

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH NAINITAL)****Original Application No. 367 of 2018**Thursday, this the 3rd day of December 2020**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Ex Seoy/AA 6791969 Ghura Nand, S/O Late Ishwari Datt R/O Gundiya
Gaon, Tehsil, Purola, District Uttarkashi.

..... Applicant

Ld. Counsel for the: **Shri Dinesh Gahatori**, Advocate
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi.
2. The P.C.D.A. Pension, G-4 Section, Allahabad, Uttar Pradesh.
3. Record Officer, Army Medical Corps, Lucknow-2.

..... Respondents

Ld. Counsel for the :**Ms Pushpa Bhatt**
Respondents Central Govt Counsel assisted by
Col Subodh Verma, Departmental
Representative.

ORDER

1. The instant Original Application under Section 14 of the Armed Forces Tribunal Act, 2007 has been filed by the applicant with the following prayers :-

“(i) To issue a suitable order or direction, calling for records of the applicant from the office of the respondent No 3 and quash the letter No 500340/NE/WEL/Misc/Pen dated 07.04.2003, by which the claim of the applicant for service pension has been denied.

(ii) To issue a suitable direction, order directing the respondents to release all benefits of service pension w.e.f. date of discharge i.e. 19.04.1973 with interest @ 12% on arrears of pension, along with all consequential benefits.

(iii) To issue any other suitable order or direction which this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case.

(iv) To award the cost of the application in favour of the applicant, otherwise the petitioner shall suffer irreparable loss and injury.

2. At the very outset it is submitted that no document except photocopy of Long Roll in respect of the applicant is available on record and according to which the applicant joined the Indian Army in Army Medical Corps (AMC) on 07.04.1958 as Sepoy (Ambulance Assistant). He executed his training and consequently served at various AMC units including J&K. During the service he was awarded (i) Sainya Sewa Medal-J&K (ii) Sainya Sewa Medal-Himalaya and (iii) Raksha Medal-1965. The applicant was transferred to reserve establishment w.e.f. 28.04.1968 having rendered 10 years and 21 days colour service and thereafter discharged from service w.e.f. 20.04.1973. Thus, total service rendered by applicant comes to more than 15 years. The applicant is not in receipt of pension. Representations submitted for grant of service pension were rejected vide orders dated 14.08.1992 and 07.04.2003 (pages 23 and 21 respectively). The applicant was paid service gratuity amounting to Rs 896.65 at the time of discharge from service.

3. Learned counsel for the applicant pleaded that since the applicant is not in receipt of any type of pension he should be granted reservist pension applicable to him as per rules.

4. We have perused the records and found that as per rules prevalent at that time applicant was engaged in the Army for terms of service of 12 years colour service and 8 years in reserve. As per para 155 of the Pension Regulation for the Army 1961 "An OR reservist who is not in receipt of a service pension may be granted on completion of the prescribed combined colour and reserve qualifying service of not less than 15 years, a reservist pension equal to $\frac{2}{3}$ rd of the lowest pension admissible to a Sepoy but in no case less than Rs. 375/- p.m on his transfer to pension establishment either on completion of his term of engagement or prematurely, irrespective of the period of colour service."

5. It is pertinent to mention that the applicant had served during the period of two wars engaging the nation. As per para 164 of the Army Pension Regulation, special pension or gratuity may be granted at the discretion of the President. As per para 165, special pension is assessed on substantive or paid acting rank and the group actually held by an individual on the date of his discharge. The scale of special pension or gratuity as per para 164, 165, 167(a)(ii) for one who has served more than 10 years and less than 15 years would be equal to service pension as determined in Regulation 136. Consequently the applicant was entitled for grant of special pension under these provisions.

6. Though counter affidavit has not been filed by the respondents but during arguments they have conceded grant of reservist pension to the applicant if it is applicable under rules on the subject.

7. Whatever be the terms and conditions of service, the physical fact of completion of 10 years and 21 days of colour service; willingness to continue serving; and the fact that he had completed more than 15 years of service including reserve at the time of discharge, leaves it clear that the individual was willing to complete his pensionable service.

8. The applicant's case is covered by pension regulation 155, that is germane to this issue:

“An OR reservist who is not in receipt of a service pension may be granted on completion of the prescribed combined colour and reserve qualifying service, of not less than 15 years, a reservist pension equal to $\frac{2}{3}$ rd of the lowest pension admissible to a sepoy, but in no case less than Rs. 375/- p.m on his transfer to pension establishment either on completion of his term of engagement or prematurely irrespective of the period of colour service.”

9. In view of the above we allow the O.A. with the following remarks:-

- (a) The applicant is eligible for reservist pension on his discharge.
- (b) Due to late filing of his claim, the applicant shall be paid arrears from three years only prior to 30.05.2018, the date of filing this O.A.
- (d) Respondents will take all actions to implement this order within three months from the date of receipt of this order. Default will invite interest @ 9% per annum.

10. No order as to costs.

(Vide Admiral Abhay Raghunath Karve)
Member (A)

Dated : December, 2020
rathore

(Justice Umesh Chandra Srivastava)
Member (J)