RESERVED
COURT NO. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 682 of 2022

Wednesday, this the 4th day of October, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)

249887 Ex Corporal Arun Kumar
S/o Raghubansi Lal Shukla
R/o 13/1973, Yamuna Road, Tilak Nagar,
Auraiya, Uttar Pradesh-206122

…. **Applicant**

Ld. Counsel for the Applicant : **Wg Cdr S.N. Dwivedi (Retd),**
Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Air Force), New Delhi – 110011.

2. The Chief of Air Staff, Air Headquarters, MoD (Air Force), New Delhi – 110011.

3. Director, Directorate of Air Veterans, Subroto Park, New Delhi.

4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP) – 211014.

5. Joint Controller of Defence Accounts (Air Force), Subroto Park, New Delhi-110010.

... **Respondents**

Ld. Counsel for the Respondents : **Shri Rajiv Pandey,**
Central Govt. Counsel

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) To issue a suitable order or direction, to quash or set aside the Directorate of Air Veterans letter No Air HQ/99798/249887/SP/DAV dated 21 Apr 22 (Annexure No. A-1) by which the claim of the applicant for service pension has been denied.

(b) To issue a suitable order or direction, directing the respondents to release his entitled Service/Reservist Pension as applicable with effect from the date of completion of his reservist service liability period of 06 years and thus completing mandatory 15 years of colour plus reserve service that is w.e.f. 05.11.1977 (FN), under the provisions of para 121 & 136 of Pension Regulations for the Air Force 1961 (Part-1). Alternatively, he may be granted Special Pension as per Para 144 of Pension Regulations for the Air Force 1961 (Part-1) on humanitarian grounds.

(c) To issue a suitable order or direction, directing the respondents to issue PPO for the regular and timely payment of his pension along with other retiral benefits including arrears of "One Rank One Pension" as applicable to the present pensioners with interest @ 12% on arrears of pension along with all consequential benefits.

(d) 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, in the interest of justice.

(e) To award the cost in favour of the applicant, since the petitioner has suffered a great loss."

2. Succinctly stated, applicant was enrolled in the Indian Air Force on 05.11.1962 with terms of engagement to serve 9 years of regular service + 6 years of reserve service. After serving 9 years in regular service, the applicant was not transferred to reserve and arbitrarily discharged from service on 05.09.1973 after serving

another 1 year and 305 days, thus the applicant served for a period of 10 years & 305 days as regular service against the period of 9 years of regular service and 6 years reserve service (Total 15 years) but the applicant has not been paid pensionary benefits. Being aggrieved, the applicant has filed the present Original Application for grant of pensionary benefits.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Air Force on 05.11.1962 with terms of engagement to serve 9 years of regular service + 6 years of reserve service. On completion of 09 years of service on 05.11.1971, his services were continued until 05.09.1973 due to the imminent war of 1971 but after serving 10 years & 305 days he was arbitrarily discharged from service on 05.09.1973 without any pensionary benefits. Thereafter, he was not recalled by the respondents to continue for reserve period. The applicant was discharged with reserve liability under the clause, "***On fulfilling the conditions of his enrollment – on completion of nine years of service and not being required to serve in the service***". The reserve liability condition stipulates, "***Liable to be inducted into Reserve Service at any time during the stipulated period of Reserve Liability as per provisions of Res & Aux AF Act, 1952***".

4. Learned counsel for the applicant further submitted that applicant, during his 10 years and 305 days of service was graded as "Superior" in trade proficiency and his character was "Exemplary". The applicant also participated in Indo-Pak Wars in

1965 and 1971. Due to his excellent service record, applicant passed service tests and examinations and was promoted to the rank of Corporal. On completion of 09 years of regular service on 05.11.1971, the applicant instead of continuing him in service until 05.11.1977, he was discharged from service with reserve liability on 05.09.1973. Therefore, applicant is entitled to Reservist Pension but he was paid service gratuity and death cum retirement gratuity only.

5. Learned counsel for the applicant further submitted that this Tribunal in OA No. 09 of 2018, **Ex AC-1 Prakash Chandra Tewari vs. Union of India & Others**, decided on 19.12.2018 after considering the different judgments passed by other Regional Benches of AFT including Principal Bench in the case of ***Sadashiv Haribhau Nargund & Ors*** (TA No. 564/2010, WP No. 6458/2009), decided on 12.01.2011 in which Principal Bench relied on the case of ***Deokinandan Prasad vs. State of Bihar*** (AIR 1971 SC 1409) and the judgment of Hon'ble Kerala High Court in WP No. 29497/2004, have extended the benefit to similarly situated personnel. The respondents are bound by the principles of promissory estoppels as they engaged the applicant for a period of 9 years regular service and 6 years reserve service. The applicant was willing to continue in reserve service but he was discharged without any notice and opportunity of being heard. The law is settled that once the terms and conditions of service entered at the time of enrolment in the Air Force for a period of 9 years regular service + 6 years reserve service, the said period cannot be withdrawn by the respondents. He pleaded for

grant of reservist pension to the applicant by counting his regular service as well as reserve service to the extent of 15 years, in view of judgments passed by the various Regional Benches of the AFT as well as by the Hon'ble Supreme Court on the subject. The applicant was discharged from service without extension or transferring to reserve service, hence, his 6 years period of reserve service which applicant was entitled to serve by way of continuation of engagement, should be combined with 9 years regular service rendered by him, for considering his case for the grant of Reservist Pension under Para 136 of Pension Regulations for the Air Force, 1961 (Part I). It the applicant's case is not considered appropriate to grant Reservist Pension, then applicant may be granted Special Pension as per para 144 of the Pension Regulations for the Air Force 1961 (Part-1).

6. Submission of learned counsel for the respondents is that applicant was enrolled in the IAF on 05.11.1962 for a term of 09 years Regular Service and 06 years Reserve Service but he was discharged from service w.e.f. 05.09.1973 under the clause "On fulfilling the conditions of his enrolment" after rendering a total of 10 years and 305 days of regular service. Pensionary benefits and its applicability are governed by Regulation 121 for Service Pension, Regulation 136 (a) for Reservist Pension and Regulation 127 & 128 for Service Gratuity. As the applicant had a total of only 10 years and 305 days of regular service against 15 years, he was not granted any kind of pension as per statutory provisions. However, by virtue of his length of service, he was eligible for Service Gratuity

in terms of Regulation 127 and was paid accordingly at the time of discharge from service. The applicant submitted a representation dated 20.04.2022 for grant of Service or Reservist Pension on the basis of 10 years and 305 days of regular service which was examined in light of Govt. orders and suitably replied vide letter dated 21.04.2022. The applicant was not retained after completion of regular service in terms of AFI (I) 12/S/48, hence, he is not eligible to any kind of pension. There is also a provision that personnel who fail to attain the rank of Corporal within 9 years of engagement will be discharged from service.

7. Learned counsel for the respondents further submitted that it is evident from the service record that applicant was holding the rank of Cpl and thus he was fulfilling all the eligibility criteria to enhance the initial period of his engagement to 15 years in terms of Corrigendum 7 to AFI 12/S/48 dated 29.03.1969. However, he did not opt to contract for 15 years of engagement and thus, he was discharged from regular service way back in the 1973 under the clause 'on fulfilling the conditions of his enrolment'. He also submitted that there is clear distinction between 'Reserve Liability' and 'Reserve Service'. 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. However, 'Air Force Reserve' has been defined as 'any of the Air Force Reserves raised and maintained under Reserve and Auxiliary Air Force Act, 1952. The decision on suspension of 'Reserve Scheme' without abrogating the Reserve and Auxiliary Air

Force Act, 1952 was taken in the Air Force Commanders' Conference held from 21-23 Aug. 1972 and pursuant to this, Reserve Scheme was suspended by the Chief of Air Staff.

8. Learned counsel for the respondents further submitted that applicant was discharged from service under the clause, 'On fulfilling the conditions of his enrolment' and thus, the question of his transfer to any Air Force Reserve does not arise as transfer of an airman to any air Force Reserve is neither automatic nor any Air Force Reserve was constituted by the competent authority. The applicant served for a total period of 10 years and 305 days of regular service against 15 years to earn Reservist Pension in terms of Regulation 136 (a) of Pension Regulations for the Air Force, 1961 (Part-1), he is not eligible for any kind of pension. He pleaded for dismissal of Original Application.

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

10. In the present case, applicant's claim is with regard to grant of pensionary benefits (Reservist Pension) as per his terms of engagement of 9 years regular service + 6 years of reserve service under the provisions of Para 136 of Pension Regulations for the Air Force, 1961 (Part-1) which reads as under :-

> "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 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."

11. Entitlements and eligibility for grant of Special Pension are given in para 144 of the Pension Regulations for the Air Force, 1961 (Part-1) which reads as under :-

"144. Special pension or gratuity may be granted, at the discretion of the President, to individuals who are not transferred to the reserve and are discharged in large numbers in pursuance of Government's policy :-

(a) of reducing the strength of establishment of the Air Force; or
(b) of re-organisation, which results in disbandment of any units/ formations.

12. The question of granting Reservist Pension and Special Pension has been dealt with elaborately in the cases of similarly placed personnel of the Navy by the Hon'ble Apex Court in ***T.S. Das and Ors. vs. Union of India and Another*** (Civil Appeal No.2147 of 2011, dated 27.10.2016). The Hon'ble Apex Court in the above judgment has concluded that transfer to Reserve is not a matter of right and principle of promissory estoppels cannot be invoked to further the claim. The relevant extracts of Paras 11 & 12 and 20 to 25 of the judgment (supra) are as follows:

11. ……. It provides that a "Reservist" who is not in a receipt of Service Pension, be granted Reservist Pension on completion of the prescribed Naval and Reserve Service of 10 years each. None of the applicants claim that they are entitled for Service Pension, nor have they been so granted. The eligibility of grant for Reservist Pension is upon completion of the prescribed Naval and Reserve qualifying service of 10 years each. It is not

in dispute that each of the applicants completed the prescribed Naval Service of 10 years in the first instance, also known as active service or engagement. It is also not in dispute that there is no formal order issued by the Competent Authority to draft the services of the concerned applicant on the Fleet Reserve Service after completion of 10 years of active service in the first instance.

12. As a matter of fact, the issue under consideration was the subject matter before the Armed Forces Tribunal, Principal Bench, New Delhi in T.A. No.492/2009. The Tribunal after analyzing the relevant provisions observed as follows:

> "9. It is an admitted position that the petitioner was not inducted for a Fleet Reserve Service. He has filed a Discharge Certificate and profile of his service on record and Service Certificate which does not show that the petitioner was engaged for a Fleet Reserve Service at all or not. However, learned counsel for the petitioner submitted that when he entered into the service at that time as per rule 10 years of regular service and 10 years of fleet reserve service and out of that five years service should be counted for the purpose of qualifying service for pension. It is true at relevant time when petitioner was inducted into service there was requirement of keeping the incumbent in fleet reserve, therefore, respondents are bound by the service conditions prevailing at that time and they must give 5 years benefit of fleet reserve service. It is true that we would have certainly acceded to the request but a difficulty arose that Regulation 269 clearly contemplates that incumbent can be kept for reserve fleet, if required. This Government policy to keep in fleet reserve was discontinued in the year 1976. The Regulation 269 clearly contemplates that incumbent can be kept in fleet reserve, if required that means this is enabling provision giving liberty to respondents to keep the incumbent in fleet reserve, it does not confer any right on the petitioner that he must be necessarily kept in fleet reserve. This is the discretion of the respondents that if they required, they keep the man in fleet reserve and if they find that they do not require the incumbent for fleet reserve, the incumbent cannot as a matter of right seek writ of mandamus, he has no statutory right to be kept in fleet reserve. The expression "if required" makes abundantly clear that discretion is with the respondents to keep the incumbent in fleet reserve or not. Since this policy has been discontinued in 1976, henceforth there is no provision to keep the incumbent in fleet reserve."

20. The quintessence for grant of Reservist Pension, as per Regulation 92, is completion of the prescribed Naval and Reserve qualifying service of 10 years "each". Merely upon completion of 10 years of active service as a Sailor or for that matter continued beyond that period, but falling short of 15 years or qualifying Reserve Service, the concerned Sailor cannot claim benefit under Regulation 92 for grant of Reservist Pension. For, to qualify for the Reservist Pension, he must be drafted to the Fleet Reserve Service for a period of 10 years. In terms of Regulation 6 of the Indian Fleet Reserve Regulations, there can be no claim to join the Fleet Reserve as a matter of right. None of the applicants were drafted to the Fleet Reserve Service after completion of their active service. Hence, the applicants before the Tribunal, could not have claimed the relief of Reservist Pension. The Tribunal (Regional Bench, Chennai) in O.A. No. 83 of 2013, however, granted that relief by invoking principle of equitable promissory estoppel and legitimate expectation in favour of the applicants.

The Tribunal, in our opinion, committed manifest error in overlooking the statutory provisions in the Act of 1957 and the relevant Regulations framed thereunder, governing the conditions of service of Sailors. The fact that on completion of 10 years of active service, the Sailor could be taken on the Fleet Reserve Service for a further period of 10 years cannot be interpreted to mean that the concerned Sailor had acquired a legal right to join the Fleet Reserve Service or had de jure continued on Fleet Reserve Service for a further 10 years after expiration of the initial term of active service/engagement. There is no provision either in the Act of 1957 or the Regulations framed thereunder as pressed into service by the applicants, to suggest that drafting of such Sailors on Fleet Reserve Service was “automatic” after expiration of their active service/enrolment period. Considering the above, it is not necessary to burden this judgment with the decisions considered by the Tribunal on the principle of equitable promissory estoppel and legitimate expectation, which have no application to the fact situation of the present case.

21. The original applicants contend that if the Government Policy dated 3rd July, 1976 is applied to the serving Sailors, inevitably, will result in retrospective application thereof to their deteriment. That is forbidden by Section 184-A of the Act. This argument does not commend to us. In that, the effect of the Government Policy is to disband the establishment of the Reserve Fleet Service with effect from 3rd July, 1976. As found earlier, drafting of Sailors to the Reserve Fleet Service was not automatic; but dependent on an express order to be passed by the competent Authority in that behalf on case-to-case basis. The Sailors did not have a vested or accrued right for being placed in the Reserve Fleet Service. Hence, no right of the Sailors in active service was affected or taken away because of the Policy dated 3rd July, 1976.”

22. Accordingly, we hold that none of the applicants before the Tribunal are entitled for Reservist Pension in terms of Regulation 92 of the Naval (Pension) Regulations, 1964. The Tribunal has relied on other decisions of other Benches of the same Tribunal, which for the same reason cannot be countenanced.

23. The next question is whether the Sailors appointed before 1973 were entitled for a Special Pension, in terms of Regulation 95 of the Pension Regulations. Indeed, this is a special provision and carves out a category of Sailors, to whom it must apply. Discretion is vested in the Central Government to grant Special Pension to such Sailors, who fall within the excepted category. Two broad excepted categories have been noted in Regulation 95. Firstly, Sailors who have been discharged from their duties in pursuance of the Government policy of reducing the strength of establishment of the Indian Navy; or Secondly, of reorganization, which results in paying off of any ships or establishment. In the present case, Clause (i) of Regulation 95 must come into play, in the backdrop of the policy decision taken by the Government as enunciated in the notification dated 3rd July, 1976. On and from that date, concededly, the Fleet Reserve Service has been discontinued. That, inevitably results in reducing the strength of the establishment of the Fleet Reserve of the Indian Navy to that extent, after coming into force of the said policy. None of the Sailors have been or could be drafted to the Fleet Reserve after coming into force of the said Policy - as that establishment did not exist anymore and the strength of establishment of the Indian Navy stood reduced to that extent. Indisputably, the Sailors appointed prior to 3 rd July, 1976, had the option of continuing on the Fleet Reserve Service after expiration of their active service/empanelment period. As noted earlier, in

respect of each applicants the appointment letter mentions the period of appointment as 10 years of initial active service and 10 years thereafter as Fleet Reserve Service, if required. The option to continue on the Fleet Reserve Service could not be offered to these applicants and similarly placed Sailors, by the Department, after expiration of their empanelment period of 10 years or less than 15 years as the case may be. It is for that reason, such Sailors were simply discharged on expiration of their active service/empanelment period. In other words, on account of discontinuation of the Fleet Reserve establishment of the Indian Navy, in terms of policy dated 3rd July, 1976 it has entailed in reducing the strength of establishment of the Indian Navy to that extent.

24. That takes us to the case of Appellant No.36 (in C.A. No.2147 of 2011). The said appellant asserts that he was discharged from the Fleet Reserve unilaterally by the Department. By that time, he had completed combined 17 years 1 month and 26 days of service, for which reason was entitled to Reservist Pension under Regulation 92(2) of the Pension Regulations. The said appellant is relying on communication dated 8th May, 2014 in support of this contention. Since this appellant was not in active service when the Government Policy dated 3rd July, 1976 came into being and claims to have been discharged from the Fleet Service on 30 th March, 1967, would be free to make representation to the competent Authority. It is for the competent Authority to examine the factum as to whether the discharge was unilateral and not at the request of the said appellant and including whether he would be entitled for Reservist Pension in terms of Regulation 92(2) of the Pension Regulations. We may not be understood to have expressed any opinion with regard to the questions that may require consideration by the competent Authority in that regard.

25. Thus understood, all Sailors appointed prior to 3rd July, 1976 and whose tenure of initial active service/empanelment period expired on or after 3rd July, 1976 may be eligible for a Special Pension under Regulation 95, subject, however, to fulfilling other requirements. In that, they had not exercised the option to take discharge on expiry of engagement (as per Section 16 of the Act of 1957) and yet were not and could not be drafted by the competent Authority to the Fleet Reserve because of the policy of discontinuing the Fleet Reserve Service w.e.f. 3rd July, 1976. The cases of such Sailors (not limited to the original applicants before the Tribunal) must be considered by the Competent Authority within three months for grant of a “Special Pension” from three years prior to the date of application made by the respective Sailor and release payment after giving adjustment of Gratuity and Death-cum-Retirement-Gratuity (DCRG) already paid to them from arrears. They shall be entitled for interest @ 9% P.A. on the arrears, till the date of payment.

13. When we examine the condition of service which were applicable to the applicant, we find that the terms and conditions of service of personnel enrolled in the Air Force as ‘Airman’ were governed by AFI (I) 12/S/48, as amended from time to time. As per amendment No. 13 dated 13 April 57 of ibid AFI, the initial period of

engagement of personnel enrolled in the IAF as an Airman was 09 years **Regular Service** and 06 years **Reserve Liability**. Later an amendment to AFI 12/S/48 was issued by the Govt. of India vide Corrigendum 7 dated 29.03.69 and the initial period of 09 years regular engagement was enhanced to 15 years w.e.f. 05.08.1966. Further, provisions were also available that Airman already serving their initial period of 09 years engagement may, if they so decide, contract for 15 years engagement provided those who fail to attain the rank of Corporal within 09 years engagement will, however, be discharged.

14. It is evident from the service record that applicant was holding the rank of Cpl and thus, he was fulfilling all the eligibility criteria to enhance the initial period of his engagement to 15 years in terms of Corrigendum 7 to AFI 12/S/48 dated 29.03.1969, however, applicant did not opt to contract for 15 years of engagement and thus, he was accordingly, discharged from regular service w.e.f. 30.08.1973 under the clause “on fulfilling the conditions of his enrolment”.

15. We are in agreement with the respondents that there is a clear distinction between ‘Reserve Liability’ and ‘Reserve Service’. Reserve Liability is the condition or term of engagement in which an Airman is liable to be transferred to any Air Force Reserve if and when constituted. Air Force Reserve has been defined as any of the Air Force Reserves raised and maintained under Reserve and Auxiliary Air Force Act, 1951 and the Competent Authority may, by general or special order, transfer any Airman, who under the terms

and conditions of his service is liable to serve in Reserve, to any Air Force Reserve, if and when constituted and thus, **transfer of any Airman to any Air Force Reserve is not automatic**.

16. The applicant was enrolled in the Air Force on 05.11.1962 and thus his initial period of engagement was 09 years Regular Service and 06 years Reserve Liability. Hence, his perception of 09 years Regular Service and 06 years Reserve Service is incorrect. It is further clear from the content elaborated above, that transfer of any Airman to any Air Force Reserve is not automatic and thus, his willingness to serve in any Air Force Reserve is not in consonance with Reserve and Auxiliary Air Force Act, 1952. In this regard we are guided by the very clear interpretation of this matter by the Hon'ble Supreme Court in the ***T.S. Das & Ors*** (supra). For sake of convenience, this para is reproduced below :-

> "15. In absence of an express order of the Competent Authority to take the applicants on the Fleet Reserve Service, the moot question is: whether the applicants can be treated as deemed to be in the Fleet Reserve Service on account of the stipulation in the appointment letter - that on completion of 10 years of Naval Service as a Sailor, they may have to remain on Fleet Reserve Service for another 10 years. That condition in the appointment letter cannot be read in isolation. The governing working conditions of Sailors must be traced to the provisions in the Act of 1957 or the Regulations framed thereunder concerning service conditions. From the provisions in the Act of 1957, there is nothing to indicate that the Sailor after appointment or enrolment is "automatically" entitled to continue in Fleet Reserve Service after completion of initial active service period of 10 years. The provisions, however, indicate that on completion of initial active service of 10 years or enhanced period as per the amended provisions is entitled to take discharge in terms of Section 16 of the Act. The applicants assert that none of the applicants opted for discharge. That, however, does not mean that they would or in fact have continued to be on the Fleet Reserve Service after expiration of the term of active service as a Sailor. There ought to have been an express order issued by the competent Authority to draft the concerned applicant in the Fleet Reserve Service. In absence of such an order, on completion of the term of service of engagement, the concerned sailor would stand discharged. Concededly, retention on the Fleet Reserve Service is the prerogative of the employer, to be exercised on case to case basis. In the present case, however, on account of a policy decision, the Fleet Reserve Service was discontinued in terms of notification dated 3rd July, 1976".

17. The issue whether the Applicant is entitled to pension has to be resolved by perusing the relevant Regulations governing Reserve Service and conditions governing transfer to Reserve Service. As per Regulation 136(a) of the Pension Regulations for the Air Force, 1961 (Part-1), only the period actually served in the “Regular 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 or term of engagement in which an Airman is only liable to be transferred to any Air Force Reserve if and when constituted but is not actually so transferred. However, the provisions for the constitution and Regulation of Air Force are governed by the Reserve and Auxiliary Air Force Act, 1952. “Air Force Reserve” has been defined as “any of the Air Force Reserves raised and maintained” under this Act. Further as per Sub Section 1 of Section 5, the Competent Authority may, by General or Special Order, transfer any Airman, who under the terms and conditions of his service is liable to serve in Reserve, to any Air Force Reserve, if and when constituted and thus transfer of an Airman to any Air Force Reserve is not automatic but the same is done on a specific order by a competent Authority and which is absent in the case of the applicant.

18. From the above, it is clear that a service personnel is expected to complete Colour Service before he is transferred to Reserve Service and that he may be required to be retained in the Colour Service so long as a War is imminent or existing or the Establishment

to which he belongs to is 10% below strength. It also states that on completion of his minimum period of colour service or an extension of Colour Service, service personnel will be transferred to Reserve if a vacancy exists, otherwise he will be discharged. Therefore, it is evident that transfer to Reserve is not a matter of right, but only if the individual fulfils the requirement of fitness and if vacancy so exists.

19. Resultantly, keeping in mind that the applicant does not fulfill the requisite conditions for grant of pension and in consonance with the provisions of AFI 14/S/48 (as amended) and Regulations 121, 127, 128 & 136 of Pension Regulations for the Air Force, 1961 (Part-1) and the Hon'ble Supreme Court directions in ***T.S. Das & Ors*** (supra), we find that applicant had completed only 10 years and 305 days of qualifying regular service against the requirement of 15 years (09 years Regular/Colour Service and 06 years Reserve Liability) to make him eligible for Reservist Pension but neither the applicant completed total service as per his terms of engagement nor he was transferred to reserve liability, hence, he was not meeting the required criteria for grant of reservist pension and therefore, applicant was denied reservist pension being ineligible in terms of Regulation 121 & 136(a) of Pension Regulations for the Air Force, 1961 (Part-1). However, in the light of the directions given by the Hon'ble Apex Court in para 25 in ***T.S. Das & Ors*** (supra), and considering the fact that the applicant has rendered 10 years and 305 days of colour service, he is clearly entitled to Special Pension under the provisions of Regulation

144 of Pension Regulations for the Air Force, 1961 (Part-1) with effect from the date of his discharge from service.

20. In view of the above, Original Application is **allowed**. The applicant is held entitled to Special Pension from the next date of discharge from service. The respondents are directed to grant Special Pension to the applicant from the next date of discharge from service after adjusting amount of gratuity, if any paid to the applicant at the time of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass v. Union of India and Others** (2007 (3) SLR 445), the arrears of Special Pension will be restricted to three years preceding the date of filing of the Original Application. The date of filing of O.A is 23.08.2022. Respondents are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

21. No order as to costs.

22. Pending Misc. Application(s), if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated: October, 2023
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