



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-03-2025

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THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

WP No. 28980 of 2024

and

WMP.Nos.31634 & 31636 of 2024

1. The Union of India,
Rep. by the Secretary,
Govt. of India,
New Delhi 110 011.

2.The Chief of Army Staff,
South Block, IHQ of MoD (Army),
New Delhi - 110 011.

3.The Officer-in-Charge,
The ASC Records (South),
Bangalore - 560 007.

4.The Principal Controller of Defence Accounts
(Pensions),
Draupadi Ghat, Allahabad
(U.P) PIN - 211 014.

Petitioner(s)



Vs

Ex.Sep.Virumandi,

No.13828000, Son of P.Thevar,

Door No.2-1/96, Mettu Perumal Nagar Street,

VII-Thathampattu, PO-T Uadipatti,

District-Madurai, Tamil Nadu - 625 218.

Respondent(s)

PRAYER Writ Petition filed under Article 226 of the Constitution of India, seeking for an issuance of writ of certiorari, to call for the records dated 31.10.2023 passed in Original Application No.133 of 2022 by the Armed Forces Tribunal, Chennai Bench and quash the same.

For Petitioner(s): Mr.Sakthivel AR
Senior Panel Counsel

For Respondent(s): Mr.M.K.Sikdar

ORDER

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

The writ on hand has been instituted challenging the order dated 31.10.2023 passed in Original Application No.133 of 2022 on the file of the Armed Forces Tribunal, Regional Bench, Chennai. The Union of India represented by its Secretary is the petitioner before this Court.



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2. The respondent was enrolled in the Indian Army on 02.03.1964 with terms of engagement of 10 years colour Service and 10 years Reserve Service. On completion of 10 years of Colour Service, the respondent was retained in the Regular Service due to disbanding of Reservist Scheme in 1974. Though the respondent was willing to continue in the Reserve Service, he was discharged from Service on 31.10.1975 on completion of 11 years and 7 months and 29 days of Colour Service under Army Rule 13(3) III (ii) as there were no vacancy in Reservist Service without any pension.

3. The learned Counsel appearing on behalf of the respondent would submit that the respondent is eligible for Special Pension. Admittedly, the respondent has not served in the Reserve. However, the Special Pension need not be denied to the respondent. The persons who have not been afforded opportunity to serve in the Reserve are eligible to avail the benefit of Special Pension. 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. Therefore, the Tribunal has rightly granted Special Pension to the respondent.

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4. The learned Senior Panel Counsel appearing on behalf of the petitioners would oppose by stating that the respondent 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 respondent 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 respondent has not fulfilled the requisite conditions stipulated under the Pension Regulations, the decision of the Tribunal is not in accordance with the Pension Regulations and the order impugned is to be set aside.

5. This Court considered the arguments placed between the parties to the *lis*.



6. Three kinds of pensions are contemplated under the Pension

Regulations for the Army, 1961 (Part I) and they are:

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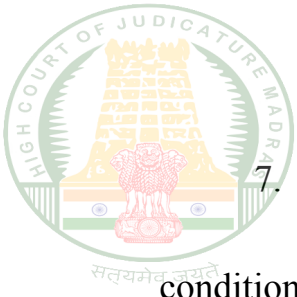
"(a) Service Pension: The minimum period of qualifying service actually rendered and required for earning service pension shall be 15 years in terms of Regulation 132 of Pension Regulations for the Army, 1961 (Part I)

(b) Reservist Pension: A reservist who is not in receipt of a service pension may be granted, on completion of the prescribed combined colour and reserve qualifying service, a reservist pension or gratuity in lieu at the appropriate rate indicated in regulation 156 in para 155 of Pension Regulations for the Army, 1961 (Part I)

(c) Special Pension: As per Regulation 164 of Pension Regulations for the Army, 1961 (Part I), 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 number in pursuance of Government's policy-

(i) of reducing the strength of establishment of the Army; or

(ii) of re-organisation, which results in disbandment of any units/formations."



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7. In the present case, the respondent 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 respondent is not eligible for Reservist Pension.

8. Regarding Special Pension, it is relevant to consider Para 164 of the Pension Regulations for the Army, 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 discharged in large number in pursuance of Government's 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 164 of the Pension Regulation for the Army, 1961. The language employed in Para 164 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 government policy. Therefore, when certain group of individuals are not transferred to 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 164 of the Pension Regulation for the Army, 1961.

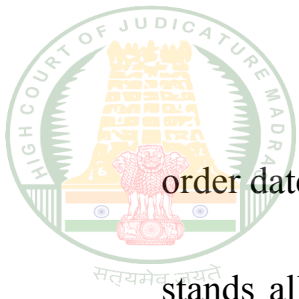
9. The nature of Special Pension and the scope of Para 164 cannot be construed as an absolute right to an individual. Further an individual, who is discharged from service, cannot claim Special Pension as a matter of right. When it is a discretion, the power is to be exercised discreetly, judiciously 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 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* case 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 respondent was discharged from service after rendering 11 years and 69 days of Colour Service. This Court is of the considered opinion that the findings made by the Armed Forces Tribunal are not in consonance with the Pension Regulations and more particularly, Para 164 with reference to the Special Pension. Thus the impugned



order dated 31.10.2023 in O.A.No.133 of 2022 is set aside and the Writ Petition

stands allowed. No costs. consequently, connected miscellaneous petitions are

closed.

(S.M.SUBRAMANIAM J.) (K.RAJASEKAR J.)

07-03-2025

veda

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

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