

IN THE ARMED FORCES TRIBUNAL

REGIONAL BENCH, GUWAHATI.

O.A. 04 OF 2015

P R E S E N T

HON'BLE MR. JUSTICE B.P.KATAKEY, MEMBER (J)

HON'BLE VICE ADMIRAL A.G.THAPLIYAL, MEMBER (A)

Sepoy No.4336377 Mayangtemjen Ao

Son of Late Chender Ao

Permanent resident of Khensa Village

Mokokchung, Nagaland.

..... Applicant

Mr. I.Imti Longchar

Mr.Renpemo

Mr.Sentiyanger

Mr.Supengwati Walling

**Legal Practitioner for the
Applicant.**

-Versus-

1. The Union of India,
through the Secretary,
to Home Affairs,
New Delhi - 110001.

2. The Director General

Assam Regiment, Happy Valley

Shillong-797007.

3. The Record Officer,

Assam Regiment, Karyalaya Records

The Assam Regiment Centre,

Happy Valley, Shillong-797007.

4. The Commanding Officer

3rd Battalion, Assam Regiment,

C/O. 99 APO.

5. The Secretary

Zila Sainik Welfare Officer,

Mokokchung, Nagaland.

..... Respondents

Mr.S.Bhattacharjee CGSC

Legal Practitioner

for Respondents.

Date of Hearing : 30.03.2016

Date of Order : **01 -04-2016**

ORDER

(B.P.Katakey, J)

The applicant, who was enrolled in the Indian Army on 18.09.1958 and in the colour service till 24.07.1966, has filed the present Original Application praying for a direction to the respondent authorities for payment of reservist pension contending, inter alia, that though he was in colour service in the India Army for 7 years 10

months 6 days w.e.f. 18.09.1958 to 24.07.1966 and thereafter, in reservist service upto 21.10.1974 i.e. for 8 years 3 months 3 days, totaling 16 years 1 month 9 days, he has not been paid reservists pension without disclosing any ground therefor.

[2] The claim of the applicant has been contested by the respondents by filing the counter affidavit contending, inter alia, that though the applicant was transferred to the reserve service on 24.7.1966, he was, however, dismissed from reservist service on 21.10.1974 under section 20(3) of the Army Act, 1950. It has also been contended that the applicant having failed to report for Reservists Biennial Training pursuant to the order dated 23.07.1970, while he was in reservist service, he was dismissed from reservist service on 21.10.1974, which entails forfeiture of past service and pension, in terms of Regulations 123 of the Pension Regulations for Army 1961, (Part-I) and hence, the applicant is not entitled to reservist pension, as claimed.

[3] We have heard Mr. T.Imti Longchar, learned counsel appearing for the applicant and Ms.M.Bhattacharjee, learned proxy counsel for Mr. S.Bhattacharjee, learned CGSC assisted by Col Anand, IOC, AFT Legal Cell, Guwahati, appearing for the respondents.

[4] Referring to the undisputed facts that the applicant was in colour service in the Indian Army from 18.9.1958 to 24.7.1966 i.e. 7 years 10 months 6 days, followed by his reservist service w.e.f.

24.7.1966, the learned counsel for the applicant has submitted that since the applicant has not been removed from reserve list till 21.10.1974, he is entitled to reservist pension, he having been in reserve list for the period of 8 years 3 months 3 days (from 24.07.1966 to 21.02.1974), the total period of service rendered by the applicant in colour and reserve service being more than 15 years. The learned counsel for the applicant referring to the Long Roll maintained by the Indian Army, annexed to the counter affidavit filed by the respondents, has submitted that before his dismissal from the reservist service w.e.f. 21.10.1974, the applicant was never declared as a deserter. It has also been submitted that as is evident from the certificate dated 28.09.1989 issued by the Deputy Secretary to the Govt. of Nagaland, Department of Border Affairs, Kohima, that the applicant, due to late receipt of the call letter issued during the year 1970 by the Assam Regiment authority, Shillong, while he was serving as a Driver in Mokokchung District, Nagaland, he could not attend the Reservists Biennial Training compulsorily required to be undergone by the reservists and hence, he cannot be denied the benefit of reservist pension on the ground of his not attending such training; more so when he has not been declared as a deserter by the Army authority prior to his dismissal from the reservist service w.e.f. 21.10.1974. The learned counsel, therefore, submits that necessary direction may be issued to the respondent authorities to pay the reservist pension with arrear from the date three years preceding the date of filing of the OA. The learned counsel in support of his contention has placed reliance on the orders dated 18.07.2014 and 21.11.2014 passed by the Regional Bench, Chennai of the Armed Forces Tribunal in

OA-23/2014(Ex.Cpl T.V.Kothandaraman Vs. Union of India and ors)and OA- 72/2014(Rank Ex Cpl Sushyamal Kundu Vs. Union of India and ors) respectively.

[5] The learned counsel for the respondents on the other hand referring to the pleadings in the OA as well in the counter affidavit filed by the respondents, has submitted that though the applicant was in the reserve service w.e.f. 24.07.1966,he having not attended the compulsory Reservists Biennial Training in the year 1970 despite issuance of the communication for that purpose, the applicant must have been declared as a deserter and thereafter, he has been dismissed from reservist service w.e.f. 21.10.1974, as is evident from the Long Roll annexed to the counter affidavit filed by the respondents. The learned counsel, therefore, submits that in view of his dismissal from service, the period of service rendered by the applicant has been forfeited in view of Regulations 123 of the Pension Regulations for the Army, 1961 (Part-I). The learned counsel further submits that as the Army is required to maintain the relevant records for the period of 25 years only, those records, which are relevant to ascertain as to whether the applicant has been declared as a deserter for not attending the Reservists Biennial Training in the year 1970, being not available, the applicant's prayer for grant of reservist pension, in the absence of records may not be accepted. The learned counsel for the respondents also submits that though the applicant himself has admitted receipt of the communication dated 23.07.1970 requiring him to attend four weeks Reservists Biennial Training in the year 1970 w.e.f. 06.09.1970, which according to the applicant has been received

belatedly, he never at any point of time thereafter reported for such training and even did not report for duty during the 1971 war for which he must have been called for. The learned counsel, therefore, submits that the applicant who did not respond to the communication issued to him for undergoing Reservists Biennial Training and also did not report for duty during 1971 war, is not entitled to reservist pension, more so when he was dismissed from reservist service w.e.f. 21.10.1974. The learned counsel, therefore, submits that the instant OA deserves to be dismissed.

[6] The arguments advanced by the learned counsel for the parties received our due consideration. We have also perused the pleadings of the parties including the annexures appended thereto.

[7] The applicant was in colour service from 18.09.1958 to 24.07.1966. He was in reserve service from 24.07.1966 and was dismissed w.e.f. 21.10.1974. The applicant has filed the present OA on 10.02.2015 i.e. more than 40 years after his dismissal from reservist service. No records pertaining to the applicant's service in Army could be produced by the respondents as the records are required to be preserved for the period of 25 years only. The Tribunal, therefore, is not in a position to verify the submission of the parties relating to desertion by the applicant. But the fact remain that the Reservists Biennial Training is mandatory for the reservists. The applicant while attended such training in the year 1968, after he was put in reserve service w.e.f. 24.07.1966, he, however, admittedly did not attend such Reservists Biennial Training held in the year 1970.

The applicant in the OA has annexed a communication dated 23.07.1970 whereby he was asked to attend four weeks Reservists Biennial Training in the year 1970, scheduled to be commenced w.e.f. 06.09.1970, by Officer-in-charge, Assam Regiment, Shillong. According to the applicant, he has received the said order belatedly, for which he could not attend the said training, without, however, disclosing the date when he received the said order. The applicant till the date of his dismissal from the reservist service w.e.f. 21.10.1974 did not report to the authority explaining the reason for not attending the Reservists Biennial Training. No such statement has also been made by the applicant in the OA.

[8] In absence of any records, the Tribunal is also unable to come to any definite conclusion as to whether the applicant was called for duty during 1971 war and also whether he was declared as a deserter before his dismissal w.e.f. 21.10.1974.

[9] Regulations 123 of the Pension Regulations for the Army 1961(Part-I) provides for forfeiture of service for certain offences and its restoration amongst other, desertion under section 38 of the Army Act, 1950. Rule 9 of Rules (1925) framed under the Indian Reserve Forces Act, 1888, provides that notwithstanding anything contained in section 126 of the Indian Army Act, 1911, it shall not be necessary to assemble a Court of Inquiry under that section merely because a reservist has failed to attend when required to do so in pursuance of Rule 5A and 5B or 8 of the said Rules. Rule 5A of the said Rules requires every reservist other than a reservist of the Indian Medical

Department Sub Assistant Surgeon Reserve to come up for service, training or muster, when required to do so by order of his Commanding Officer; or for service when required to do so by order of the COMMANDER-IN-CHIEF in India or of any authority empowered by him in this behalf. Rule 5B of the said Rules requires that every reservist of the Indian Medical Department, Sub Assistant Surgeon Reserve shall come up for training when required to do so by order of his commanding officer, or for service when required to do so by a notification in the Gazette of India, and shall for this purpose attend at any place specified in such order or notification. Rule 10 of the aforesaid Rules provides that a reservist who fails to attend at any place on the date on which he is required to do so in pursuance of Rule 5A or 5B, shall be liable, at the discretion of his commanding officer, to forfeit all or a portion of arrears of pay and allowances due to him. Rule 11(b) of the aforesaid Rules provides that a reservist who is discharged for misconduct shall forfeit pay and allowances due to him with effect from the date of misconduct or the first day of the third calendar month preceding the date fixed for the next training or muster whichever is earlier.

[10] As discussed above, this Tribunal, because of long delay in filing the OA by the applicant claiming reservist pension, is unable to scrutinize the records, those being not available, to ascertain whether the applicant was declared as a deserter and he was called upon to report for duty during 1971 war, in absence of which it would not be proper to pass any order in favour of the applicant directing the respondents for payment of reservist pension, as in the event he was

declared as a deserter and he did not report to his duty during 1971 war, if called for, it would amount to grant of benefit to which the applicant is not entitled to because of his desertion and for not attending duty when called for. The Tribunal, therefore, cannot grant the relief as claimed without verifying the records, which is not available because of long delay in approaching the Court of law by the applicant.

[11] In view of what has been discussed above, we are of the opinion that the relief claimed by the applicant in the OA cannot be granted.

[12] The OA, accordingly, stands dismissed .No costs.

MEMBER (A)

MEMBER (J)

MC