



W.P.No.30605 of 2024

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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

Writ Petition No.30605 of 2024

Mr.Sarada Krishnan Sudhir

... Petitioner

Vs.

1. Union of India,
Rep by the Secretary,
Government of India,
Ministry of Defence (Air force),
5 A South Block,
New Delhi – 110 011.
2. The Chief of Air Staff,
Air Head Quarters (Vayu Bhavan),
Rafi Marg, New Delhi – 110 006.
3. The Principal Controller,
Defence Accounts(Pensions),
G3 – Section, Draupadi Ghat,
Allahabad – 211 014.
4. Controller General,



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Defence Accounts (AF),
Ulan Batar Road,
Palam, Delhi Cant,
New Delhi – 110 010.

5. The Director,
Air HQs,
Directorate of Air Veterans,
Subroto Park,
New Delhi – 110 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of order of the Armed Forces Tribunal at Chennai in O.A.No.74 of 2019 dated 16.06.2022 and quash the portion of order “However, the arrears of pension is restricted for a period of Three years prior to the date of filing Original Application (OA filed on 18.03.2019)” and consequently, issue direction to the respondents to pay service pension to the petitioner with effect from the date of discharge of the petitioner i.e., 28.03.1999.

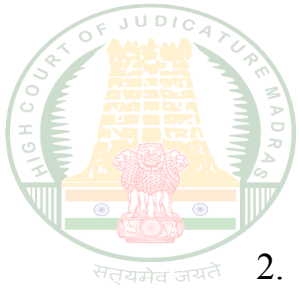
For Petitioner : Mr.K.Mohamed Hussen

For R1 to R5 : Mr.C.Kulanthaivel,
Special Panel Counsel

ORDER

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

Under assail is the order passed by the Armed Forces Tribunal, Regional Bench, Chennai in O.A.No.74 of 2019.



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2. The applicant before the Tribunal is the writ petitioner before this Court. The petitioner was enrolled in the Indian Air Force on 16.01.1985 and admittedly discharged from service on 20.03.1999. Thus, the petitioner rendered 13 years and 360 days of regular qualifying service (excluding 70 days due to AWL).

3. As per Regulation 121 of the Pension Regulations for The Air Force, 1961 (Part-1) the minimum qualifying regular service required to earn service pension is 15 years. As per the Government of India, Ministry of Defence letter dated 14.08.2001, condonation of short fall in qualifying service for the grant of pension in respect of Airmen, beyond 6 months and up to 12 months may be condoned by the competent authority. Since the deficit service crossed more than one year, the said deficiency for qualifying regular service was not condoned, which resulted in the filing of Original Application before the Armed Forces Tribunal.

4. The Armed Forces Tribunal elaborately considered the issues and condoned the delay and allowed service pension to the writ petitioner. The order of the Armed Forces Tribunal directed the respondents to issue PPO to the petitioner granting service pension with effect from 30.03.1999. The arrears



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shall be paid within four (4) months from the date of receipt of a copy of the order, failing which the arrears will carry interest at 8% per annum till payment.

However, the arrears of pension is restricted for a period of three years prior to the date of filing of the Original Application in accordance with the principles laid down in the Judgment of the Hon'ble Apex Court in ***Union of India and Others vs. Tarsem Singh***¹.

5. The learned counsel for the petitioner relying upon the findings of the Hon'ble Supreme Court in the case of ***Union of India Vs. Surender Singh Parmar*** in Civil Appeal No.9389 of 2014 would submit that a fraction of a year equal to 3 months and above, but less than 6 months, shall be treated as a completed one half year and reckoned as qualifying service.

6. The main issue which crops up in the present lis is that an Airman not completed requisite qualifying services of 15 years under Regulation 121 of the Pension Regulations for Air Force, 1961, but eligible to avail the benefit after condonation of short fall upto 12 months under Para 114 would be further eligible for condonation of short fall exceeding 12 months (i.e., 1 Year and 5 days) from the hands of the executive authorities.

¹ (2008) 8 SCC 648



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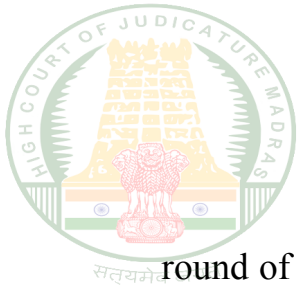
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7. Para 114 of the Pension Regulation is a concession extended to an airman for condoning the shortfall of qualifying service upto 12 months by the competent authority. For example, an airman completed 14 years and above of qualifying services, by applying Para 114, his services can be rounded off to 15 years for the purpose of grant of service pension. However, the said Para cannot be applied for an Airman, who has not even completed 14 years of service.

8. Let us now consider Pension Regulation 121, which provides minimum qualifying services for pension as under,

121. Unless otherwise provided for, the minimum qualifying regular service for earning a service pension is 15 years.

The minimum qualifying regular service for earning a service pension is 15 years. Therefore, the mandatory qualifying services for service pension is 15 years and the petitioner, who has completed 13 years and 360 days of qualifying services would be ineligible for service pension. However, the contention of the petitioner that an airman, who has completed 13 years and 10 months of services is eligible for rounding off fraction of a year equal to 3 months, so as to



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round of the period as 14 years, and thereafter, one year condonation of delay is to be granted by the authority to make the qualifying services as 15 years is undoubtedly beyond the scope of the Pension Regulation and if such an interpretation is accepted, it will defeat the very purpose of concession granted to the airman under Para 114.

9. The Pension Regulations intends that an airman, who has a shortfall of upto 12 months of qualifying service, would be eligible to avail the benefit under Para 114 for grant of service pension. However, the Regulation 121, which prescribes minimum qualifying service of 15 years for pension, cannot be further diluted so as to grant service pension to the airman who has not completed 14 years at all.

10. The ambit of Para 114 is independent and standalone. Para 114 is to be applied with reference to the cases falling under those category and it is unconnected with the scope of Regulation 121, which provides minimum qualifying service for pension as 15 years.

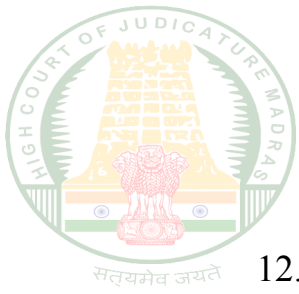
11. However, the scope of Para 114 is entirely different. Para 114 Subclause (c) enumerates that an individual who is invalidated with less than



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15 years service, deficiency in service for eligibility to service pension or reservist pension of gratuity, in lieu, may be condoned by a competent authority up to 12 months in each case vide G.O.I Letter dated 14-08-2001. The language employed under subclause (c) to Para 114 is “may be condoned”. Therefore, the power of discretion vested with the executive authority. The power of discretion is to be exercised based on facts and circumstances of each case. Condonation becomes a discretion of an authority to be exercised judiciously and to remove injustice if any caused to an airman. The power of condoning cannot be exercised in a routine manner by the authority and sufficient reasons ought to be recorded for condoning the period and to treat the non service period as qualifying service period. The authorities competent is expected to exercise the powers of discretion, discreetly so as to remove injustice and the powers of discretion cannot be exercised for the purpose of favouring a person or to dilute the minimum qualifying services contemplated under Pension Regulation 121. Thus, Regulation 121 operates as a condition and Para 114 is to be exercised discreetly in deserving cases. The note below Para 5 of G.O.I Instructions dated 30.10.1987 at Clause – 5 confess right for rounding off a fraction of a year equal to 3 months, provided an airman has completed the qualifying services of 14 years or above.

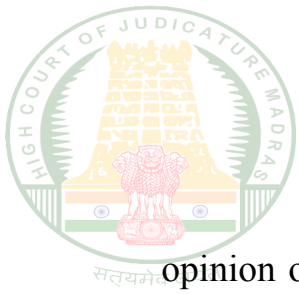


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12. The Armed Forces Tribunal in the impugned order has read down the Pension Regulations, which is falling beyond the scope of its jurisdiction. Provisions of the Act, Regulation or the Government directives cannot be read down by the Courts, unless such Act, Regulations are under challenge in appropriate proceedings. In other words, when the Constitutional validity and ultra vires of the Act is challenged, then alone the Court can interpret the provisions, but not otherwise. Therefore, the Tribunal cannot exercise its discretion and to condone the non service period and convert the same as qualifying services for grant of service pension. The eligibility for condonation must be examined with reference to the Regulations 121 and Para 114 as each provisions operates in different circumstances and more specifically Para 114 is a standalone provision, so as to extend the benefit of condonation of delay beyond one year. Such a benefit is running counter to the spirit of Pension Regulation for the Air Force. It amounts to grant of double benefits in the matter of calculating the qualifying services for grant of service pension, which is not contemplated under the Pension Regulations.

13. In the present case, the Union of India has not preferred any appeal. Contrarily, the original applicant has preferred the present Writ Petition, seeking further benefit to include the arrears from the date of his discharge. In the



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opinion of this Court, the Armed Forces Tribunal has extended the concession by condoning the delay beyond the permissible limit as contemplated under the Pension Regulations. Thus, there is no scope for further interference by this Court. Since the Union of India has not preferred any Appeal, this Court is not inclined to deprive the Writ Petitioner from getting the benefits as granted by the Armed Forces Tribunal. However, the order of the Armed Forces Tribunal need not be cited as a precedent in other similar cases, as this Court interpreted the scope of Regulation 121 and Para 114 of the Pension Regulation.

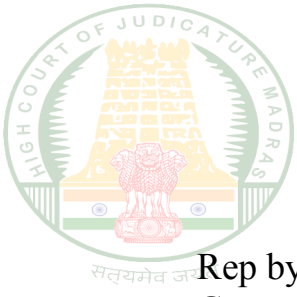
14. The learned Standing Counsel brought to the notice of this Court that the Tribunal's order has already been implemented and the petitioner is receiving service pension. Consequently, the writ petition stands dismissed. The Miscellaneous Petitions, if any, stands closed. There shall be no order as to costs.

(S.M.S., J.) (K.R.S., J.)
12.02.2025

ssi/gd
Index: Yes
Speaking Order: Yes/No
Neutral Citation Case : Yes/No

To

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S.M.SUBRAMANIAM., J.

AND

K. RAJASEKAR., J.

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