

**Reserved Judgment****ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW****Original Application No. 276 of 2016****Thursday, this the 30<sup>th</sup> day of May, 2019****Hon'ble Mr. Justice S.V.S.Rathore, Member (J)  
Hon'ble Air Marshal B.B.P. Sinha, Member (A)**

Harish Chandra Srivastava, Service Number 257730, S/o Late Sri Kailash Nath Srivastava, R/o MMIG 208, Ram Nagar, LDA Colony, Aishbagh, Lucknow

..... **Applicant**

Ld. Counsel for the Applicant: **Shri J.N. Mishra, Advocate.**

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. Chief of the Air Staff, Air Headquarters Vayu Bhawan, New Delhi.
3. The Air Officer Commanding in Chief, Air Force Records, Directorate of Air Veterans, Air Force Record Office, Subroto Park, New Delhi-110010.
4. Group Captain Commanding No. 24 Wing Air Force Station.
5. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad (U.P.) - 211014.

.....**Respondents**

Ld. Counsel for the Respondents : **Shri G.S. Sikarwar,  
Central Govt. Counsel.**

**ORDER**

**“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

1. The instant Original Application under Section 14 (2) of the Armed Forces Tribunal Act, 2007 has been filed by the applicant with the following prayers :-

*“(i) To quash/Set Aside the impugned order dated 26.09.2016 (Contained as Annexure No. 1 to the Original Application) passed by the opposite party No. 5.*

*(ii) To issue an order or direction to the respondents to grant Reservist Service Pension or Special Pension to the applicant from the date he was discharged i.e. from the date 20.08.1973.*

*(iii) To issue an order or direction to the respondents to pay the arrears of pension with interest at 12% per annum on the delayed payment of pension.*

*(iv) To issue an order or direction that this Hon’ble Tribunal may deem fit and proper under the facts and circumstances of the case.*

*(v) Award the cost of the application to the applicant.*

2. The undisputed factual matrix of the case is that the applicant was enrolled in Air Force on 27.06.1963 for a term of 09 years regular and 06 years of reserve liability. After completing 10 years and 55 days of service, the applicant was discharged from service on 20.08.1973 under clause ‘**on fulfilling the conditions of his enrolment**’. The applicant was denied six years of Reservist terms of engagement. After

discharge from the Air Force, the applicant approached the respondents for grant of reservist pension. His claim was rejected by the respondents vide order dated 26.09.2016 stating that he has not completed 15 years of reservist pensionable service, hence he is not entitled for reservist pension. Being aggrieved by denial of reservist pension, the applicant has filed the present Original Application.

3. Learned counsel for the applicant pleaded that the applicant was enrolled in Air Force on 27.06.1963 for total period of 15 years of service which includes 9 years of Colour or Regular Service and 6 years reservist terms of engagement under the provisions of Air Force Instructions (India) No. 12/Special/48(AFI(I)12/S/48 issued by Government of India dated 24.07.1948 as amended from time to time. Thus he is eligible to earn retirement Pension at the end of his total service of 15 years. He was promoted to the rank of Corporal and his character was 'Exemplary'. He was awarded with Raksha Medal, Amar Seva Medal, Long Service Star and Sangram Medal. He participated in 1965 and 1971 war in Indo-Pakistan. After completing 10 years and 55 days of service, the applicant was discharged from service on 20.08.1973. The applicant did not make any request seeking his discharge but he was denied six years of Reservist terms of engagement contrary to the terms and conditions of his engagement. After discharge from

the Air Force he wrote various letters but the same were not replied by the respondents. Then the applicant sent legal notice vide letter dated 17.02.2016 for grant of reservist pension. When nothing happened, the applicant preferred an Original Application which was disposed of by this Tribunal vide order dated 10.08.2016 with the direction to opposite party to decide the representation of the applicant within three months. The respondents rejected the representation of the applicant vide order dated 26.09.2016 stating that he has not completed 15 years of reservist pensionable service, hence he is not entitled for reservist pension. The respondents while deciding the representation made by the applicant did not answer as to how on the principles of "Promissory Estoppels" reserve period is also liable to be counted for the purpose of pension. Learned counsel for the applicant pleaded that in similar cases, various Benches of Armed Forces Tribunal have granted reservist pension to the applicants. He vehemently pleaded that the respondents have denied the extension of six years of service as reservist to the applicant, contrary to terms of engagement, hence, denial of reservist pension to the applicant is unlawful and needs to be set aside.

4. On the other hand, learned counsel for the respondents pleaded that the matter relates to the year 1973, hence, all the documents pertaining to case have been destroyed. As per

Long Roll, the applicant was discharged from service after completion of 10 years and 55 days of service as per terms and conditions of engagement under clause **'on fulfilling the conditions of his enrolment'**. The terms and condition of service for airmen at that time were governed by Air Force Instructions (1) 12/S/48 as amended from time to time. As per the said terms and conditions, in Para-12, the initial period of engagement of candidates was 09 years Regular Service and 06 years in the Reserve. An amendment to the said Rules was issued by the Government of India on 13.4.1957. According to amendment No.13, for the future entrants, on completion of their engagement of Regular Service including extensions and prolongations, they will be liable to service in the Regular Air Force Reserve for a period of 06 years with effect from the date on which their regular engagement expires. The initial period of 9 years regular service was enhanced to 15 years with effect from 05.08.1966. The ibid AFI was accordingly amended vide Corrigendum No 7 to AFI 12/S/48 dated 29.03.1969. Further provisions were also available that airmen already serving their initial period of engagement of 9 years, may, if they so decide, opt for 15 years of regular engagement. He submitted that the applicant was enrolled on 27.06.1963 with his initial terms of 9 years regular service and 6 years of reserve liability. He attained the rank of Corporal within 9 years of regular service, but he was not allowed to enter contract of service till 15 years

of engagement and was discharged w.e.f. 20.08.1973 as per provisions. He pleaded that as per Regulation 136 (a) the prescribed combined colour and reserve qualifying service for earning reservist pensions is 15 years and only the period actually served in the Air Force Reserve is taken into account for grant of Reservist Pension and not the period of Reserve Liability as reserve liability is the condition of terms of engagement in which an airman is liable to be transferred to any Air Force Reserve if and when constituted. Pension of airmen is governed by the Pension Regulations for the Air Force, 1961 (Part-I) and as per Regulation 121 of the said Regulations, the minimum qualifying regular service for earning service pension is 15 years. He pleaded that as per Pension Regulation 136, an airman 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 on his transfer to pension establishment either on completion of his term of engagement or prematurely irrespective of the period of colour service. However, airmen who have less than 15 years of service are eligible only for service gratuity and death cum retirement gratuity in terms of Regulation 127 and 128 and the applicant was paid Rs. 3264/- as service gratuity and Rs. 1920/- as DCRG. Accordingly, his claim for grant of reservist pension has been correctly denied.

5. Heard learned counsel for the parties and perused the record. The questions which need to be answered by us are of two folds i.e.:-

(a) Whether the impugned order contained in letter dated 26.09.2016 is unsustainable and the applicant is eligible for the grant of Reservist Pension and the benefits thereunder?

(b) To what relief the applicant is entitled for?

6. During the course of the argument, learned counsel for the applicant placed reliance on the judgment and order of Armed Forces Tribunal, Regional Bench, Chennai, passed in ***O.A. No 39 of 2013, P Dhanusmurthy Vs The Defence Secy & Others***, decided on 19.08.2013. He pleaded that since the facts and circumstances of the case of the applicant is similar in nature, as such the competent authority be directed to consider the case of the applicant for grant of reservist pension. The only point raised by the respondents in support of impugned order and for the rejection of Reservist Pension was that the applicant was not transferred to reserve service by the respondent and applicant has also received the gratuity and other benefits at the time of discharge from Air Force after completing 10 years and 55 days of regular service. For better understanding of the

terms of service conditions of the applicant, the AFI orders, which were prevalent at the time of enrolment, are necessary to be scrutinised. The AFI Order No.12/Special/48 (AFI(I)12/S/48) issued by the Government of India on 24.07.1948, reads as under :-

*“12. Terms of Engagement: Candidates will be enrolled for nine years Regular Service and six years in the Reserve. The period of engagement will count from the date of enrolment.”*

7. It was amended by another Order AFI(1)/12/S/48 dated 13.4.1957, which reads as under :-

*“Insert the following as sub-clause (iv) to para 13.*

*(iv) Notwithstanding anything contained in Paras. 12 and 13(i) and (ii) above regarding Reserve Liability, the Reserve Liability of the future entrants will be as under:--*

*(a) Reserve Liability*

*On Completion of their engagement of regular service including extensions and prolongations thereof, airmen will be liable to serve in the Regular Air Force Reserve for a period of 6 years with effect from the date following the date on which their regular engagement expires.*

*(b) Extension of Service in the Reserve*

*On completion of the initial period of service in the Regular Air Force Reserve, an airman may be required by the Competent Authority to serve in the Regular Air Force Reserve for such further period or periods not exceeding in the aggregate 5 years as it may think fit, vide Section 7 of the Reserve and Auxiliary Air Force Act, 1952.*



*(c) In the case of airmen who are discharged before the expiry of their regular engagement, the period of the unexpired portion of their regular engagement will be added to their Reserve Liability.*

*(d) Airmen, who are not transferred to the Regular Air Force Reserve on expiry of their active list engagement, will have the liability to be transferred to the Regular Air Force Reserve any time during the period of the Reserve Liability.*

*(e) Notwithstanding anything contained in this paragraph, no airman shall be liable to serve in the Regular Air Force Reserve after attaining the age of 55 years, vide Rule 4 of the Reserve and Auxiliary Air Forces Act Rules, 1953.”*

8. In the above Orders, it has been categorically laid down that the initial period of engagement of candidate enrolled was 09 years of Regular service and 06 years in the Reserve. This AFI was amended again vide Corrigendum No.7 dated 29 March, 1969. The amendments are as under :-

*“ 7. A.F.I 12/S/48 regarding Terms and Conditions of Service of Regular Airmen is amended as follows :-*

*Delete existing para 2,13,13A and substitute as under:-*

*“ Period of engagement:- Candidates will be engaged with effect from the date of enrolment for the under mentioned periods of service with the Regular Air Force and in the Regular Air Force Reserve :-*

*(a) Regular Service;*

(i) Candidates will be enrolled initially for 15 years of regular service but those who fail to attain the rank of Corporal **within 9 years will be discharged.**

Note: Airmen already serving their 9 years of initial engagement may be allowed to contract for 15 years of engagement counting from the date of their enrolment subject to the fulfilment of the condition mentioned in this sub-clause.

(ii) On completion of 15 years regular service, an airman may be allowed, at the discretion of the C.A.S. to extend the period of regular service by 6 years (amended as 2 years vide AFI 19/77 and Corrigendum No.16/77, applicable w.e.f. 01 Sep 1976) to complete 21 years service. On completion of 21 years regular service, further extensions of regular service may be granted for a period of 3 years at a time or such shorter period as deemed necessary up to the age of 55 years.

(Para 12(a)(i) & (ii) above has been amended vide Corrigenda No.15-56 of AFI/21/79 dated 01 Oct 1979)

(i) Subject to the provisions of succeeding sub-clauses and para 13 (c) on completion of the period of the regular service, including extension, if any, mentioned in (a) above, the airmen will be liable to serve in the Regular Air Force Reserve for a period of 6 years (amended as 2 years vide AFI 19/77 and Corrigendum No.16/77, applicable w.e.f. 01 Sep 1976) with effect from the date on which regular engagement expires.

(ii) In the case of airmen transferred to Regular Air Force Reserve before the expiry of their regular service for which

*they were engaged, un-expired portion of their regular service will be added to their reserve liability.*

*(iii) Airmen who are not transferred to Regular Air Force Reserve on the expiry of their regular service will have the liability to be transferred to the Regular Air Force Reserve any time during the period of the reserve liability.*

*(iv) On completion of the initial period of service in the Regular Air Force Reserve, an airman may be required by the competent authority to serve in the Regular Air Force Reserve for such further period or periods not exceeding in the aggregate five years as it may think fit vide Section 7 of the Reserve and Auxiliary Air Forces Act, Rules 1953.*

*13. Retention after completion of regular service-(a) If at the time he becomes entitled to be discharged, a state of war exists between India and foreign power, or in the opinion of the Central Government a war is imminent or a state of emergency has been declared or if the strength of the trade in which he is mustered is 10% below the authorized establishment, an airman may, notwithstanding anything contained in para 12(b) above, be retained in the Air Force Service for such further period or periods as the Chief of the Air Staff may order.*

*(b) During the period of this retention under sub-para(a) an airman will continue to be governed by the normal terms and conditions of service in the same manner as if an extension had been granted to him.*

*(c) The reserve liability of an airman who has been retained in Air Force service under this paragraph shall be reduced by the period of such retention.”*

9. When the applicant was enrolled in the IAF on 27.06.1963, the provisions of Para-12 of AFI (I) Order No.12/Special/48(AFI(I)12/S/48) dated 24.07.1948 as amended by AFI(1)/12/S/48 dated 13.4.1957, was only applicable and the provisions of the amendment made vide Corrigendum No.7 dated 29.3.1969, was not available. According to the then existing AFI Order No.12/Special/48(AFI(I)12/S/48), the initial period of Regular service was 09 years and Reserve service was for 06 years. It is also found in the Long Roll that the terms of service of the applicant was 09/06 years. The respondents have also admitted in Paras-2 and 3 of their Counter Affidavit that the applicant was engaged for 09 years of Regular service and 06 years of Reserve service.

10. The contention of the respondents throughout would be that there is a clear distinction between Reserve liability and Reserve service as provided in the statutory provisions and the applicant who was not transferred to Reserve service would not be eligible for Reservist Pension as he did not complete 15 years of combined colour service. For that, we have to look into the provisions of Service Pension for the airmen:-

*“14. Section 121 of Pension Regulations for Air Force 1961 Part II stipulates “Unless otherwise provided for, the minimum qualifying regular service for earning a service pension is 15 years”. Section 126 of the said Regulations stipulates “An individual transferred to*

*the reserve after earning a service pension shall be granted such pension from the date of his transfer”.*

Under the provision of Section 121 the petitioner is not entitled to service pension since he has not completed 15 years of regular service. However, Section 136 of the said Regulations come to the petitioner's aid:

#### *RESERVIST PENSION*

*“136.(a) A reservist who is not in receipt of a service pension may be granted on completion of the prescribed period of nine years regular and six years reserve qualifying service, a reservist pension of Rs.10.50 p.m. or a gratuity of Rs.800 in lieu.*

*(b) A reservist who is not in receipt of a service pension and whose period of engagement for regular service was extended, and whose qualifying service is less than the total period of engagement but not less than 15 years may, on completion of the period of engagement or on earlier discharge from the reserve for any cause other than at his own request, be granted a reservist pension at the above rate or the gratuity in lieu.*

*(c) Where a reservist elects to receive a gratuity in lieu of pension under the above clauses, its amount shall, in no case, be less than the service gratuity that would have accrued to him under regulation 128 based on the qualifying regular service, had he been discharged from regular service.*

*Note: The option to draw a gratuity in lieu of pension shall be exercised on discharge from the reserve and once exercised shall be final. No pension/gratuity shall be paid until the option has been exercised. “*

Had he been transferred to reserve service he would have been eligible for pension under the provisions of Section 136(a). Admittedly he was paid the gratuity. But he was probably unaware of the implications of gratuity payment. He was not transferred to Reserve consequent to a decision taken

during Air Force Commanders' Conference held on 23 Aug 1972 details of which are contained in a letter dated 31 October 1972 produced by the respondents. The relevant extracts are:-

*"1. In the Air Force Commanders' Conference held on 21-23 Aug 72 it was decided that the Reserve scheme should be suspended....."*

*2. As a result of this, it has been decided that no airman will be transferred to the Regular Air Force Reserve on expiry of his regular engagement."*

11. What emerges is that the respondents after Air Force Commanders Conference held on 21-23 August 1972 unilaterally decided to suspend the Reserve Scheme thus depriving the applicant of his pension. However such a unilateral decision of respondents cannot be enforced because it is against the above said statutory rules.

12. In the case of ***P. Dhanusmurthy Versus The Defence Secretary and Others*** (Supra), the Reservist Service Pension was allowed to the applicant by the Armed Forces Tribunal, Regional Bench, Chennai. The facts of the case are reproduced from the order of that case are as under:-

*"The applicant was enrolled in the Indian Air Force as Combatant on 19.10.1963, on the engagement terms of 09 years Regular Service and 06 years Reserve service. After completion of 09 years colour service on 19.10.1972, the applicant was retained for five additional months due to national emergency. Due to disbandment of units and for want of vacancy in the Reserve List, the applicant was discharged from Regular Colour Service on 9.3.1973. The*

*applicant took part in 1965 and 1971 Indo Pakistan wars and was decorated with several medals. He had rendered 09 years and 141 days of regular active service in the Indian Air Force, and his general behavior and character was assessed as "Very Good". But he was not paid any pension and had been running from pillar to post for getting Reservist Service Pension. He did not get any reply for his 1st application for pension dated 5.4.1973. He underwent by-pass surgery recently and due to poor health condition and poverty, he could not pursue the matter. After learning about the decisions of Armed Forces Tribunal for grant of Reservist Pension, he made an application dated 11.11.2011 to the Air Force Records which was rejected arbitrarily vide letter dated 12.1.2012 and the said letter is impugned in this application. The applicant did not opt to be discharged from service. The Air Force authorities have committed breach of contract by discharging him before completion of reserve service and deprived him the Reservist Service Pension. The applicant relied upon the Orders passed by AFT, Chennai, in O.A.No.1/2011 and O.A.No.7/2011 and AFT, Kolkata, in O.A.No.53/2011 for payment of Reservist Service Pension and requests the Tribunal to allow the application and to grant the Reservist Service Pension to him."*

13. In the aforesaid facts and situation the Original Application was allowed and Reservist Service Pension was allowed in favour of the applicant.

14. We have asked the learned counsel for the respondents whether any Appeal has been preferred against the above pronouncement of the Regional bench, then the Ld. Counsel for the respondents could not produce any contrary judgment or any order of the Hon'ble Apex Court or any order wherein a contrary view was taken. Therefore, keeping in view the settled principle of law of precedent that the judgment of coordinate

Bench is binding and we are of the view that this case has to be decided in view of the law laid down by the coordinate Bench in the aforementioned case.

15. In the light of the principles laid down by the Armed Forces Tribunal, Regional Bench, Chennai and Hon'ble Apex Court on promissory estoppels, the Reserve liability of the applicant should have been considered as Reserve service for being reckoned with the Regular service so as to find out the qualifying service of the applicant. If it is done so, the Reserve liability of the applicant should have been counted as Reserve service to be reckoned with Regular service of 10 years and 55 days and the total qualifying service of the applicant would come to 15 years, which would earn a Service Pension for the applicant. Further the applicant did not make any request seeking his discharge but he was denied six years of Reservist terms of engagement contrary to terms and conditions of his engagement. The applicant was promoted to the rank of Corporal as such he was eligible for reserve liability. The requisition made by the applicant for the grant of Reservist Pension ought to have been accepted by the respondents. But it has been erroneously rejected and the applicant had come before us with the claim for Reservist Pension. Therefore, it has become necessary to set aside the impugned order dated



26.09.2016, as not sustainable. Accordingly, this point is decided.

16. In view of the foregoing discussion, we hold that the period of Reserve service should also be taken for qualifying service of the applicant to make him eligible for pension under Section-136(a) of Pension Regulations for the Air Force, 1961 (Part-I). However, the applicant has laid his claim before the respondents vide his representation dated 23.08.2016. As per the principles laid down in the case of **Union of India and Others Versus Tarsem Singh, reported in (2008) 8 SCC 648**, by the Hon'ble Apex Court, the applicant shall be entitled to the claim only from 23.08.2013 i.e. the date three years prior to the date of filing of the Original Application. The amount paid as gratuity shall be liable to be recovered from or adjusted in the pension payment to the applicant. In view of above, the Original Application deserves to be partly allowed.

17. Accordingly, **Original Application No. 276 of 2016** is hereby **partly allowed**. The impugned order dated 26.09.2016 passed by the respondents is set aside. The applicant is entitled for the Reservist Service Pension to be calculated in accordance with rules. The respondents are directed to pay the arrears of pension from 23.08.2013, after adjusting the gratuity amount already paid to the applicant and issue a Pension Payment Order to that effect within a period of four months from

the date of receipt of a certified copy of this order by the respondents, failing which they will have to pay interest @9% on the amount from the date of it's accrual till the date of actual payment.

No order as to costs.

**(Air Marshal BBP Sinha)**

**Member (A)**

Dated: May, 2019  
ukt/-

**(Justice S.V.S. Rathore)**

**Member (J)**