



W.P.No.11477 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2025

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CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE K.RAJASEKAR

W.P.No.11477 of 2024

Ex LAC R Jayadheer Reddy
S.No.251573

.. Petitioner

-VS-

1. Union of India
represented by its Secretary
Government of India
Ministry of Defence
South Block, New Delhi 110 011
 2. The Chief of Air Staff
Air Headquarters, Vayu Bhavan
New Delhi 110 106
 3. The Directorate of Air Veterans
Air Headquarters
Subroto Park, New Delhi 110 010
 4. The Joint Controller of Defence Accounts (Air Force)
Subroto Park
New Delhi 110 010
- .. Respondents



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Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records in respect of the impugned order passed in O.A.No.138 of 2018 with M.A.No.131 of 2018 dated 28.04.2023 passed by the Hon'ble Armed Forces Tribunal, Regional Bench, Chennai and quash the same and further directing the respondents to grant the Reservist Pension in terms of Regulation 136(2) of Pension Regulations for the Air Force, 1961 and pay the same to the petitioner (or) in alternate to grant the Special Pension in terms of Regulation 147 of Pension Regulations for the Air Force, 1961 and pay the same to the petitioner with all consequential benefits of arrears and restricting such arrears to three years prior to the date of 29.09.2016 – date of rejection of the pension claim by the respondents with reasonable interest as may be fixed in terms of various decisions of Hon'ble Apex Court within a period of three months as has been held by the Full Bench of Hon'ble Apex Court in the case of TS Dass Vs UOI & another.

For Petitioner :: Mr.M.K.Sikdar

For Respondents :: Mr.C.Kulanthaivel
Senior Panel Counsel

ORDER

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

The writ on hand has been instituted challenging the order dated 28.04.2023 passed in O.A.No.138 of 2018 on the file of the Armed Forces Tribunal, Regional Bench, Chennai. The original applicant before the Armed Forces Tribunal is the writ petitioner before this Court.



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2. The writ petitioner was enrolled in the Indian Air Force on 17.10.1963 with terms of engagement for 9 years Regular Service and Reserve Service for 6 years. The applicant was not discharged from service on completion of his 9 years regular service, but was discharged on 01.01.1974 after rendering 10 years and 77 days of service on the ground 'on fulfilling the conditions of his enrollment and not being required to serve in the Reserve'. It is not in dispute that the writ petitioner was not recalled for Reserve Service and therefore denied Reservist Pension, since he did not serve 15 years of qualifying service under the Pension Regulations.

3. The learned counsel appearing for the petitioner Mr.M.K.Sikdar would submit that the claim of the writ petitioner was for Reservist Pension or Special Pension. Admittedly, the petitioner has not served in the Reserve. However, the Special Pension need not be denied to the writ petitioner. The persons who have not been afforded opportunity to serve in the Reserve are eligible to avail the benefit of Special Pension and thus the rejection of the said claim by the competent authorities and by the Tribunal is not in



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accordance with the principles. The judgment of the Hon'ble Supreme Court in the case of *T.S.Das and others v. Union of India and another* (Civil Appeal No.2147 of 2011 dated 27.10.2016) has been relied upon. It is further contended that the Armed Forces Tribunal, Regional Bench, Chennai granted the relief of Special Pension in favour of Smt.Eva Maiti, W/o Ex Cpl late Anjan Kumar Maiti in O.A.No.315 of 2018 dated 7.12.2021 based on the orders passed in T.S.Das and others case. Therefore, similar benefit is to be extended to the present writ petitioner also.

4. The learned Senior Panel Counsel appearing on behalf of the respondents would oppose by stating that the petitioner is not eligible for Reservist Pension, since he has not completed 15 years of qualifying service under the Pension Regulations. As far as Special Pension is concerned, the petitioner has not served in the Reserve and the grant of Special Pension being discretion of the authorities, the same cannot be claimed as a right. Since the petitioner has not fulfilled the requisite conditions contemplated under the Pension Regulations, the decision of the Tribunal is in accordance with the Pension Regulations and the writ petition is to be rejected.



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5. This Court considered the arguments placed between the parties to the lis. Three kinds of Pensions are contemplated under the Pension Regulations for the Air Force, 1961 (Part 1) and they are:-

“(a) Service Pension: The minimum qualifying regular service required to earn Service Pension is 15 years in terms of Regulation 121 of Pension Regulations for the Air Force, 1961 (Part 1).

(b) Reservist Pension: The prescribed combined colour and reserve qualifying service for earning Reserving Pension is 15 years in terms of Regulation 136(a) of Pension Regulations for the Air Force, 1961 (Part 1) and only the period actually served in any 'Air Force Reserve' is taken into account for grant of Reservist Pension.

(c) Special Pension: As per para 144 of Pension Regulations for the Air Force, 1961 (Part 1), 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:-

- (i) of reducing the strength of Establishment of the Air Force; or
- (ii) of re-organisation, which results in disbandment of any units/formation.”



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6. The petitioner claims Reservist Pension or Special Pension. As far as Reservist Pension is concerned, the Tribunal in paragraph 13 made a finding that the issue of formal transfer to Reserve Service being a prerequisite for Reservist Pensionary benefits, which has been upheld by the Hon'ble Supreme Court while upholding the orders passed by Armed Forces Tribunal, Regional Bench, Chennai in Civil Appeal No.2866 of 2022 (Diary No.6847/2022) in the matter of **Ex LAC Dasari Sham Rao Vs Union of India & others** and also in Civil Appeal No.210/2023 (Diary No.30150/2021) in the matter of **Ex Cpl CM Rajamani Vs Union of India & others**. In the present case, the writ petitioner has not fulfilled the requisite conditions as contemplated under the Pension Regulations for grant of Reservist Pension. Thus the Tribunal has rightly concluded that the writ petitioner is not eligible for Reservist Pension.

7. Regarding Special Pension, it is relevant to consider Para 144 of the Pension Regulations for the Air Force, 1961, which would indicate that Special Pension or Gratuity may be granted, at the discretion of the President, to individuals, who are not transferred to the Reserve and are



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discharged in large numbers in pursuance of government policy. The very objective of the provision is to consider grant of Special Pension, not to the personnel, who are not transferred to the Reserve, but to the personnel, who are discharged in large numbers in pursuance of government policy. Therefore, it is a Special Category Pension, which is to be granted at the discretion of the authorities in certain special and exceptional circumstances. The very nature of pension i.e., Special Pension *per se* would indicate that it is to be granted only in exceptional circumstances and to the categories falling under Para 144 of the Pension Regulations for the Air Force, 1961. The language employed in Para 144 explicitly indicates that Special Pension or Gratuity **may be** granted. It is a discretionary power conferred on the competent authority. One of the criteria is that the individuals not transferred to the Reserve and are discharged in large numbers in pursuance of the government policy. Therefore, when certain group of individuals are not transferred to the Reserve, but discharged in large numbers in pursuance of government policy, the authority may consider and exercise powers of discretion for grant of Special Pension or Gratuity under Para 144 of the Pension Regulations for the Air Force, 1961.



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9. The nature of Special Pension and the scope of Para 144 cannot be construed as an absolute right to an individual. Further an individual, who is discharged from service, cannot claim Special Pension as a matter of right. When it is a discretion, the power is to be exercised discreetly, judiciously and in deserving cases. The power of discretion is conferred on the authorities, which is to be exercised in exceptional cases, where there is gross injustice. Power of discretion cannot be exercised in a routine manner in administrative matters. Rules and Regulations are to be followed scrupulously. Power of discretion is conferred with an objective to remove certain difficulties and to meet the ends of justice. Thus judicious approach on the part of the authorities while exercising the administrative discretion is of paramount importance and it cannot be exercised callously. Therefore, it is not an individual's vested right provided under the Pension Regulations. This Special Pension, which is a special provision, being granted to an individual in certain exceptional circumstances.

10. As far as T.S.Das and others case is concerned, the Hon'ble Supreme Court in paragraph 25 has recorded that many number of Sailors



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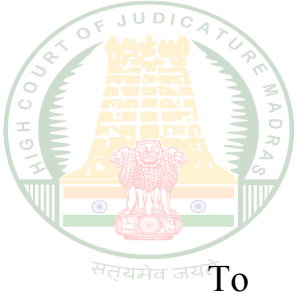
appointed prior to 3rd July, 1976 have approached the Court for grant of Special Pension. Pertinently, in the said judgment, the relief was granted by the Hon'ble Supreme Court by invoking its power under Article 142 of the Constitution of India and therefore the relief granted in T.S.Das cannot be granted in all cases by the High Court by relying on the same.

11. In the present case, it is not in dispute that the petitioner was discharged from service after rendering 10 years and 77 days of qualifying service on the ground 'on fulfilling the conditions of his enrolment and not being required to serve in the Reserve'. That being so, this Court is unable to find any reason to interfere with the findings made by the Armed Forces Tribunal, which are in consonance with the Pension Regulations and more particularly, Para 144 with reference to the Special Pension. Thus the order impugned stands confirmed and the writ petition is dismissed. No costs.

Index : yes
Neutral citation : yes

(S.M.S.,J.) (K.R.S.,J.)
07.03.2025

SS



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To
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Ministry of Defence
South Block, New Delhi 110 011
2. The Chief of Air Staff
Air Headquarters, Vayu Bhavan
New Delhi 110 106
3. The Directorate of Air Veterans
Air Headquarters
Subroto Park, New Delhi 110 010
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