185 of 1998 before the Hon’ble High Court of Judicature at Allahabad, which has been transferred to this Tribunal and registered as T.A. No.1320 of 2010. The petitioner has claimed the reliefs as under:-

“1. The Hon’ble Tribunal may kindly be pleased to direct the respondents to provide pension book to the applicant and grant full pension with increments from the date of discharge from service along with its arrears with interest on the balance amount at the rate of 12% per annum.

1.a The Hon’ble Tribunal may kindly be pleased to set aside Principal Controller of Defence Account (Pension), Allahabad, letter dated 02.06.1977 and impugned order dated 08.04.1997 passed by OIC record, Lucknow.

2. Award cost of the petition”.

2. The factual matrix of the case is that the petitioner was enrolled in the Army on 14.11.1956 in Army Service Corps and served upto 27.11.1967. He was transferred to reserve service and was recalled for colour service on 03.11.1971 and served upto 27.05.1972 (Total 11 years and 221 days). This reserve service was from 28.11.1967 to 02.11.1971(03 years and 340 days) and again from 28.05.1971 to 30.11.1976 The total reserve service works out to 08 years and 162 days. As per rule, half of Reserve Service of 08 years and 162 days works out to 4 years and 81 days. Thus the petitioner had rendered 15 years and 302 days colour service. He was discharged from service on 01.12.1976. He is getting Reservist pension vide PPO dated 18.09.2014. His claim for service pension was rejected by PCDA (P), Allahabad vide letter dated 11.07.2014, stating that he has not completed 15 years of colour service hence he is not entitled for service pension. Being aggrieved by the fact that he has been granted reservist pension instead of

normal pension, the petitioner has filed the instant Transferred Application for grant of service pension.

3. Heard Shri J.N. Rai, Learned Counsel for the petitioner and Shri Rajeev Pandey, Learned Counsel for the respondents and perused the record.

4. Learned Counsel for the petitioner submitted that the petitioner was awarded Sainya Seva Medal with Clasp and Raksha Medal for his good services. After rendering 11 years and 14 days of colour service, he was discharged from service as reservist. He was recalled to colour service during the emergency period. He rendered 08 years and 162 days service as reservist. As per Special Army Instruction 13/S/62, half of reserve service is equal to colour service, as such half of total reserve service of 08 years and 162 days is equal to 04 years and 81 days which period will be added to the aforesaid total colour service. After adding the aforesaid period of colour service (half of reserve service) total colour service rendered by the petitioner works out to be 15 years and 302 days. Details of total colour service are given below:-

<u>Colour Service</u>	<u>Total Days</u>
(a) 14.11.1956 to 27.11.1967	11 years and 14 days
(b) 03.11.1971 to 27.05.1972	207 days
	A. 11 years and 221 days
<u>Reserve Service</u>	
(a) 28.11.1967 to 02.11.1971	03 years and 340 days
(b) 28.05.1975 to 30.11.1976	04 years and 162 days
	08 years and 162 days
Half of Reserve Service of (08 years 162 days)	= B. 04 years and 81 days
<u>Total Colour Service</u>	A + B. = 15 years and 302 days
(A = 11 years and 221 days + B = 04 years and 81 days)	

5. Learned counsel for the petitioner submitted that as per conditions laid down in Special Army Instruction 13/S/62, Indian Army Other Ranks reservists (other than pensioner reservists) recalled to colour service during emergency shall, in the event of their being discharged from the colours, be eligible to receive ordinary pension and invalid gratuity as would have been admissible for their total colour and the reserve service, if they had been discharged from the reserve. Extract of Special Army Instruction 13/S/62 being relevant is reproduced as under:-

“13. Pensionary benefits for Indian Army reservists recalled to colours in connection with the present emergency.

1. Indian Army or reservists (other than pensioner reservists) recalled to colours during the present emergency shall, in the event of their being discharged from the colours, be eligible to receive the same ordinary pension and invalid gratuity as would have been admissible for their total colour and the reserve service, if they had been discharged from the reserve. They may, where it is more favourable, be allowed to combine half of their qualifying reserve service with their total qualifying colour service for the purpose of the grant of a colour pension or gratuity at the scales and under the condition laid down in A.I. 1/S/53 read with A.I. 6/S/62 colour service for this purpose does not include any periods of normal reserve training which will be classified as reserve service only.

2. The pensions of OR reservists who were transferred to the reserve after earning a pension by virtue of their colour service and are recalled to the colours in connection with the present emergency will be held in abeyance from the date of such recall and their colour service from that date will count for enhancement of pension.”

6. Extract of Special Army Instruction 17/S/68 being relevant is reproduced as under:-

“1. OR reservists who are transferred to the pension establishment on or after 1st April 1968, will be granted reservists pension at a uniform rate of Rs. 15p.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.

7. A plain reading of the aforesaid Special Army Instructions indicate that the half of reserve service can be combined with the colour service for the purpose of eligibility for pension.

8. Learned counsel for the respondents submits that the petitioner was enrolled in the Indian Army on 14.11.1956 and was transferred as reservist on 28.11.1967 thus completed only 11 years and 221 days of colour service. Petitioner's total reserve service was 08 years and 162 days. Half of which (04 years and 81 days) will be counted for pension. He rendered total 15 years and 302 days of both colour and reserve service combined. As per Rule 132 of Pension Regulations for the Army, (1961) Part – I, minimum qualifying (without weightage) service for earning pension is 15 years colour service. Since he did not complete 15 years of colour service for earning normal pension, he was correctly granted reservist pension of Rs. 15/- per month combining half of his reserve service with the total colour service rendered under the provisions of Special Army Instructions 13.S/62 read with Special Army Instruction 17/S/68. Later on it was revised to Rs. 50/- per month under the provisions of Special Army Instructions 4/S/77. The minimum rate of all types of pension was raised to Rs. 375/- per month from 01.01.1986. Again the same has been raised to Rs. 1275/- per month from 01.01.1996 under the Govt of Indian letter dated 24.11.1997 and he is regularly getting reservist pension. He submitted that claim of the petitioner for grant of ordinary pension was rightly rejected due to policy constraints. Therefore, the plea of the petitioner is not sustainable in the eyes of law and be dismissed being devoid of merit and lack of substance.

9. Para 132 of Pension Regulations for the Army 1961 (Part I) is as under:-

“132. The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years”.

10. Plain reading of the provisions in Special Army Instruction 13/S/62 and para 132 of Pension Regulations for the Army 1961 (Part I) indicates essentially two conditions. First being the need to complete 15 years of

coloured service for earning normal pension. The Second, that half of the reserve service could be added to the total colour service for purposes of pension.

11. In the instant case, the petitioner has rendered 11 years and 221 days colour service in the army and later on served as reservist for 08 years and 162 days (half 4 years and 81 days) thus he has completed 15 years and 302 days total service. The contention of the respondents is that petitioner has not completed 15 years of colour service in the army and that he, therefore, gets reservist pension for the entire period of 15 years and 302 days.

12. The only thing that requires adjudication is colour and reserve service when the combined is in excess of 15 years, the petitioner is entitled to normal service pension on reservist pension. The Key words of provision 13/S/62 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 the 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.....

13. The framers of the provisions were conscious that reservist would be called to serve the nation at short notice during national emergency. The provisions were accordingly made to recognise the reserve service and made provision for them to get pensionary benefits. The provisions are clearly beneficial in nature. The petitioner had done active colour service during the 1965 and 1971 wars. He had been on a “hot standby” as a reservist in the interim periods. If the army personnel were to get Reservist Pension only, then the framers of the provision would not have brought on the clause for counting only half of the reserve period for pensionary benefits. It is clear that the half weightage was given to reserve service to make it equivalent to

colour service and then the reserve period could be added to colour service for pension purposes.

14. The petitioner having been enrolled on 14.11.1956 was moved to reserve establishment on 28.11.1967 after about 11 years of service. Respondents have not explained that on what basis the petitioner was shifted to reserve nor have brought any document on terms of engagement. Neither did the applicant request for discharge nor was any disciplinary case against him which was the cause for his discharge prior to completion of pensionable service. If he indeed was surplus to the trade, he could have been given another trade or appointment or could have been transferred to another Corps for completion of remaining pensionable service. The act of discharging a soldier when only a few years remain for him to earn pension is devoid of fair play and cannot be justified. The word 'pension' is defined in Article 366, sub class (17) of Indian Constitution. In fact, the right to get pension is considered as an incidence of service under Article 309 of the Constitution of India. The payment of pension is not an act of charity. In **D.S. Nakara Vs. Union of India (1983) 1 SSC 305** Hon'ble The Apex Court held that pension is neither a bounty nor a matter of grace. In **Deoki Nandan Prasad Vs. State of Bihar (AIR 1971 SC 1409)**, the Apex Court held that pension is a right and its payment does not depend upon the discretion of the Government. Pension is payment to a person in consideration of past services rendered by him. While exercising power to discharge from service, the officer so authorised must also ensure that a soldier is not put to any disadvantage when there is only a small shortfall in pensionable service. It is most unfortunate that a war veteran has had to run from pillar to post for litigation for his dues for years.

15. We feel the petitioner has been able to make a case. Accordingly, in view of the above, the Transferred Application No. 1320 of 2010 succeeds and is allowed. Impugned orders dated 02.06.1977 and 08.04.1997 passed by the respondents are quashed. The respondents are directed to pay ordinary pension and other retiral dues to the petitioner from the due date as applicable to him within four months from the date of receipt of a certified copy of this order. Reservist pension already paid may be adjusted. In case the respondents fail to

give effect to this order within the time as stipulated above, the amount accrued to the petitioner would start earning interest at the rate of 9% from due date till the date of actual payment.

16. No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: Sep 2016

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