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W.P.No.57 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2025

CORAM :

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

W.P.No.57 of 2024

Ex – 10452274-L Hav M.Mayaperumal
The 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. Principal Controller Defence Accounts (Pension)
Droupati Ghat, Allahabad, Uttar Pradesh PIN 211 014
4. Officer in charge Records
Brigade of the Guard
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 16.01.2023 in O.A.No.218 of 2018 with M.A.No.229 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 Regulations for Army,1961 or grant pro-rata pension as per O.M. dated 04.11.2022 with all arrears and attendant benefits from the date of discharge on 01.04.2005.

For Petitioner :: Mr.M.Selvaraj

For Respondents :: Mr.S.Diwakar
Senior Panel Counsel
Central Government

ORDER

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

Under assail is the order dated 16th January, 2023 passed by the Armed Forces Tribunal, Regional Bench at Chennai in O.A.No.218 of 2018.

2. The undisputed facts between the parties would reveal that the writ petitioner was enrolled in the Territorial Army on 17.10.1984 and was



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discharged while serving as Havildar on 01.04.2005. He has put embodied service of 12 years and 179 days and unembodied service of 7 years and 353 days, out of the total service of 20 years and 166 days.

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 Senior 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 12



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years and 179 days, he became ineligible and the unembodied service of 7 years and 353 days cannot be reckoned for the purpose of calculation of qualifying service for the grant of pension.

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



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is not in dispute that the writ petitioner has put in the embodied service of 12 years and 179 days and the unembodied service of 7 years and 353 days out of the total service of 20 years and 166 days. Therefore, he is ineligible for grant of pension under the Pension Regulations for the Army, 1961. Pertinently, the writ petitioner was discharged from service on 01.04.2005. The application before the Armed Forces Tribunal itself has been instituted in the year 2018, after a lapse of 13 years. 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 such 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 services rendered by a person in the



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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 in the year 2005, the pension rules applicable for the Territorial Army alone is to be taken into consideration for grant of pension.

8. Though the learned counsel for petitioner would submit that the case of one junior Havildar P.Krishnan was considered for grant of service pension, in the said case, Mr.P.Krishnan possessed the embodied service of 14 years and 81 days and therefore by condoning the permissible limit as contemplated under the regulations, he was granted service pension and thus the case of P.Krishnan cannot be compared with the case of the petitioner, wherein the embodied service rendered by the petitioner is beyond the realm of the powers of condonation as contemplated under the regulations.

9. 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



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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

12.02.2025

SS

To

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New Delhi 110 011
2. The Chief of Army Staff
Army Head Quarters (AHQ)
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