

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Court No 1****Reserved****ORIGINAL APPLICATION No. 98 of 2011**Monday, this the 25th Day of October, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Service No. Ex 1508216 Sapper Moti Lal Pandey, Son of Shri Ram Kripal, Bombay Engineering Group, Corps of Engineer, Kirkee, Pune, Present Address- Village – Sumeda, PO- Naighari, Tehsil- Mauganj, Distt- Rewa (MP)(Since Deceased).

Smt Ram Kumari Pandey W/o Late Motilal Pandey, Village Sumeda, PO- Naighari, Tehsil – Mauganj, Dist: Rewa (M.P.)

..... Applicant

Ld. Counsel for the : **Shri SK Pandey, Advocate**
Applicant

Versus

1. The Defence Minister, Union Govt. Of India South block Ministry of Defence New Delhi-11
2. The Chief of Army Staff, Army Head Quarter, Sena Bhawan New Delhi 110011.
3. The GOC– in-C Southern Command Army H.Q. Pune Maharashtra.
4. Officer – in- Charge Records Bombay Engineering Group Corps of Engineer, Kirkee (East) Pune -3 (Maharashtra).
5. Principal Controller of Defence Account (Pension) Draupadi Ghat Allahabad (U.P)

.....Respondents

Ld. Counsel for the: **Shri Namit Sharma,**

Respondents.

Central Govt. Counsel

ORDER

“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(i) This Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to grant pension to applicant for rank of sapper in the army for life.

(ii) This Hon’ble Tribunal may grant any other and further relief to applicant as it deem fit, just and proper in the facts and circumstances of the case.

(iii) This Hon’ble Tribunal may award the cost of petition to applicant.

2. Succinctly stated, husband of the applicant was enrolled as Sapper in Bombay Engineer Group on 01.12.1050. As per terms of engagement, he was enrolled for 7 years colour service and 8 years reserve service. After completing period of colour service, husband of the applicant

was discharged from colour service on 26.09.1958 and he was finally discharged from reserve service on 29.03.1966. After retirement husband of the applicant prayed for grant of reservist pension which was denied. Being aggrieved, husband of the applicant has filled instant O.A. for grant of reservist pension.

3. Learned counsel for the applicant submitted that husband of the applicant was enrolled as Sapper in Bombay Engineer Group (BEG) on 01.12.1950 after clearing all physical and medical tests. As per terms of engagement, he was enrolled for 7 years colour service and 8 years reserve service. After successfully completing colour service, applicant was discharged from colour service on 26.06.1959. His character was assessed "Very Good". Husband of the applicant was recalled on 30.01.1962 to fight the war and to protect the nation. Husband of the applicant fought war with Pakistan in 1965. On 01.01.1966 husband of the applicant was finally discharged from service. Husband of the applicant was granted gratuity for the service rendered in the army. Contention of learned counsel for the applicant is that as per contract of engagement between husband of the applicant and the respondents, husband of the applicant had to serve 7 years as

colour service and 8 years in Reserve, in order to complete 15 years minimum qualifying service to get pension. His claim is for the Reservist Pension under Para 155 of the above mentioned Regulations which says that “an OR Reservist who is not in receipt of service pension may be granted on completion of prescribed combined colour and reserve qualifying service, of not less than 15 years, a Reservist Pension equal to 2/3 of the lowest pension admissible to a Sepoy, but in no case less than Rs. 375/- per month on his transfer to pension establishment either on completion of terms of his engagement or prematurely irrespective of the period of colour service”.

4. Learned counsel for the applicant further submitted that it is a case of a soldier who was eligible for reservist pension as per Circular No 278 and advice of PCDA (P), Allahabad to OI/C BEG Records, vide their letter dated 05.07.2011. Learned counsel for the applicant prayed that directions be issued to respondents to grant reservist pension to the husband of the applicant.

5. On the other hand, learned counsel for the respondents submitted that as per long roll husband of the applicant had rendered only 12 years, 6 months and 25 days including

reservist service. He had not rendered 15 years minimum qualifying service to earn service pension in terms of Para 132 as well as Reservists Pension as per para 155 of Pension Regulations for the Army 1961, therefore husband of the applicant was discharged from the service as a non pensioner. Service record of the husband of the applicant has already been destroyed by burning after retention period of 25 years in terms of Rule 595 of Defence Service Regulations for the Army (Revised Edition) 1987 Vol- II. Respondents have stated on oath that service record of the husband of the applicant is not available to verify the correct facts and to produce the same before the Court. Documents produced by the husband of the applicant are tempered, hence its authenticity is doubtful. Husband of the applicant has filed the instant Original Application after a gap of more than 48 years. The husband of the applicant has not rendered minimum pensionable service, hence he was not granted reservist pension under Para 132 of the Pension Regulations for the Army- 1961 (Part-1). The documents of husband shows that on 11.12.1975, he wrote some letters, in response to which the respondents on 17.10.1975 had denied the claim of husband of the applicant explaining their stand that he had not

rendered the qualifying service and was entitled only service gratuity of Rs 315/- which was paid to him. Learned counsel for the respondents submitted that Original Application is devoid of merit and is liable to be dismissed in the interest of justice.

6. We have heard learned counsel for the parties and perused the record.

7. A short question that arises for consideration in this Original Application (O.A.) is whether the husband of the applicant is entitled to get reservist family pension of Sepoy when he had not rendered the minimum qualifying service under service rules applicable.

8. In the instant case, learned counsel for the applicant has drawn our attention towards the judgment of Armed Forces Tribunal, Regional Bench, Chennai, in **O.A. No 106 of 2013, Ex Spr Chengaih vs Union on India & Others**, decided on 26.11.2013. In this judgment, Hon'ble Tribunal has held that if one was enrolled by the Government of India for both colour service and reserve service and after completion of colour service was offered only few days service of reserve instead whole period, for no fault on his part, the entire period of colour

service and reserve service would be combined together and on completing minimum qualifying service would be entitled for the grant of pension. In this case the Regional Bench, Chennai, has cited various judgments rendered by the Hon'ble Apex Court, Hon'ble High Courts, Principal Bench and Regional Benches of the Armed Forces Tribunal and on account of that has held that if applicant was enrolled for both colour service and reserve service and after completion of colour service was willing to continue in service at the time of discharge, but the respondents still discharged him from service for want of vacancy, the period of reserve service would be reckoned for pensionable service. Relevant Paras 16, 17 and 18 of the judgment are reproduced below for the reference:

“16. As per the judgment of Hon'ble Principal Bench, AFT, New Delhi, the period of reserve service should be reckoned for pensionable service when the respondents are not transferring the individual after the completion of colour service, to reserve service. Therefore, it is quite clear that the non- transfer of the applicant to reserve service will not prevent the applicant from claiming the benefit of reserve service of 08 years under which he was enrolled in the army. We have already found that the applicant was willing to continue in service at the time of his discharge, but the respondents still

discharged him from service for want of vacancy. This would not save the respondents in any way from considering the applicant towards his reserve service.

17. The reservist pension is being dealt in Para-155 of Pension Regulations for the Army, 1961 (Part- 1). The amended Regulation- 155 runs as follows:-

“155. 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 terms of engagement or prematurely irrespective of the period of colour service.”

18. The contention of the Learned Senior Panel Counsel was that the applicant was not transferred to pension establishment and, therefore, he cannot take shelter under Para- 155 of Pension Regulations for the Army, 1961 (Part-1). The liability of the respondents as per the terms of engagement of the applicant was to transfer the applicant to reserve service after the completion of colour service. For no fault of the applicant, he was

discharged from service without being transferred to reserve service. As per the dictum laid down by Hon'ble Apex Court and the Principal Bench of AFT, New Delhi, it is very clear that the 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. We have already seen that the applicant served the army for 07 years 03 months and 20 days regular service. The enrolment was for 07 years regular service followed by 08 years reserve service. The respondents failed to transfer him to reserve service and it would amount to withdrawal of promise made by the respondents at the time of enrolment of the applicant. The respondents are, therefore, promissorily stopped from doing so and, therefore, the applicant is deemed to have continued in service till the end of reserve period which would enure him a total service of more than 15 years. Therefore, in accordance with the provisions outlines in the judgments of Hon'ble Apex Court and the Principal Bench, AFT, New Delhi, the period of reserve service shall be taken into account to make the applicant eligible for pension under Para- 132 and 155 of Pension Regulations for the Army, 1961 (Part -1). However, the gratuity paid to the applicant shall be adjusted with the pension payable to the applicant.

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

10. Learned counsel for the applicant also drawn our attention towards 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 colour service, 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.”

11. 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. 15 p.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.

12. 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.

13. An affidavit dated 12.12.2017 has been filed on behalf of OIC Records Bombay Engineer Group, Kirkee to the effect that husband of the applicant was enrolled on 01.12.1050 and transferred to reserve on 26.06.1959 and retired from service on 29.03.1966. Thus, husband of the applicant rendered 15 years and 02 months total service.

14. 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 husband 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 husband of the applicant. If it is done so, the Reserve liability of the husband of the applicant should have been counted as Reserve service to be reckoned with Regular service and the total qualifying service of the husband of the applicant would come to 15 years, which would earn a Reservist Pension for the husband of the applicant. Further the husband of the applicant did not make any request seeking his discharge but he was denied Reservist terms of engagement contrary to terms and conditions of his engagement. The requisition made by the husband of 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 has come before us with the claim for Reservist Pension. Therefore, it has become necessary to set aside the observation made by the respondents rejecting her claim for grant of reservist pension, as not sustainable.

15. In view of the foregoing discussion, we hold that the period of Reserve service should also be taken for qualifying service of the husband of the applicant to make him eligible for reservist pension. However, the husband of the applicant has laid his claim before the Tribunal by filing this Original Application on 25.03.2011. 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 25.03.2008 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.

16. Accordingly, Original Application is hereby **partly allowed**. Objections raised by the respondents rejecting the claim of the applicant for grant of reservist pension are rejected. Applicant shall submit relevant documents to respondents to authenticate that she is legal wife of Late Moti Lal Pandey. After receipt of documents, respondents shall amend their record and enter the name of Smt Ram Kumari Pandey in service record of Late Moti Lal Pandey. The respondents are directed

to pay the arrears of reservist pension to be calculated in accordance with rules to late Moti Lal Pandey from 25.03.2008 till his life time i.e. 19.10.2014 and there after family pension to applicant from next date of death of her husband for life after adjusting the gratuity amount already paid. The respondents shall issue a Pension Payment Order to this 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.

17. No order as to costs.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 25 October, 2021

Ukt/-