

Reserved

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 666 of 2017

Thursday, this the 25th day of February, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Ex Nk/Reservist Avadh Narain (No. 7035330) S/o Kali Charan Tripathi,
R/o Village Rudoli, Post – Auraiya, District – Etawah.

..... Applicant

Counsel for the : **Col AK Srivastava (Retd) and
Applicant Shri Dharam Raj Singh**

Versus

1. The Secretary, Govt of India (MoD) South Block, DHQ PO New Delhi – 110001.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, New Delhi - 110011.
3. The Additional Dg of Personnel Services, Adjutant General’s Branch/PS-3, Integrated HQ of MoD (Army), Sena Bhawan, New Delhi - 110001.
4. OC EME Records, Secunderabad.
5. Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad-211014.

.....Respondents

Counsel for the : **Shri Ashish Kumar Singh,
Respondents. Central Govt. Counsel**

ORDER

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

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

(a) *Issue/ pass an order or direction of appropriate nature to quash/ set aside respondent’s PCDA (P) letter Dated 04/04/2016 and 29/08/2014 denying OROP and revision of pension w.e.f. 17/01/2013 since he was given pension of Rs. 3500/- w.e.f. 24.09.2012 **(Annexure No A-4 and A-5 respectively)**.*

(b) *Issue/ pass an order or direction of appropriate nature to quash/set aside the respondents’ EME Records letters dated 20 Sep 2008 & 19 Sep 2008 denying and pension of a Nk to the applicant because he did not serve in said rank for 2 years and was sanctioned pension of a reservist **(Annexure A-1 to A-3)**.*

(c) *Issue/ pass an order or direction of appropriate nature to the respondents to grant ordinary service pension w.e.f. date of retirement i.e. 01 Aug 1977.*

(d) *Issue/pass an order or direction of appropriate nature to the respondents to grant pension of a Naik, last rank held for about more than 5 years before retirement excluding 50% of his reservist service of 8 years, w.e.f. 01 Aug 1977.*

(e) *Issue/ pass an order or direction of appropriate nature to the respondents to grant his entitled Service Gratuity, not paid till date, against 20 years and 22 days of reckonable service rendered by him.*

(f) *Issue/ pass an order or direction of appropriate nature to the respondents to grant OROP benefits and other enhancement in pension wef 01 Jan 2006, 01 July 2009 and 24 Sep 2012 applicable to a Naik.*

(g) *Issue/ pass any other order or direction of appropriate nature as this Hon’ble Tribunal may deem fit in the circumstances of the case.*

(h) Allow this application with costs and 14% interest on arrears due to the applicant.

2. The factual matrix of the case is that applicant was enrolled in the Indian Army as Sepoy on 04.07.1957 and as per terms of engagement he had to serve 10 years Colour Service and 10 years Reserve Service. He served regularly up to 25.10.1968 that is for 11 years 03 months and 23 days and thereafter transferred to Reserve Service. He was recalled to regular service on 04.06.1971 in view of ensuing Indo-Pak War 1971 and served regularly for 07 months and 6 days. He was promoted to the rank of Paid Acting Naik on 11.11.1971 and thereafter again transferred to Reserve Service on 31.07.1977. Thus, he rendered total 20 years and 20 days service out of which 11 years, 10 months and 28 days was colour service and 8 years, 01 month and 22 days was reserve service, and, if as per Army Instruction 17/S/62, half of Reserve Service is added to Colour Service then Colour Service comes to more than 16 years. Applicant having served more than 15 years in Regular/Colour service was entitled to ordinary service pension. However, when applicant retired from service getting only reservist pension he represented to Records for grant of the same. His claim for grant of gratuity and service pension was rejected vide EME Records letters dated 19.09.2008 and claim for payment of gratuity and promotion was rejected vide letter dated 29.02.2008. His claim for OROP and revision of pension was also denied by the respondents vide PCDA (P), Allahabad letter dated 29.08.2014 and 04.04.2016. Being aggrieved by denial of

service pension of Naik and grant of OROP and service of gratuity, the applicant has filed the present Original Application.

3. The delay in filing the Original Application has been condoned vide order dated 13.12.2017.

4. Learned counsel for the applicant submitted that the applicant served regularly in the Army from 04.07.1957 to 24.10.1968, that is for 11 years 113 days. He was recalled and he again served in the Army from 25.10.1971 to 04.06.1972, that is for 07 months and 06 days. The applicant was promoted to the rank of Paid Acting Naik on 11.11.1971. He was discharged from service on 31.07.1977. In addition to above, applicant used to be called for refresher training from time to time as applicable to a reservist. Thus, the applicant rendered 20 years and 22 days of total service which included 11 years, 10 months and 28 days of Regular Service and about 8 years 01 month and 22 days as a reservist, and if 50% of reservist service is counted against entitled colour service as per A.I. 1/S/62 for pension, then he has rendered 16 years colour service. Thus, he submitted that applicant was entitled to service pension of Naik and service gratuity but he was granted only reservist pension of Sepoy and service gratuity was not granted to him. During the course of the argument, learned counsel for the applicant placed reliance on the judgment of this Tribunal passed in ***T.A. No 1320 of 2010, Brahm Deo Mandal vs. Union of India***, decided on 05.10.2016. He pleaded that since the facts and circumstances of the case of

the applicant are similar in nature, as such the competent authority be directed to consider the case of the applicant for the grant of service pension. After adding the period of colour service and half of reserve service the total colour service rendered by the petitioner works out to be more than 16 years of colour service.

5. Per contra, learned counsel for the respondents submits that the petitioner was enrolled in the Indian Army on 04.07.1957 and was transferred as reservist on 25.10.1968, thus completing only 11 years and 3 months of colour service. The petitioner was recalled for active colour service on 25.10.1971 and retransferred to reserve list on 05.06.1972 after rendering about 09 months service. Petitioner's total reserve service was about 08 years, half of which (04 years) will be counted for pension. He rendered total 20 years and 28 days of both colour and reserve service combined. As per Rule 132 of Pension Regulations for the Army, (1961) Part – I, minimum qualifying (without weightage) service for earning pension is 15 years colour service. Since he did not complete 15 years of colour service for earning normal pension, he was correctly granted reservist pension of Rs. 15/- per month combining half of his reserve service with the total colour service rendered under the provisions of Special Army Instructions 13/S/62 read with Special Army Instruction 17/S/68. Later on it was revised to Rs. 50/- per month under the provisions of Special Army Instructions 4/S/77. The minimum rate of all types of pension was raised to Rs. 375/- per month from 01.01.1986. Again

the same has been raised to Rs. 1275/- per month from 01.01.1996 under the Govt of India letter dated 24.11.1997 and he is regularly getting reservist pension. He submitted that claim of the petitioner for grant of ordinary pension was rightly rejected due to policy constraints. He also submitted that since applicant had not completed 2 years regular service, he was not granted pension of Naik. Therefore, he submitted that the plea of the applicant is not sustainable in the eyes of law and be dismissed being devoid of merit and lack of substance.

6. We have heard learned counsel for the parties and perused the record. After hearing both the sides and perusing the evidence on record, the question which needs to be answered is as below:-

“Whether the applicant is entitled for grant of service pension of Naik along with gratuity and OROP benefits”?

7. Learned counsel for the applicant submitted that as per conditions laid down in 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 colours, 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.”

8. 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. 15p.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.

9. 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 determining eligibility for service pension.

10. Para 132 of Pension Regulations for the Army 1961 (Part I) is as under:-

“132. The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years”.

11. Plain reading of the provisions in Special Army Instruction 13/S/62 and para 132 of Pension Regulations for the Army 1961 (Part- I) indicates essentially two conditions. First being the need to complete 15 years of coloured service for earning normal pension. The Second, that half of the reserve service could be added to the total colour service for purposes of determining pension.

12. In the instant case, the petitioner has rendered approximately 12 years colour service in the army and served as reservist for about 08 years (half 4 years). Thus he has completed (12 + 4) 16 years colour service. The contention of the respondents is that petitioner has not completed 15 years of colour service in the army and that he, therefore, will get reservist pension for the entire period of 20 years.

13. The only thing that requires adjudication is when combined colour and reserve service is in excess of 15 years, whether the petitioner is entitled to normal service pension or reservist pension? The Key words of provision 13/S/62 are very clear and self explanatory.

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

14. The framers of the provisions were conscious that reservist would be called to serve the nation at short notice during national emergency. The rules were accordingly made to recognise the reserve service and made provision for them to get pensionary benefits. The rules are clearly beneficial in nature to the petitioner. The petitioner had done active colour service during the 1965 and 1971 wars. He had been on a "hot standby" as a reservist in the interim periods. If the army personnel were to get Reservist Pension only, then the framers of the provision would not have framed the clause for counting only half of the reserve period for pensionary benefits. It is clear that the half weightage was given to reserve service to make it equivalent to colour service and then this 50% reserve period could be added to colour service for pension purposes.

15. The petitioner having been enrolled on 04.07.1957 was moved to reserve establishment on 25.10.1968 after about 11 years and 3 months of service. Respondents have not explained that on what basis the petitioner was shifted to reserve service. Neither did the applicant request for discharge nor was any disciplinary case against him which was the cause for his discharge prior to completion of pensionable service. If he indeed was surplus to the trade, he could have been given another trade or appointment or could have been

transferred to another Corps for completion of remaining pensionable service. The act of discharging a soldier when only a few years remain for him to earn pension is devoid of fair play and cannot be justified. The word 'pension' is defined in Article 366, sub class (17) of Indian Constitution. In fact, the right to get pension is considered as an incidence of service under Article 309 of the Constitution of India. The payment of pension is not an act of charity. In **D.S. Nakara Vs. Union of India (1983) 1 SSC 305**) Hon'ble The Apex Court has held that pension is neither a bounty nor a matter of grace. In **Deoki Nandan Prasad Vs. State of Bihar (AIR 1971 SC 1409)**, the Apex Court has also held that pension is a right and its payment does not depend upon the discretion of the Government. Pension is payment to a person in consideration of past services rendered by him. While exercising power to discharge from service, the officer so authorised must also ensure that a soldier is not put to any disadvantage when there is only a small shortfall in pensionable service. It is most unfortunate that a war veteran has had to run from pillar to post for litigation for his dues for years.

16. In view of the aforesaid, we find that getting the benefit of AI 13/S/62 and thereby adding half of the reserve service i.e. total reserve service = 08 years, 01 month and 22 days (its half = 04 years and 26 days) and 11 years, 10 months and 28 days colour service, the applicant's total colour service comes to 15 years, 11 months and 22 days which is more than 15 years, the applicant has been able to

make out a case in his favour for the grant of ordinary service pension. He has also been able to make out a case for grant of service gratuity and also the benefit of OROP. As regards pension of Naik, applicant's service being less than two years in this case he is not entitled to same. As such O.A. deserves to be allowed.

17. Accordingly, O.A. is allowed. Respondents are directed to grant ordinary service pension of Sepoy from the date of final discharge. They are also directed to grant him (applicant) service gratuity and benefit of OROP. However, arrears of pension shall be restricted to three years prior to filing of O.A.. The date of filing of O.A. is 31.08.2017. Respondents are further directed to complete the entire exercise within four months from the date of receipt of a certified copy of this order failing which they shall be liable to pay interest at the rate of 8% from due date till the date of actual payment.

18. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 25 February, 2021
Ukt/-