

**Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 749 of 2020****Tuesday, this the 28<sup>th</sup> day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

13901339 Ex Sep Gopi Chand, S/o Late Rameshwar Dayal, No. Vill &amp; Post-Ranipur, Dist-Mainpuri (Uttar Pradesh)-205268.

**.... Applicant**Ld. Counsel for the: **Shri Ashok Kumar and Shri Rohit Kumar**  
Applicant **Sharma, Advocates.**

Versus

1. Union of India, through the Secretary, Ministry of Defence, DHQ PO, New Delhi-110011.
2. The Chief of Army the Staff, Through Integrated HQ of Ministry of Defence (Army) DHQ PO, New Delhi-110011.
3. The Additional Director General Personnel services (AG's Branch), Integrated HQ of Ministry of Defence (Army) DHQ PO, New Delhi-110011.
4. Controller Defence Account (Pension) Draupadi Ghat, Allahabad (UP)-211014.

**... Respondents**Ld. Counsel for the: **Dr. Chet Narain Singh**, Advocate.  
Respondents.**ORDER**

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) Call for the Records based on which the Respondents have denied reservist pension to the applicant.*

*(b) Quash the order dated 19.09.2017 and 13.10.2018 of Respondents rejecting the Appeal of the Applicant for grant of Reservist Pension.*

*(c) Issue directions to the Respondents to grant Reservist pension to the Applicant w.e.f. 24.07.1970, in the rank of Sepoy, including increment/DA etc. earned till date be given to the applicant on that basis along with penal interest @ 18%.*

*(d) Pass any other order/orders as deemed appropriate by this Hon'ble Tribunal in the facts and circumstances of the present case.*

2. Brief facts of the case giving rise to this application are that applicant was enrolled in the Indian Army on 23.07.1963 and discharged from service on 23.07.1970 under Army Rule 13(3) III (ii) on completion of engagement period of 07 years colour service. Applicant was granted service gratuity Rs. 955.50. Applicant preferred a representation on 27.08.2017 for grant of reservist pension, which was rejected vide order dated 19.09.2017 stating that service documents (Sheet Roll) was destroyed in terms para 592 to 596 of Defence Service Regulations for the Army 1987, Vol-II (Revised Edition). On scrutiny of available records with respondents the applicant has rendered 07 years service and minimum 15 years of qualifying service is mandatory for grant of reservist

pension. Thereafter, applicant filed an Original Application before the Hon'ble Principal Bench which was dismissed with liberty to file at appropriate forum. Thereafter, applicant preferred an appeal in the month of July 2018 against for non grant of reservist pension which was also rejected vide order dated 13.10.2018. It is in this perspective this O.A. has been filed.

3. Learned counsel for the applicant submitted that applicant was discharged from service on 23.07.1970 on completion of his terms of engagement of 07 years and he was not kept in the reserve list for 08 years which is contrary to terms and conditions of engagement. Denial of Reservist Pension to the applicant is also contrary in terms of Sec 155 of Pension Regulations as the discharge of applicant on completion of colour service of 07 years, after entering into a contract of engagement with the applicant for both 07 years colour service and 08 years of reserve service, is against the policy on the subject. Discharge of the applicant on the ground that there was no vacancy in the reserve service, cannot be a ground to deny reservist pension, as laid down in aforesaid Rules. Therefore, applicant is held entitled to reservist pension. As a matter of right and non compliance of regulations by the respondents are highly illegal, arbitrary, and discriminatory as well as against the constitutional mandate having the status of basic fundamental rights of a service person.

4. Further submission of learned counsel for the applicant is that it is the liability of the respondents, as per terms of engagement of the applicant to transfer the applicant to reserve service after the completion

of colour service. There was no fault of the applicant who was discharged from service without being transferred to reserve service. As per policy laid down by Hon'ble Apex Court and the Principal Bench of AFT, New Delhi it is a very clear that reserve period should also be reckoned for the purpose of computing the period of service of the applicant for the purpose of granting benefits to the applicant. Applicant served for the Army for 07 years regular service followed by 08 years reserve service. Respondents failed to transfer him to reserve service and it would amount to withdrawal of the promise made by the respondents at the time of enrolment. Therefore respondents are promissory stopped from doing so and applicant is deemed to have continued in service till the end of reserve period of service to allow him a total service of more than 15 years. Applicant was willing to continue in service at the time of his discharge, but the respondent still discharged him from service claiming lack of vacancy in reserve service and does not save the respondents in any way from considering the applicant towards his reserve service. Therefore, in accordance with provisions outlined in the Judgments of Hon'ble Apex Court and Principal Bench , AFT, New Delhi that period of reserve service should be taken into account, so that applicant could be granted reservist pension under para 132 and 155 of Pension Regulation for the Army, 1961 (Part-I). His further submission is that he is entitled to reservist Pension with similar conditions in the case of judgment of this Tribunal, passed in O.A. No. 09 of 2018, **Prakash Chandra Tewari Vs Union of India & Others.**

4. Learned counsel for the applicant further pleaded that applicant's case is fully covered by order dated 19.08.2013, **Original Application No. 39 of 2013, P Dhanusmurthy Vs The Defence Secy & Others**, passed by Armed Forces Tribunal, Regional Bench, Chennai, which is as under:-

“He also pleaded that since the facts and circumstance 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 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 Army service after completing 09 years and 05 days of regular service.....”

6. Learned counsel for the applicant pleaded on the aforesaid grounds for grant of Reservist Pension should be granted to the applicant.

7. On the other hand learned counsel for the respondents submitted that applicant was granted pensionary benefits such as Service Gratuity Rs. 955.50. He submitted that service documents (Sheet Roll) of the applicant have been destroyed after expiry of preservation period of 25 years in terms of Para 592 to 596 of Regulations for the Army 1987, Vol-II (Revised Edition). Learned counsel for the applicant filed an Original Application No 189 of 2018 before the Hon'ble AFT, (Principal Bench), New Delhi which was disposed off vide order dated 11.05.2018 with the directions that “***without going into the question of merits or maintainability as well as the factum as to whether the applicant is***

***entitled to any pension or not, the applicant is permitted to withdraw the application with liberty to approach the respondents for seeking such relief as may be deemed fit and proper. In view of the above, OA stands disposed of".*** Applicant preferred an application for grant of reservist pension which was rejected on 13.10.2018 on the grounds that applicant has not completed 15 years prescribed combined colour and reserve qualifying service where as applicant has rendered 07 years of colour service, hence he not entitled reservist pension as per para 155 Pension Regulations 1961 (Revised) which is stipulated as under:-

(a) A reservist who is not in receipt of a service pension may be granted, on completion of prescribed combined colour and reserve qualifying service a reservist pension or gratuity in lieu at the appropriate rate indicated in Pension Regulations 1961 (Revised) para 156.

(b) A reservist who is not in receipt of service pension and whose period of engagement was more than 15 years but whose qualifying service is less than the period of engagement or on earlier discharge for any cause other than at his own request be granted a reservist pension at Rs. 10/- p.m. or a gratuity of Rs. 750/- 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 him under Regulations 140 based on the qualifying colour service, had he been discharged from the colours.

8. Further submission of learned counsel for the respondent is that in terms of Para 132 of Pension Regulations for the Army 1961 (Part-I) stipulated that, **“unless otherwise provided for, the minimum qualifying colour service for earning a service pension is 15 years”**.

In the instant case, he was discharged from service after rendering only 07 years of service in accordance with Army Rule (13) 3 III (ii) and he was not granted any type of pension after his discharge as he was not rendered 15 years minimum service for earning reservist pension and thus he has become a non pensioner. Therefore, applicant is not entitled for reservist pension.

9. Learned counsel for the respondents placed reliance on the judgment and order of the **Hon'ble High Court of Delhi dated 31.07.1995 passed in CM 2063/1993 & CW No 1267 of 1993 filled by Hans Ram Vs (UOI)** a division bench of the court had taken the view that “a writ petition claiming pension, if the claim be otherwise just and legal may be entertained and allowed limiting the same to a period of three years before the date of filing of the petition. In the present case the petitioner has on account of culpable delay and latches extending over a period of 45 years himself created a situation which disentitles him to any relief. The service record of the petitioner is not available. It is not known as to why and in what circumstance the petitioner was paid merely the gratuity and yet felt satisfied therewith, though no pension was allowed. If only the petitioner would have approached the court within a reasonable time, the respondents could have been directed to search and produce the relevant service record of the petitioner enabling a just

decision of the petitioner's claim, which is not possible in the present case. The entire fault is of the petitioner. However, sitting as a writ court, we cannot grant relief of pension to the petitioner merely as a charity or bounty in the absent of relevant facts being determinable and relevant documents available. For the foregoing reasons the petition is dismissed though without any order as to cost".

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

11. In the above scenario, we are of the view that applicant was discharged from colour on 23.07.1970 and he was granted Service Gratuity Rs. 955.50/- accordingly.

12. We also take note that applicant was enrolled in Indian Army on 23.07.1963 for 07 years colour regular service and 08 years of reserve service. Applicant was required to be placed him in reservist list by respondents, but he was not placed in reserve list/establishment being no vacancy in reserve. Therefore, applicant was not considered for placing in reservist list and he was discharged after completion of only 07 years colour service, therefore reserve service could not taken into account for computing his reservist pension.

13. We find that since applicant has not rendered minimum pensionable service of 15 years (including colour and reserve) and he has rendered 07 years only of colour service in the Indian Army, therefore, he is not entitled to reservist pension.

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

15. In view of the above scenario, we also find that learned counsel for the applicant has not made a party to AMC Records, Lucknow in this Original Application.

16. No order as to costs.

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

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated : 28<sup>th</sup> September, 2021  
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