
(2022) 06 AFT CK 0013

In the Armed Forces Tribunal

Case No : OA 1403 Of 2020 with MA 898 Of 2022

Col Nandu Kumar B N (Retd)

APPELLANT

Vs

Union of India & Ors

RESPONDENT

Date of Decision : 02-06-2022

Acts Referred:

Citation : (2022) 06 AFT CK 0013

Hon'ble Judges : Sunita Gupta, Member (J); Gen Bobby Mathews, Member (A)

Bench : Division Bench

Advocate : Ajit Kakkar, Neeraj

Final Decision : Disposed Of

Judgement

1. The Applicant filed this OA praying

(a) to quash the Impugned Order dated 12.6.2020 passed by the Respondents

(b) to treat the Applicant as a Late Entrant and grant all the pensionary benefits, including Service Pension w.e.f. 1.6.2020

2. The Learned Counsel for the Applicant submits that the Applicant was commissioned on 3.6.1994 in the Territorial Army as a Second Lieutenant and served in various field and peace areas throughout his service and superannuated on 31.5.2020 after rendering 18 years 11 months and 24 days of Embodied Reckonable Service. The Applicant submits that his 'total service has been 26 years 2 months and 19 days. The Applicant further submits that he was not granted Service Pension after his retirement. The Applicant submitted an Application dated 30.5.2020 for condonation of shortfall of service and to be covered under the 'Late Entrant' policy of the Respondents which was strongly recommended by his Unit and forwarded to DGTA (TA-4) vide letter dated 42208/NK/Pension. However, the same was rejected by the Respondents vide letter dated 12.6.2020 stating that only those TA Officers who have completed qualified service of 20 years are eligible for Service Pension. The Applicant also submits

that he is covered under the "Late Entrant" policy of the Respondents as per MoD Letter dated 30.10.1987 with regards to 4th CPC and the Indian Army Pension Regulations, Para 6.1(a) of MoD Letter dated 3.2.1998. The Applicant further submits that provision of condonation of shortfall of service can also be applied to TA officers as per GoI MoD letter No.4684/DIR(Pen)/2001 dated 14.8.2001 and Section 5, 5(a) & (b). Reliance has also been placed on several judgements passed by the Principal Bench, New Delhi.

3. The Learned Counsel for the Respondents admits that the Applicant was granted Commission in the Territorial Army on 3.6.1994 and superannuated from TA Service on 31.5.2020 in the rank of Colonel as a Deputy Commander of Territorial Army(TA). The Respondents submit that as per records held with the Territorial Army (TA) Directorate, the Applicant's commissioned service is 26 years 3 months and 28 days and Embodied Service is 18 years 11 months and 24 days. The Respondents further submit that as per GoI MoD letter No.68699/921/GS/TA-3(a)/113/B/D (GS-VI) dated 11.6.1985 and Para 186 of Pension Regulations for the Army 2008, twenty years of embodied service is required for grant of Service Pension to Territorial Army Officers and since the total Qualifying (embodied) Service for pension of the Applicant was less than 20 years, he superannuated without any pensionary benefits. The Applicant's Application requesting for condoning the shortfall of service required for grant of Service Pension was rejected and the same was intimated to the Applicant vide letter dated 12.6.2020. The Respondents submit that the Applicant proceeded on voluntary disembodiment on various occasions wherein he enjoyed all pay and perks of civil life, away from his military responsibilities and was privy to the fact that he needs to render minimum 20 years of embodied service to be eligible for Service Pension, The Respondents further submit that no policy for condonation of delay in shortfall of service of a Commissioned Officer exists. They have also contended that the Late Entrant Provision is applicable only to Regular Officers vide Reg.34 of Pension Regulations for the Army, 2008 (Part I). Hence, the Respondents prayed to dismiss the Application.

4. We have heard the arguments of the Learned Counsels for the Applicant and Respondents as well as documents placed on record.

5. Important facts of the case which merit highlighting are : -

(a) The Applicant was commissioned in Territorial Army (TA) on 03.06.1994 and superannuated from service on 31 May 2020 with Embodied Service (Pension Qualifying Service) of 18 years, 11 months and 24 days.

(b) Pensionary Benefits under the ambit of Late Entrant Clause vide Para 34 of Pension Regulations for the Army 2008 is not applicable to Officers of the Territorial Army

6. The following Regulations of Pension Regulations for the Army 2008 Part-I are germane to this Application and are extracted as under :-

"(a) 182. The grant of pensionary awards to the service personnel shall be governed by the same general Regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of Regulations in this chapter.

These Regulations shall not apply to those who are :

- (i) Civil Government servants holding permanent appointments, and
- (ii) Retired Civil Government Servants.

(b) Minimum Qualifying Service for Earning Retiring Pension

34. The minimum period of actual qualifying service (without weightage) required for earning a retiring pension shall be 20 years (15 years in the case of late entrants).

Explanation : For purpose of the Regulations in the Chapter, a 'late entrant' is an Officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years service (without weightage) qualifying for pension but whose total qualifying service is less than 20 years (without weightage).

7. During the course of the hearing, Learned Counsel for the Applicant reiterated that the Applicant was clearly entitled to the benefits of Late Entrant Clause specified both in the Pension Regulations of 1961 and 2008. He quoted the following judgements of AFT, Principal Bench/AFT, RB, Chandigarh, wherein the issue of Late Entrant Provision being equally applicable to Officers of the Territorial Army has been clearly spelt out :-

(a) Lt Col IK Talwar Vs Union of India in TA No.771/2009 vide Order dated 18.1.2010

(b) Major SD Singh Vs Union of India in TA No.46/2010 arising out WP (c) No.2713/2003 vide Order dated 19.2.2010

(c) Maj PC Gupta Vs Union of India in OA No.164/2010 vide Order dated 26.5.2010

(d) Maj SH Khokhar Vs Union of India in OA No.17/2011 vide Order dated 19.7.2012

(e) Dhiraj Singh Vs Union of India in OA No.1277/2011 vide Order dated 2.8.2013 (AFT, RB, Chandigarh).

(f) Lt Col Charanjit Singh Vs Union of India in OA No.332/2016 vide Order dated 13.8.2018

(g) Lt Col DM Dafedar (Retd) Vs Union of India in OA No.433/2017 vide Order dated 7.1.2020

'8. It is pertinent to extract Para 14 of the Tribunal Order in the case of Lt Col

Charanjit Singh Vs Union of India (supra) :

14. xxxx xxxx xxxx The point which clearly stands out in favour of the Applicant is that, if this provision of 'late entrant' is not applicable for a TA Officer, then, who else it/s meant for? Thus, we find that the Applicant is entitled to the categorization of 'late entrant' and consequent pensionary benefits."

9. The Tribunal explained the underlying principle with regard to Pensionary benefit as enunciated both in Pension Regulations for the Army, 1961 and 2008 wherein despite the differences in terms of service between the Regular Army and other elements like TA and DSC the qualifying parameters for Pension remained the same. If this parameter is not in dispute then denying the benefit of Late Entrant Clause only to Officers of the TA wherein all other qualifying requirements remain the same would indeed be untenable as also go against the principles of natural justice. The Learned Counsel for the Respondents conceded that all these aspects had been considered in the case of Lt Col Charanjit Singh Vs Union of India (Supra).

10. In view of the aforesaid, we are of the considered opinion that the Applicant is eligible for Pensionary Benefits from the date of superannuation from the Territorial Army w.e.f. 01 June 2020. Arrears be paid within 12 weeks of date of this Order failing which interest @ 6% p.a. will be payable to the Applicant.

11. The OA stands disposed off accordingly. Connected MAs, if any, also stand disposed off.

12. No orders on cost.

Pronounced in open Court on this day 2nd of June, 2022.