

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 577 of 2020****Friday, this the 17th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 6881692, Ex Sep/ Rest, Amrit Lal, S/o Sri Shyam Sunder, R/o Vill-Badilpur, Post – Ashwar Jarapurb District – Fatehpur, (UP).

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

Versus

1. Union of India through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of Army the Staff, South Block, New Delhi-110011.
3. The Officer–In-Charge, AOC Records, Secunderabad.
4. PCDA (P), Draupadi Ghat, Allahabad-211014.

... RespondentsLd. Counsel for the **Shri Ashish Kumar Singh**, Advocate.
Respondents.**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, whereby the applicant has sought 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 along with 12% interest from date of discharge i.e. 01.05.1978.

(c) To issue/pass any other 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. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 05.04.1963 and transferred to Reservist Establishment on 18.08.1973 after rendering 10 years, 04 months and 13 days colour service. Thereafter, having rendered 01 month and 15 days colour service he was transferred to Reserve on 30.04.1978 in terms of para 231 (a) of the Regulations for the Army 1962. Applicant was granted Reservist Pension vide PPO No. S/11007/1979 dated 05.03.1979 which was revised vide Corrigendum PPO Nos. S/4016/1984 dated 01.06.1984 and S/CORR/5007/2008 dated 09.04.2008. Now, he has served a legal notice to PCDA (P), Allahabad through his advocate for grant of ordinary service pension and other retiral dues which was turned down intimating him that he is not entitled to receive service pension, though he is entitled to reservist pension which he is in receipt of. It is in this perspective this O.A. has been filed.

3. Learned counsel for the applicant submitted that applicant has rendered 12 years, 09 months and 13 days combined service with colour and reserve service:-

Colour Service

Total Service

(a) 05.04.1963 to 18.08.1973	10 years, 04 months & 14 days
(b) Service in year 1976	01 month & 15 days
	(A)10 Years, 05 months & 29 days

Reserve Service

(a) 18.08.1973 to 01.05.1978 = 04 years, 06 months & 28 days

Half of Reserve Service of = (B) 02 years, 03 months & 14 days

Total Colour Service

A+B = 12 years, 09 months and 13 days

(A) = 10 years, 05 months and 29 days

(B) = 02 years, 03 months and 14 days

4. Ld. Counsel for the applicant pleaded that applicant's short fall of 02 years and 02 months and 17 days should be condoned to receive regular service pension in terms of the Hon'ble Apex Court judgment rendered in Civil Appeal No. 9389 of 2014, ***Union of India & another Vs Surender Singh Parmar***. Further submission of learned counsel for the applicant is that if colour and reserve services are combined, it comes to more than 15 years, thus, making applicant eligible for grant of service pension, in terms of Para 132 of Pension Regulations for the Army 1961 (Part I), which indicates essentially two conditions, firstly being the need to complete 15 years of colour service for earning normal pension and secondly half of reserve service could be added to the total service for grant of pension which is self explanatory and the same is reproduced as under:-

".....in the event of their being discharged from colour, be eligible to receive the same ordinary pension and invaliding gratuity, as would have been admissible for their total colour service 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....."

As per SAI 17/S/68 relevant portion for regular service pension to Reservist Pensioner is reproduced below;

"1. OR reservist who are transferred to the pension establishment on or after 1st 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. Regulations 156. Pension Regulations, 1961 (Part-I), will be amended in due course"

5. He pleaded that since applicant has never made a request for discharge but he was discharged notionally by giving no intimation to him. He further submitted that there was no disciplinary case pending against him which could have been the cause for his notional discharge from service prior to completion of pensionable service. His submission is that if there was no vacancy in his trade, he could have been given another trade or appointment or could have been transferred to another unit before discharging him so that he could earn regular pension. Learned counsel for the applicant further pleaded that applicant's case is fully covered by order dated 05.10.2016, Transferred Application No. 1320 of 2010 passed by this Hon'ble Tribunal which is as under:-

"Accordingly in view of the above, the Transferred Application No 1320 of 2010 succeeds and is allowed. Impugned order 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 due date as applicable to him within four

months from the date of receipt of a certified copy of this order.....”

6. On the other hand learned counsel for the respondents submitted that applicant was granted Reservist Pension Vide PPO No. S/11007/1979 dated 05.03.1979 which was revised vide Corrigendum PPO Nos. S/4016/1984 dated 01.06.1984 and S/CORR/5007/2008 dated 09.04.2008. Learned counsel for the applicant served a legal notice through his advocate for grant of ordinary service pension and other retiral dues. In response ADALAT OFFICER PCDA (P), Allahabad intimated on 14.08.2018 to the applicant that he is entitled a Reservist Pension amounting Rs 9000/- P.M. only. Applicant was asked to submit certain documents which he did not supply. As per PCDA (P), Allahabad circular No 570 dated 31.10.2016 at Sub Para 4.4 of Para 4 (titled as minimum and maximum pension) mentioned that “the minimum basic pension with effect from 01.01.2016 will be Rs 9,000/- per month (excluding the element of additional pension admissible to old pensioners). The upper ceiling of pension/family pension will be 50% and 30% respectively of the highest pay in the Government. The highest pay in the Government is Rs. 2,50,000/- with effect from 01.01.2016.

7. We have heard learned counsel for both sides and perused the material placed on record.

8. In the above scenario, we are of the view that applicant was transferred to Reserve Establishment on 18.08.1973 under Para 231 (a) of the Regulations for the Army, 1962 and he was granted Reservist pension accordingly vide PPO No. S/11007/79 dated 05.03.1979. His

Reservist Pension was revised from time to time vide Corrigendum PPO Nos. S/4016/1984 dated 01.06.1984 and S/Corr/5007/2008 dated 09.04.2008. Thereafter, PCDA (P), Allahabad intimated applicant about revision of his pension w.e.f. 01.10.12016 as per Circular No. 570 dated 31.10.2016 for which certain papers were asked for from the applicant which were not supplied to pension sanctioning authority as yet.

9. We find that since applicant has not rendered minimum pensionable service of 15 years (including colour and reserve), therefore, he is not entitled to regular service pension. He is entitled to reservist pension for the services rendered in the organisation.

10. We have also noticed that PCDA (P), Allahabad had asked certain details to be forwarded by applicant for his revision of pension, which the applicant has not been able to furnish. Keeping in view the aforesaid, applicant is directed to furnish requisite details to PCDA (P), Allahabad for revision of his pension.

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

12. No order as to costs.

13. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 17th September, 2021
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