SUPREME COURT OF INDIA

Ex Navy Direct Entry Artificers Association

Vs.

Union of India

C.A.No.6785 of 2014

(A.K.Sikri and Ashok Bhushan,JJ.,)

08.05.2018

JUDGMENT

A.K.Sikri,J.,

1. Appellant No. 1 is a registered Association of Ex Navy Direct Entry Artificers, whereas appellant Nos. 2 to 5 are Ex Direct Entry Artificers of the Navy. Primarily, it is the cause of appellant Nos. 2 to 5 which is espoused by their Association as well i.e. appellant No. 1. These appellant Nos. 2 to 5 have rendered actual service of 10 years. For an Artificer to become entitled to pension, he is supposed to render minimum service of 15 years as per Regulation 78 of the Navy (Pension) Regulations, 1964. The appellants claim that after their initial engagement period of 10 years as Artificers, they were placed in Fleet Reserve for a period of 10 years and as per Regulations, 50% of the period of Reserve is to be counted for the purpose of pension. On that basis, it is claimed that 5 years period of Reserve would enure to their benefit and on adding this period of 5 years with actual service of 10 years, it is to be treated that they have rendered 15 years of service and are accordingly entitled to receive pensionary benefits. The respondents deny the placement of appellant Nos. 2 to 5 in Fleet Reserve for a period of 10 years as claimed by the said appellants. Therefore, the moot question is as to whether the appellants, after rendering actual service of 10 years in the Navy, were drafted into Fleet Reserve or not.

2. The appellants had filed O.A. No. 8 of 2013 before the Armed Forces Tribunal (hereinafter referred to as the 'AFT'), Regional Bench, Kochi in which prayer to grant benefit was sought by them. The AFT, however, has not accepted the case set up by the appellants. As a result, their O.A. stands dismissed by the AFT vide order dated January 22, 2014. The appellants thereafter filed review petition seeking review of that judgment which was also dismissed by the AFT on March 25, 2014. Simultaneously, however, prayer for leave to appeal to this Court have been granted by the AFT seeking authoritative pronouncement of this Court on the following questions of law formulated by the Tribunal:

> "(1) Whether the applicants' reserve liabilities imposed at the time of enrolment ipso facto amounted to their being drafted to Fleet Reserve without any specific order to

draft them to the Reserve on completion of regular Naval service? If so, whether the period of such reserve liability as per the stipulated scheme was liable to be taken into account for computing the length of service of the applicants for pension purposes?

(2) Whether the applicants Nos. 2 to 5 were entitled to be treated at par with the Apprentice Entry Artificers for pension purposes only on the ground that both of them belong to the same homogenous class of Artificers?

3. Both these orders passed in O.A. as well as in review petition have been assailed by the appellants by way of instant appeal preferred under Section 30 of the Armed Forces Tribunal Act, 2007.

4. We now advert to the seminal facts which have led to the present litigation.

5. In the Indian Navy, the sailors are of two classes, the Artificers class and the non-Artificer class. Artificers are considered to be skilled sailors and they work on sophisticated technologies of warships. For the Artificer Class, there are two channels of Entry, known as Apprentice Entry Artificers and Direct Entry Artificers. The appellants joined Indian Navy as Direct Entry Artificers. At the relevant point of time (i.e. prior to July 3, 1976), the initial engagement of the Apprentice Entry Artificers as well as of the Direct Entry Artificers (appellants herein) was for 10 years active service. On the expiry of this term, they could be drafted into Fleet Reserve for a period of 10 years. A person who is kept in Fleet Reserve can be recalled at any time, during the said period of 10 years, to serve in the Navy.

6. The Apprentice Entry Artificers (with education qualification of Matriculation) get 4 years training in Indian Navy during which period they get a special rate of pay (fixed stipend per month). After the 4 years training period in naval establishment, the Apprentice Entry Artificers are advanced to the rank of Artificer Vth Class and their initial engagement of 10 years active service commences. At the end of it, they could also be kept in Fleet Reserve for 10 years. It may be mentioned that after one year in the rank of Artificer Vth Class, these Apprentice Entry Artificers are advanced to the rank of Artificer Acting IVth Class to complete the engagement 10 years active service. On the other hand, Direct Entry Artificers, to which class appellants belong, with qualification of 3 years Diploma in Engineering from recognized Universities in the country are directly enrolled to the rank of Artificer Acting IVth Class with initial engagement of 10 years active service. It may also be stated that in the rank of Artificer Acting IVth Class, the Apprentice Entry Artificers and Direct Entry Artificers are merged together, and are treated at par for the purposes of rank, work, promotions, pay and allowances, leave and other benefits allowed for sailors. They are all governed by the same Navy (Pension) Regulations, 1964. In their respective ranks, they relieve each other when transferred to ships and establishments.

7. These facts are noted, as stated by the appellants, because of the reason that the appellants are claiming that since Apprentice Entry Artificers are given the pension, after counting the 4 years training period in Naval Establishment, same treatment be given to the appellants as well. Question No. 2 framed by the AFT and referred to this Court touches upon this aspect.

8. Reverting to the facts of the appellants' case, as pointed out above, appellant Nos. 2 to 5 were engaged as Direct Artificers for a period of 10 years. All these appellants were engaged prior to July, 1976. This is the actual service rendered by them. According to them, they were drafted into Fleet Reserve for a period of 10 years and 50% of this period have been counted for pension. On that basis, they claim that they have become entitled to receive pension. Therefore, they made a request on May 10, 2012 to the respondents to grant pension to them. However, vide reply dated June 25, 2012, respondents turned down their request as 'not tenable in accordance with the extent rules/regulations'. The reason given by the respondents was that the appellants were not drafted into Fleet Reserve at all and, therefore, there was no reason to count 50% of the Fleet Reserve period. The respondents, in this behalf, referred to Government Order No. AD/5374/2/76/2214/S/D(N.II) dated July 3, 1976 as per which drafting into Fleet Reserve was discontinued from 1976 onwards and, therefore, the appellants were never drafted into Fleet Reserve. After receiving this rejection of their request, the appellants approach the AFT in the form of O.A. which has met the fate of dismissal, as already mentioned above.

9. A perusal of the impugned judgment of the AFT would reveal that the appellants were enrolled into Navy under Regulation 268(1) of the Navy Regulations, Part III. Regulation 269 thereof provides for an initial engagement of 10 years, followed by liability to remain 10 years in Fleet Reserve. However, further 10 years service in Fleet Reserve is subject to regulations of Fleet Reserve. At the time of recruitment itself of the appellants, it was made clear to them that they would be drafted into Fleet Reserve only if required and regulations for Indian Fleet Reserve specifically stipulate that 'no man can claim to join Fleet Reserve as a right'. Therefore, the appellants did not have any automatic right to get drafted into Fleet Reserve. In any case, in terms of Government's letter dated July 3, 1976, transfer of sailors into Fleet Reserve was discontinued and, therefore, no orders for drafting the appellants into Fleet Reserve were ever made. There is no notation on records that they are being drafted into Fleet Reserve on expiry of their active service. In this behalf, the AFT has quoted relevant portion of Government's letter dated July 3, 1976 which is as under:

> "SUB: CONDITIONS OF SERVICE OF SAILORS.
>
> I am directed to state that the President is pleased to approve the following modifications in the conditions of service of sailors:--
>
> (f) Transfer to Current Fleet Reserve:-- Transfer of sailors into the Fleet Reserve to be discontinued.
>
> 3. Appropriate Government Regulations/Orders will be amended in due course."

10. The AFT also found that subsequently, Regulations for the Navy was amended by the Government of India vide SRO.No.106 of 1978 dated 28th March 1978. Relevant portions of the SRO are given below:

"S.R.O.106:-- In exercise of the powers conferred by section 184 of the Navy Act, 1957 (62 of 1957), the Central Government hereby makes the following regulations further to amend the Navy Ceremonial, Conditions of Service and Miscellaneous Regulations,

1964, namely:--

2. In the Naval Ceremonial, Conditions of Service and Miscellaneous Regulations, 1964--

(i) in regulation 269, in sub-regulation (1), for the brackets and figure "(1)", the brackets, figure and words "(1) Old Entrants" shall be substituted, and after subregulation (1) as so amended, the following sub-regulation shall be inserted, namely:--

"(1A) New Entrants:--(a) Boys, Artificer, Apprentices and Direct Entry sailors may be enrolled for a period calculated to permit a period of 15 years' service to be completed from the date of enrolment or from the date of attaining the age of 17 years, whichever is later, provided their services are so long required. (IB)(a) In case of the existing sailors, their period of engagement shall be governed by sub-regulation (1), except that they shall not be transferred to Fleet Reserve.

(b) (IC) Persons joining service on or after the 3rd July, 1976 shall be deemed to be New Entrants."

11. After going through the various provisions of Navy Act, Navy Regulations, Part III and the aforesaid amendments, the AFT culled out the relevant features in the form of salient points in the following manner:

"25. Salient points that emerge from the above Regulations, which are of relevance in this case are:--

(a) Sailors having 10 years continuous service shall be liable, if required, for further service in Indian Fleet Reserve, subject to provisions of Regulations for Indian Fleet Reserve (Regulation 269).

(b) When an active service rating is within six months of completion of his term of enrollment, the Commanding Officer has to inform the Registrar of Reserves whether or not he is recommended for Fleet Reserve Service and his service certificate is to be endorsed accordingly (Regulation 11 of Fleet Reserve).

(c) Qualifications have been specified for enrolment into Fleet Reserves. Joining Reserves is not a Right (Regulations 4 and 6 of Fleet Reserves).

(d) Recruiting officers are mandated to explain and make the recruits fully understand terms and conditions of service and liabilities before they are enrolled into the Navy (Regulation 264 of Regulations for the Navy).

(e) A Fleet Reservist Certificate will be issued to each person on enrolment in Fleet Reserves.

26. It is evident from the Regulations that a Sailor after his active service has to be drafted into Fleet Reserve and it is not an automatic re-enrollment. There is no specific claim or right to join the Fleet Reserve as there are terms and conditions which have to be fulfilled by a person before he can be drafted into Fleet Reserve. It is also evident that, at the time of initial enrollment no recruit can be given any guarantee/promise of his being enrolled into Fleet Reserve as his performance in the active service and recommendations he receives would decide his eligibility for enrollment into Fleet Reserve. Therefore even prior to the promulgation of policy for discontinuance of drafting into Fleet Reserve from 1976, Respondents 1 and 2 were clearly at liberty to decide if a Sailor is to be enrolled into Fleet Reserve or not. In view of the above, we cannot agree with the submission of the learned counsel for applicants that they were made to understand anything else."

12. The appellants advanced two arguments before the AFT. In the first instance, it was argued that at the time of their recruitment into the service, which was before the Government's order dated July 3, 1976 was passed, they were given to understand that they would be rendering 10 years of active service followed by 10 years of Fleet Service. Thus, they understood that 50% of the Fleet Service was counted towards pension to enable them to receive pension. Hence, the Government was bound by Principle of Promissory Estoppel to accord the aforesaid benefit to them. Second argument advanced by the appellants was that the appellants, namely, Direct Entry Artificers and Apprentice Entry Artificers formed a homogenous class. Thus, when pensionary benefits were accorded to the Apprentice Entry Artificers, there was no reason to deny the same to the appellants and such a denial was discriminatory and violated the provisions of Article 14 of the Constitution of India. Both these contentions have been negated by the AFT. At the same time, as already noticed above, on both these aspects, questions of law have been framed while granting leave to appeal to the appellants.

13. We now proceed to take up the two questions for our consideration. Question No. 1 - Whether the applicants' reserve liabilities imposed at the time of enrolment ipso facto amounted to their being drafted to Fleet Reserve without any specific order to draft them to the Reserve on completion of regular Naval service? If so, whether the period of such reserve liability as per the stipulated scheme was liable to be taken into account for computing the length of service of the applicants for pension purposes?

14. To find an answer to the aforesaid question, we shall have to traverse through some relevant provisions of the Navy Act, the Naval Regulations Part-III as well as decision taken by the Government to discontinue with the policy of drafting into Fleet Reserve. Insofar as

Navy Act is concerned, following provisions therefrom are relevant for deciding the controversy.

> "14. Liability for service of officers and sailors:--
>
> (1) Subject to the provisions of sub-section (4), officers and sailors shall be liable to serve in the Indian Navy or the Indian Naval Reserve Forces, as the case may be, until they are duly discharged, dismissed with disgrace, retired, permitted to resign, or released.
>
> 17. Provisions as to discharge.—(4) Every sailor who is dismissed, discharged, retired, permitted to resign or released from service shall be furnished by the prescribed officer with a certificate in the language which is the mother tongue of such sailor and also in the English language setting forth—
>
> (a) the authority terminating his service;
>
> (b) the cause for such termination; and
>
> (c) the full period of his service in the Indian Navy and the Indian Naval Reserve Forces. [184A. Power to make regulations with retrospective effect.—
>
> The power to make regulations conferred by this Act shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the regulations or any of them, but no retrospective effect shall be given to any regulation so as to prejudicially affect the interests of any person to whom such regulation may be applicable."

15. The relevant regulations from the Pension Regulations for the Navy, 1964 are re-produced below:

> "78. Minimum qualifying service for pension - Unless otherwise provided, the minimum service which qualifies for service pension is fifteen years.
>
> 79. Service qualifying for pension and gratuity - (1) All service from the date of enrolment or advancement to the rank of ordinary seaman or equivalent to the date of discharge shall qualify for pension or gratuity with the exception of —
>
> 87. Sailors transferred to the reserve—A sailor transferred to the reserve after earning a service pension shall be granted such pension from the date of his transfer.
>
> 92. Reservist pension and gratuity--(1) A reservist who is not in receipt of a service pension may be granted, on completion of the prescribed naval and reserve qualifying service of ten years each, a reservist pension of rupees eleven per mensem or a gratuity of rupees nine hundred in lieu of pension.

(2) A reservist who is not in receipt of a service pension and whose qualifying service is less than the period of engagement but not less than fifteen years may, on completion of the period of engagement or on earlier discharge from the serve otherwise than at his own request, be granted a reservist pension at rupees seven hundred and fifty in lieu of pension."

16. Navy Regulations Part III laid down the conditions of service of sailors in the Navy. Some of the provisions thereof, with which we are concerned, are as under:

"261. Recruitment - The Chief of the Naval Staff may recruit sailors required for the Service.

(2) Recruitment of sailors shall be made through boy entry, artificer apprentice entry, and direct entry, as necessary....

268. Engagements - (1) Boys, Artificer Apprentices and Direct Entry sailors shall be enrolled for co0ntinuous service as provided in sub-regulation (1) of Regulation 269.

269. Continuous Service - (a) Old Entrants Boys, Artificer Apprentices and Direct Entry sailors may be enrolled for a period calculated to permit a period of 10 years' service to be completed from the date of attaining 17 years of age or from the date of being ranked in the Man's rank on successful completion of initial training, whichever is later, provided their services are so long required. Continuous Service sailors of all Branches shall be liable, if required, for a further 10 years' service in the Indian Fleet Reserve, subject to the provisions of the Regulation for the Indian Reserve.

(1-A) New Entrants:-

(a) Boys, Artificer-Apprentices and Direct Entry sailors may be enrolled for a period calculated to permit a period of 15 years service to be completed from the date of attaining the age of 17 years, whichever is later, provided their services are so long required.

(1-B) (a) In case of the existing sailors, their period of engagement shall be governed by sub regulation (1) except that they shall not be transferred to Fleet Reserve.

(1-C) Persons joining service on or after the 3rd July, 1976 shall be deemed to be New Entrants."

17.It will also be apt to reproduce Regulation 269 (unamended) as it existed prior to the amendments carried out in the year 1978, which is as follows:

"269. Continuous Service: - (1) Boys, Artificer Apprentices and Direct Entry sailors may be enrolled for a period calculated to permit a period of 10 years' service to be

completed from the date of attaining 17 years of age or from the date of being rated in the Mans rate on successful completion of initial training, whichever is later, provided their services are so long required. Continuous Service sailors of all Branches shall be liable, if required, for a further 10 years' service in the Indian Fleet Reserve, subject to the provisions of the Regulations for the Indian Fleet Reserve."

18. We have already reproduced portions of Government of India's decision dated 3rd July, 1976 whereby transfer of Sailors into Fleet Reserve was discontinued. Likewise, we have already extracted the relevant portions of SRO 106 dated 28th March, 1976. In addition, it would also be pertinent to note Regulations for Indian Fleet Reserve which are as follows:

"4. Regulation 4, lays down Qualification criteria in respect of Character, Efficiency, Medical Status and Age for joining the fleet reserve.

6. Claim to join Fleet Reserved:--No man can claim to join the Fleet Reserve as a right.

11. Enrolment:-- The Registrar of Reserves is authorized to enrol or re-enrol ratings in the Royal Indian Fleet Reserve, acting under the authority of the Officer Commanding the Royal Indian Navy.

(a) When an Active Service rating is within six months of completing his terms of enrolment the Commanding Officer of the ship in which he is serving is to inform the Registrar whether or not he is recommended for Fleet Reserve Service and is to endorse his Service Certificate accordingly.

13. Fleet Reservist Certificate:-- Every man on enrollment or re-enrollment in Royal Indian fleet Reserve is to be issued with a Fleet Reservist Certificate (Form RINF.3P). This certificate identifies the man as a member of the Royal Indian Fleet Reserve and contains a detachable Emergency Movement Order for use on General Mobilisation.

19. Regulation 19 lays down mandatory training period for reservists.

21. Notations on Service Certificates:-- On the conclusion of each period of training the Registrar will cause the following information to be entered in the Service Certificates of the ratings concerned:--

(a) Character.

(b) Ability in substantive rating held.

(c) Fitness to hold non-substantive rating (vide Article 7(v)] The Registrar is to sign the Service Certificate on page 4 as being satisfied that the prescribed training has been carried out and that the man is in possession of his Fleet Reservist Certificate and know where to report on mobilization."

19. Following position emerges from the conjoint reading of the aforesaid provisions:

(i) Once a person is enrolled as Sailor/Officer in the Indian Navy, he is liable to serve in the Indian Navy or in the Indian Naval Forces, as the case may be, until he is discharged, dismissed with disgrace, retired, permitted to resign or released.

(ii) In the event of discharge, dismissal etc, i.e., at the time of severance from Naval service, every sailor has to be furnished with a certificate in his mother tongue and also in English language. Such a certificate states the authority terminating his services; the cause of such termination; and the full period of service in the Indian Navy and the Indian Naval Reserve Forces.

(iii) In order to become qualified to receive service pension, minimum service of 15 years is required.

20. Calculating the qualifying period for the purpose of pension and gratuity, entire service from the date of enrolment or advancement to the rank of ordinary seaman or equivalent till the date of discharge is to be counted. Thus, whereas full continuous service in the Navy is to be reckoned for pension, insofar Fleet Reserve is concerned those who are drafted thereinto are entitled to count 50% of the period of Fleet Reserve as reckonable service towards pension.

21. Insofar as, drafting into Fleet Reserve is concerned, Regulations in respect thereof provide as under:

"(i) Those Sailors who are having 10 years' service as Sailors are eligible for drafting in Indian Fleet Reserve.

(ii) As per Regulation 269, those who have rendered 10 years' service, their service is to be treated as continuous service. This Regulation further provides that continuous service of Sailors of all branches shall be liable, if required, for a further 10 years' service in the Indian Fleet Reserve.

(iii) Regulation 4 of the Regulations for Indian Fleet Reserve lays down qualification criteria in respect of character, efficiency, medical status and age for joining the Fleet Service, which means only those who fulfill qualifications contained in Regulation 4 can be considered for drafting into Fleet Reserve. Further, Regulation 6 specifically declares that no person can join the Fleet Reserve as a matter of right. The manner of enrolment is mentioned in Regulation 11, as per which, Commanding Officer has to make a specific recommendation for such an enrolment, i.e., he has to say as to whether or not he is recommending a particular Sailor for Fleet Reserve service and his service certificate has to be endorsed accordingly.

(iv) In case of positive recommendation, a Fleet Reserve certificate has to be issued to such a person on enrolment in Fleet Reserve.

22. It is clear from the above that liability to serve in the Indian Fleet Reserve, if required, as stipulated in Regulation 269, is only when such a Sailor is drafted into Indian Fleet Reserve. There has to be, thus, a positive act of enrolment in the Fleet Reserve. A person who is enrolled as Artificer in the Indian Navy and completes 10 years' of service, cannot presume that he stands automatically enrolled in Fleet Reserve.

23. So far as Appellant Nos. 2 to 5 are concerned, there was no such enrolment in Fleet Reserve.

24. In fact, the appellants were conscious of the aforesaid position. That was the reason that Principle of Promissory Estoppel was invoked on the ground that since their enrolment was prior to July 03, 1976, the decision of the Government of India to discontinue transfer of Sailors into Fleet Reserve as contained in communication dated July 03, 1976 is not binding on them. Even if we proceed on that basis, the legal position that has been culled out from the relevant statutory provision and enumerated above, clearly shows that there was no promise held out to these appellants that after the completion of continuous service of 10 years as Sailors, they would be drafted into Fleet Reserve. The Tribunal has correctly remarked that at the time of initial enrolment no recruit can be given any guarantee/promise of his being enrolled into Fleet Reserve as his performance in the active service and recommendations he receives would decide his eligibility for enrolment into Fleet Reserve. Therefore, even prior to the promulgation of policy for discontinuance of drafting into Fleet Reserve from 1976, Respondent Nos. 1 and 2 were clearly at liberty to decide if a Sailor is to be enrolled into Fleet Reserve or not. It may be pertinent to mention that the aforesaid view of ours has not been taken for the first time. We are not treading on unchartered territory. Precisely, this very question has been decided by a three Judge Bench of this Court in *T.S. Das & Ors. v. Union of India & Anr*[3]. . The factual background in which the aforesaid judgment is rendered is identical as can be seen from the following question posed therein for determination:

> "25. In the absence of an express order of the competent authority to take the applicants on the Fleet Reserve Service, the moot question is: whether the applicants can be treated as deemed to be in the Fleet Reserve Service on account of the stipulation in the appointment letter—that on completion of 10 years of naval service as a Sailor, they may have to remain on Fleet Reserve Service for another 10 years. That condition in the appointment letter cannot be read in isolation. The governing working conditions of Sailors must be traced to the provisions in the 1957 Act or the Regulations framed there under concerning service conditions. From the provisions in the 1957 Act, there is nothing to indicate that the Sailor after appointment or enrolment is "automatically" entitled to continue in Fleet Reserve Service after completion of initial active service period of 10 years. The provisions, however, indicate that on completion of initial active service of 10 years or enhanced period as per the amended provisions is entitled to take discharge in terms of Section 16 of the

Act. The applicants assert that none of the applicants opted for discharge. That, however, does not mean that they would or in fact have continued to be on the Fleet Reserve Service after expiration of the term of active service as a Sailor. There ought to have been an express order issued by the competent authority to draft the applicant concerned in the Fleet Reserve Service. In the absence of such an order, on completion of the term of service of engagement, the Sailor concerned would stand discharged. Concededly, retention on the Fleet Reserve Service is the prerogative of the employer, to be exercised on case-to-case basis. In the present case, however, on account of a policy decision, the Fleet Reserve Service was discontinued in terms of Notification dated 3-7-1976."

25. The Court reproduced the aforesaid notification dated July 7, 1976 and continue with the discussion in the following manner:

"27. As noted hitherto, none of the relevant provisions even remotely suggest that the Sailor is "automatically" transferred to the Fleet Reserve Service. Whereas, it is expressly provided that on expiration of the term of service of engagement the Sailor would be placed on Fleet Reserve Service only if an express order in that behalf is passed by the competent authority to draft him on the Fleet Reserve and not otherwise. Section 16 of the Act merely gives an option to the Sailor to take a discharge after expiration of term of service of engagement. It is not a deeming provision that if such option is not exercised by the Sailor concerned, he would be treated as having been drafted on the Fleet Reserve Service for another 10 years "automatically".

28. Regulation 269 spells out the conditions of service. It reinforces the position that the services of a Sailor would be continued "so long required" or "if required". The second part of sub-regulation (1) of that Regulation uses the expression "if required", for further 10 years' service in the Indian Fleet Reserve, subject to the provisions of the Regulations for the Indian Fleet Reserve. This view taken by the Tribunal (Principal Bench, New Delhi) in *Niranjan Chakroborty v. Union of India*[1] *[Niranjan Chakroborty v. Union of India*[2]*,* commends to us.

29. As aforesaid, on introducing the new policy on 3-7-1976, the Fleet Reserve was discontinued and instead the Sailors in service at the relevant time were given an option to continue in active service for a further term of 5 years. Some of the Sailors opted to continue till completion of 15 years, who then became eligible for "service pension" having qualifying service.

30. The quintessence for grant of reservist pension, as per Regulation 92, is completion of the prescribed Naval and Reserve qualifying service of 10 years "each". Merely upon completion of 10 years of active service as a Sailor or for that matter continued beyond that period, but falling short of 15 years or qualifying Reserve Service, the Sailor concerned cannot claim benefit under Regulation 92 for grant of reservist pension. For, to qualify for the reservist pension, he must be drafted

to the Fleet Reserve Service for a period of 10 years. In terms of Regulation 6 of the Indian Fleet Reserve Regulations, there can be no claim to join the Fleet Reserve as a matter of right. None of the applicants were drafted to the Fleet Reserve Service after completion of their active service. Hence, the applicants before the Tribunal, could not have claimed the relief of reservist pension..."

26. In the absence of any such assurance of enrolment of drafting into Fleet Reserve, at the time of initial recruitment, the Principle of Promissory Estoppel cannot be invoked. The Tribunal has, in this behalf, taken note of certain judgments of this Court and on that basis rightly concluded that mere recruitment/enrolment for active as well as reserve service without making any order of transfer to Indian Fleet Reserve under Regulation 269 of Navy Regulation Part III as well as Regulations of Indian Fleet Reserve, it cannot be treated that any promise was accorded to the appellants about drafting into Fleet Reserve, at any time. We would, at this juncture, like to reproduce para 31 of T.R. Das case.

"31. The original applicants contend that if the Government Policy dated 3-7-1976 is applied to the serving Sailors, inevitably, it will result in retrospective application thereof to their detriment. That is forbidden by Section 184-A of the Act. This argument does not commend to us. In that, the effect of the Government Policy is to disband the establishment of the Reserve Fleet Service with effect from 3-7-1976. As found earlier, drafting of Sailors to the Reserve Fleet Service was not automatic, but dependent on an express order to be passed by the competent authority in that behalf on case-to-case basis. The Sailors did not have a vested or accrued right for being placed in the Reserve Fleet Service. Hence, no right of the Sailors in active service was affected or taken away because of the Policy dated 3-7-1976..."

27. It would, however, be pertinent to mention here that in T.R. Das, though the Court had specifically held that such direct Entry Artificers were not entitled to reservist pension, they were entitled for special pension, in terms of Regulation 95 of the Pension Regulations. The relevant portion of the discussion which ensued on this aspect is contained in paras 34 and 36 of the judgment in T.R. Das and these paras read as under:

"34. The next question is whether the Sailors appointed before 1973 were entitled to a special pension, in terms of Regulation 95 of the Pension Regulations. Indeed, this is a special provision and carves out a category of Sailors, to whom it must apply. Discretion is vested in the Central Government to grant special pension to such Sailors, who fall within the excepted category. Two broad excepted categories have been noted in Regulation 95. Firstly, Sailors who have been discharged from their duties in pursuance of the government policy of reducing the strength of establishment of the Indian Navy; or secondly, of reorganization, which results in paying off of any ships or establishment. In the present case, clause (i) of Regulation 95 must come into play, in the backdrop of the policy decision taken by the Government as enunciated in the Notification dated 3-7-1976. On and from that date, concededly, the Fleet Reserve Service has been discontinued. That, inevitably results in reducing the strength of the establishment of the Fleet Reserve of the Indian Navy

to that extent, after coming into force of the said policy. None of the Sailors have been or could be drafted to the Fleet Reserve after coming into force of the said policy—as that establishment did not exist anymore and the strength of establishment of the Indian Navy stood reduced to that extent. Indisputably, the Sailors appointed prior to 3-7-1976, had the option of continuing on the Fleet Reserve Service after expiration of their active service/empanelment period. As noted earlier, in respect of each applicants the appointment letter mentions the period of appointment as 10 years of initial active service and 10 years thereafter as Fleet Reserve Service, if required. The option to continue on the Fleet Reserve Service could not be offered to these applicants and similarly placed Sailors, by the Department, after expiration of their empanelment period of 10 years or less than 15 years as the case may be. It is for that reason, such Sailors were simply discharged on expiration of their active service/empanelment period. In other words, on account of discontinuation of the Fleet Reserve establishment of the Indian Navy, in terms of Policy dated 3-7-1976 it has entailed in reducing the strength of establishment of the Indian Navy to that extent.

36. Thus understood, all Sailors appointed prior to 3-7-1976 and whose tenure of initial active service/empanelment period expired on or after 3-7-1976 may be eligible for a special pension under Regulation 95, subject, however, to fulfilling other requirements. In that, they had not exercised the option to take discharge on expiry of engagement (as per Section 16 of the 1957 Act) and yet were not and could not be drafted by the competent authority to the Fleet Reserve because of the policy of discontinuing the Fleet Reserve Service w.e.f. 3-7-1976. The cases of such Sailors (not limited to the original applicants before the Tribunal) must be considered by the competent authority within three months for grant of a "special pension" from three years prior to the date of application made by the respective Sailor and release payment after giving adjustment of gratuity and death-cum-retirement-gratuity (DCRG) already paid to them from arrears. They shall be entitled for interest @ 9% p.a. on the arrears, till the date of payment."

28. We, thus, answer question no. 1 in the negative and hold that the appellants are not entitled to count 50% of the Fleet Reserve as they were never drafted into the said reserve. Consequently, the appellants are not entitled to reservist pension. However, their cases would be considered for grant of special pension on same lines as was done in T.R. Das judgment and directed in para 36 of the said judgment. Question No. 2 - Whether the applicants Nos. 2 to 5 were entitled to be treated at par with the Apprentice Entry Artificers for pension purposes only on the ground that both of them belong to the same homogeneous class of Artificers?

29. Insofar as Apprentice Entry Artificers are concerned they are getting pension and the appellants' claim that since Artificer is one homogeneous class, whether the Entry thereto is after completing the Apprenticeship course or it is a direct entry (as in the case of Appellants) all the Artificers are to be treated alike. There is no quarrel about this proposition. However, in the instant case, we are concerned with the question as to whether

the appellants are eligible for service pension even after they have rendered only 10 years of service (as they are held not entitled to count any period of Fleet Reserve in which they were never drafted). Had Apprentice Artificers also got the pension on rendition of 10 years' service, there would have been some force in the argument of the appellants. However, that is not so. As already noted above, insofar as Apprentice Entry Artificers are concerned, they had undergone 4 years' training in Naval establishment. Thereafter, they were advanced to the rank of Artificer V and their initial engagement of 10 years' active service commenced. After one year in the rank of Artificer Vth Class, these Apprentice Entry Artificers were advanced to the rank of Artificer acting IVth Class. In their cases, the training period of four years has been counted for considering their eligibility for the purpose of pension. This has happened pursuant to the judgment of this Court in A*nuj Kumar Dey & Anr. v. Union of India & Ors*[4]. . In the cases of Apprentice Entry Artificers, the Government had refused to reckon the period for the purpose of pension. The question before this court was as to whether the training period spent on Apprentice Artificers was liable to be taken into account for pension purposes. The Court decided the question in favour of the Apprentice Entry Artificers. Thus, these Apprentice Entry Artificers became entitled to pension on the inclusion of training period towards the service. Their case is, therefore, entirely different from the appellant' who are Direct Entry Artificers and had no benefit of such training.

30. An attempt was made by learned counsel for appellants to argue that Anuj Kumar Dey does not lay down correct law as the training period could not have been reckoned for calculating qualifying period for pension. However, it is not open to the appellants to raise such an argument. In the first place, this argument would not enure to the benefit of the appellants as it would not entitle them to pension in any case. Even if the contention of the appellants is presumed as correct, the only effect thereof would be to hold that even Apprentice Entry Artificer are not entitled to pension. We may note, however, that learned counsel for appellants was candid in his submission that he did not want Apprentice Entry Artificers to be deprived of their pension. Secondly, in any case, in the absence of Apprentice Entry Artificers, such an argument cannot be considered. Thirdly, the law laid down in Anuj Kumar Dey has held the filed for more than 20 years and there is no reason to upset the same. For all these reasons, we reject the contention and answer Question no. (2) against the appellants.

31. As a consequence, this appeal stands dismissed insofar as claim for reservist pension is concerned. However, their cases for grant of special pension shall be considered as directed above.

32. No order as to costs.

Judgment Referred.

[1]*(2010) SCC OnLine AFT 803*
[2]*(1979) 2 SCC 0409*
[3]*(1986) 2 SCC 0365*
[4]*(1997) 1 SCC 0366*