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WP.No.30696 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

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Poyyeri Muthu Swamy Rama Swamy

Petitioner

Vs

1. Union of India, by Defence Secretary, Ministry of Defence
New Delhi 110011
2. The Chief of the Air Staff, Air Force HQs,
New Delhi 110011
3. The Director, Dte of Air Veterans, The Air Force Pension and
Welfare (Superintendent of Police) Air Force Record Office
Subroto Park, New Delhi 110010
4. The PCDA (Pension), UP 211014

Respondents

Prayer:- This Writ Petition has been filed, under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 04.08.2023 passed in OA.No.81 of 2022 by the Armed Forces Tribunal, Chennai and to quash the same and to direct the Air Force Authorities to grant eligible Reservist Special Pension from the date of the Petitioner's discharge from Air Force i.e. 21.10.1973 with all arrears and interest till the date of payment.

For Petitioner : Mr.S.P.Ilangovan



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For Respondents : Mr.C.Kulanthaivel, Standing Counsel

ORDER

(Order of the Court was made by S.S.SUNDAR, J.)

1. This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus to call for the records relating to the order dated 04.08.2023 passed in OA.No.81 of 2022 by the Armed Forces Tribunal, Chennai and to quash the same and to direct the Air Force Authorities to grant eligible Reservist Special Pension from the date of the Petitioner's discharge from Air Force i.e. 21.10.1973 with all arrears and interest till the date of payment.
2. This Court heard the learned counsel on either side, considered their submissions and perused materials placed on record.
3. The Petitioner was enrolled in the services of the Indian Air Force on 20.06.1963 on the engagement terms of 9 years Regular Service and 6 years Reserve Service. It is the specific case of the Petitioner that he was not discharged from service on completion of 9 years Regular Service due to exigency of service and that he was discharged only on 21.10.1973 after rendering 10 years and 124 days of extended Regular Service.
4. The main grievance of the Petitioner is that he was denied Reservist Special Pension on the ground that he did not serve 15 years qualifying service. Referring to the Pension Regulations for the Air Force, 1961, the Petitioner submitted before the Tribunal that the Petitioner was discharged after 10



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years and 124 days of regular service for want of vacancy in the Reserve and Government Policy on reduction of troops and hence, he is entitled to the benefit of Reservist Special Pension on the basis of Regulation 144 of the Pension Regulation for the Air Force

5. Regulation 144 reads as follows:-

“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 policy:-

(a) of reducing the strength of Establishment of the Air Force. or

(b) reorganisation which results in disbandment of any units/ formation.”

6. It is admitted before this Court that the Petitioner had filed the application in OA.No.81 of 2022, in which, the impugned order has been passed, claiming Reservist Special Pension, nearly 48 years after he was discharged from service. In the impugned order, the Tribunal, apart from considering the fact of inordinate and unexplained delay of 48 years in preferring the application and referring to Paragraph 136 of the Pension Regulations for the Air Force 1961, came to the conclusion that only the period actually he served in the Regular Air Force Reserve is taken into account for grant of Reservist Pension and not the period of Reserve Liability.

7. Following the judgement of the Honourable Supreme Court, dated 27.10.2016 rendered in the case of **T.S.Das Vs. Union of India (Civil Appeal No.2147 of 2011)**, the Tribunal has held that the principle of



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equitable estoppel cannot be invoked in such a case where the Petitioner's case cannot be considered under Regulation 144 of the Pension Regulations for the Air Force. On facts, the Tribunal held that the Petitioner was discharged from service on 21.10.1973 on his own request before fulfilling the mandatory conditions of retirement. The findings and conclusions reached by the Tribunal are purely based on the facts that are available on service records as the claim was made after an inordinate delay 48 years, without valid explanation for such a delay.

8. It is well settled that the Tribunal or the Court cannot entertain a claim after an inordinate and unexplained delay as it is likely to cause serious prejudice to the other side. In view of the long delay in approaching the Tribunal, this Court is unable to entertain this Writ Petition. This Court, after this length of time, cannot once again go into the facts to examine as to whether the observations and the findings of the Tribunal is supported by service records or other materials. In such view of the matter, this Court is not inclined to entertain this Writ Petition.

9. In fine, this Writ Petition is dismissed. No costs.

(S.S.S.R.J.) & (N.S.J.)
05.04.2024



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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
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To

1. Union of India, by Defence Secretary, Ministry of Defence, New Delhi 110011
2. The Chief of the Air Staff, Air Force HQs, New Delhi 110011
3. The Director, Dte of Air Veterans, The Air Force Pension and Welfare
(Superintendent of Police) Air Force Record Office, New Delhi 110010
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and
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