



W.P.No.63 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2025

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CORAM :

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

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Ex 10450796-H,
Hav Kannayiram
Records, Brigade of the Guards .. Petitioner

v.

1. Union of India represented by its
Secretary to Government of India
Ministry of Defence
South Block
New Delhi 110 011
2. Chief of Army Staff
Army Head Quarters (AHQ)
Defence Head Quarters (DHQ)
Integrated Head Quarters (IHQ)
New Delhi 110 011
3. The Principal Controller Defence Accounts (Pension)
Droupati Ghat, Allahabad, Uttar Pradesh PIN 211 014
4. The Officer i/c Records, Brigade of The Guards
PIN 900 745, C/O 56 APO .. Respondents



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Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the passing of the order dated 13.01.2023 in O.A. No.119 of 2018 on the file of the Armed Forces Tribunal, Regional Bench, Chennai and quash the same consequently direct the respondents to grant Pension or Reservist Pension, as per para 155 of Pension Regulation for Army 1961 or grant Pro-rata pension, as per O.M. dated 04.11.2022 with all arrears and attendant benefit from the date of discharge 01.08.1989.

For Petitioner :: Mr.M.Selvaraj

For Respondents :: Mr.A.R.Sakthivel
Senior Panel Counsel for
Central Government

ORDER

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

Under assail is the order dated 13th January, 2023 passed by the Armed Forces Tribunal, Regional Bench at Chennai in O.A.No.119 of 2018.

2. The undisputed facts between the parties would reveal that the writ petitioner was enrolled in the Territorial Army on 02.07.1971 and was discharged while serving as Havildar on 31.07.1989. He has put in the embodied service of 10 years and 5 months and 7 years and 8 months of unembodied service, out of the total service of 18 years and 1 month.



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3. The contention raised on behalf of the writ petitioner before the Tribunal was that the writ petitioner is governed by the provisions of the Territorial Army Act, Rules and Regulations, 1948 and for the purpose of pension, the Territorial Army Pension Regulations, 1961 is followed. Therefore, the total period of embodied and unembodied service of the petitioner is to be reckoned as qualifying service for grant of pension for the services rendered by him in the Territorial Army.

4. The learned Panel Counsel would oppose by stating that the writ petitioner admittedly served in the Territorial Army. Under the Pension Regulations for the Army, the services rendered in the Territorial Army are treated differently and 15 years of qualifying service alone is eligible for the grant of pension under Regulation 132 of the Pension Regulations for the Army, 1961. Since the petitioner has completed the embodied service of 10 years and 5 months, he became ineligible and the unembodied service of 7 years and 8 months cannot be reckoned for the purpose of calculation of qualifying service for the grant of pension.



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5. Under the Pension Regulations for the Army, 1961, Regulation 132

provides the minimum qualifying service for pension. Accordingly, the minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years. Therefore, Regulation 132 in clear terms stipulates that the actually rendered service is to be taken into consideration for reckoning the qualifying service for grant of pension.

6. Section 1 under the Territorial Army Note for the Reader defines the service to qualify for pension. All embodied service rendered in continuation or in broken spells shall qualify for pension. For calculation of the total embodied service, the break in embodied service due to disembodiment shall be treated as condoned. But the period of break itself shall not be treated as qualifying service for pension. In the present case, it is not in dispute that the writ petitioner has put in the embodied service of 10 years and 5 months and the unembodied service of 7 years and 8 months out of the total service of 18 years and 1 month. Therefore, he is ineligible for grant of pension under the Pension Regulations for the Army, 1961.



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Pertinently, the writ petitioner was discharged from service on 31.07.1989.

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The application before the Armed Forces Tribunal itself has been instituted in the year 2018, after a lapse of 29 years. Long delay is also a ground to reject the claim. That apart, the petitioner has not satisfied the eligibility criteria as fixed under the Pension Regulations for the Army.

7. The argument as advanced by the learned counsel appearing on behalf of the petitioner is that the application of Territorial Army Services per se cannot be taken into consideration in the present case, since the case of the petitioner can be considered under the category of Reservist. It is hard to accept the proposition, in view of the fact that each category of services in the Indian Army are distinct and the nature of recruitment and service are also distinct and different. The application of pension rules is to be made with reference to the nature of service rendered by a person in the Indian Army. Thus the question of treating the petitioner in the reservist category would not arise at all. The petitioner since enrolled in the Territorial Army and discharged by the Army in the year 1989, the pension rules applicable for the Territorial Army alone is to be taken into



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consideration for grant of pension.

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8. In view of the above facts and circumstances, this Court does not find any infirmity or perversity in respect of the findings and the decision made by the Armed Forces Tribunal and therefore the order impugned stands confirmed and the writ petition is dismissed. No costs.

Index : yes

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

Neutral citation : yes

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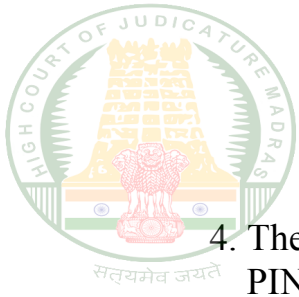
SS

To

1. The Secretary to Government of India
Ministry of Defence
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