

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

17.

OA 2777/2023 with MA 3910/2023

Ex CPL Anaparthi Balaji Sashi Bhusan Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr Ram Niwas Bansal, proxy for Mr. Ravi
Kumar, Advocate

For Respondents : Mr. Neeraj, Sr CGSC

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
19.09.2023

MA 3910/2023

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 5440 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UOI & Ors Vs Tarsem Singh* 2009(1)AISLJ 371 and in *Ex Sep Chain Singh Vs Union of India & Ors* (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 3910/2023 is allowed and the delay of 5440 days in filing the OA 2777/2023 is thus condoned. The MA is disposed of accordingly.

OA 2777/2023

The applicant, vide the present OA makes the following prayers:



“ (a) To issue an order/direction to the respondents to grant the benefits of Pro-Rate Pension to the applicant for life.

(b) To direct the respondents to grant the benefits of Pro-Rate pension to the applicant with the arrears and interest @12% p.a. w.e.f. the date of discharge from Air Force Service.

(c) To pass any other order or direction that the Hon'ble Tribunal deems fit, just and proper in the light of the circumstances of the case.”

2. Notice of the OA was issued to the respondents which is accepted on their behalf.

3. The applicant in the instant case is aggrieved with the action of the respondents for not granting him the benefit of Pro-Rata Pension for the service rendered in the Indian Air Force. The applicant was enrolled in the Indian Air Force on 21.07.1997 and after rendering 10 years, 03 months and 21 days of service was discharged from the Indian Air Force at his own request on 11.11.2008 for taking up an appointment in the State Bank of India as a Probationary Officer. The applicant submits that he applied for the post of Probationary Officer through proper channel and that the Air HQ(VB) vide letter No.Air HQ/40726/4/PA(RC) dated 27.08.2008 had issued a No Objection Certificate to the applicant to appear in the recruitment process for the post of Probationary Officer and that the applicant was selected. Thereafter, the respondents discharged the applicant from the Indian Air Force service to permit him to join the State Bank of India which he joined on 24.11.2008. The applicant submits that



he fulfils the condition for the grant of pro-rata pension and is entitled to the grant of the same.

4. The services rendered by the applicant in the Indian Air Force were not counted for the purpose of earning civil pension by the State Bank of India. The applicant submits that he fulfils the condition for the grant of pro rata pension and is entitled to the grant of the same. The applicant submits that he made a representation/legal notice dated 30.12.2002 to the respondents requesting for grant of the benefit of pro-rata pension for the services rendered in the Indian Air Force i.e. 10 years, 03 months and 21 days in terms letter/circular No.8(3)/86/A/D(Pension)/Services) dated 19.02.1987 issued by the Ministry of Defence, Govt of India, containing the provision for the grant of Pro-Rata Pension to the commissioned officers of Armed Forces who after 10 years of service joined a public sector undertaking which had been extended for the benefit of PBORs also.

5. The learned counsel for the applicant places reliance on the verdict dated 09.01.2019 of the High Court of Delhi in ***Govind Kumar Srivastava Vs Union of India & Ors*** in W.P.(C) No.10026/2016 wherein vide para-8 of the said verdict, the Hon'ble High Court of Delhi, held to the effect:

"Para 8- The discrimination meted to PBOR/NCO like the applicant in the matter of grant of pro-rata pension is violative of Article 14 of the Constitution as it is not based on any rational criteria or principle. In other words, while the Commissioned Officer of the IAF are granted such pro-rata pension that benefits is not available to the PBOR/NCOs in terms of letter/circular dated 19.02.1987 issued by the MoD. The circular/letter states that pro-rata pension will be available only to Commissioned officers of the Defence Services on their

absorption/appointment in the Central Public Enterprises under the control of MoD. The eligibility for receiving such pro-rata pension is the completion of 10 years of qualifying services in the defence services."

6. The learned counsel for the applicant submits that the Hon'ble Supreme Court dismissed the SLP(C) 8813/2019 preferred by the Union of India(MoD) against the judgment in *Govind Kumar Srivastava Vs Union of India & Ors* in W.P.(C) No.10026/2016.

7. The learned counsel for the applicant further places reliance on the verdict of the High Court of Delhi in WP(C) 14435/2021 in *Tarlochan Singh Vs Union of India & Ors* and the common judgment dated 10.12.2019 in *Mohammad Israr Khan Vs Union of India & Ors* in WP(C) 5642/2019 and in WP(C) 6524/2019 in *Wudali Srikant Vs UOI & Ors* and the order of the Armed Forces Tribunal(RB) Lucknow in OA 331/2021 in the case titled *Dharm Raj Ex Cpl Vs Union of India & Ors* observing to the effect:

"10. The respondents have adverted to Regulation 121 of the Pension Regulations applicable to the members of the IAF which mandates completion of 15 years of service to be eligible for pension. There is no doubt that in terms of Regulation 121, for the purpose of regular pension a PBOR in the IAF would be entitled to earn pension only after completing 15 years of minimum qualifying service. However, in the present case we are not concerned with the issue of grant of regular pension but pro-rata pension. Regulation 121

is silent on the aspect of pro-rata pension. However, circulars/letters dated 19.02.1987 and 21.04.1988 provide for it but confine the benefit to Commissioned Officers only subject to the stipulation that the officer should have completed 10 years of service and should have been(a) permanently 'absorber' in a PSU thereafter or(b) appointed in such PSUs on the basis of their own applications sent through proper channel and if they are permitted to retire prematurely from service to take up such appoints. In the present case the applicant comes under the provision(b) above as he had applied for higher post in DRDO after obtaining no objection from the Air Force authorities and got selected also. Thereafter, he applied for premature discharge to join his new post in DRDO. The applicant had put in 09 years 11 months and 11 days service prior to discharge which is short of 19 days for completion of ten years service for grant of pro-rata pension. However, since the letters dated 19.02.1987 and 21.04.1988 are not strictly applicable to PBORs, there appears to be a gap in the required policy that could otherwise have covered the applicant's case. Nevertheless, judgments passed by Hon'ble AFT(PB), New Delhi in Ex Sgt Godina Rajasekhar(supra) and Hon'ble Delhi High Court in Brijlal Kumar(supra) come to the aid of the applicant. In both these judgments it has been held that PBORs are also eligible for grant of pro-rata pension if they serve for atleast 10 years and get selected/absorbed in PSUs in terms of Brijlal Kumar & Ors(supra). For convenience sake extracts of para 43Y and 45 are reproduced as under:

"43Y.'xxxxxxThe circular/letter dated 19th February 1987 does not on the fact of it contain any reason for conferment

of benefit of pro-rata pension to Commissioned Officers only. We have in this context also perused the counter affidavit in WP(C) No.98/2020 referred to by Mr. Sushil Kumar Pandey, Advocate. Though the same sets out the different provisions in the Air Force Act and the Air Force Rules pertaining to Commissioned Officers and Airmen, to contend that the same are treated differently but fails to plead why, while a Commissioned Officer not serving the minimum period of eligibility for earning pension, when being discharged for employment elsewhere in terms of letter/circular dated 19th February, 1987, has been conferred benefit of pro rata pension, a Airmen, similarly being discharged, has not been conferred the same benefit."

45. However, once we have agreed with the view taken in Govind Kumar Srivastava(supra) of the circular/letter dated 19th February, 1987 discriminating Airmen vis-a-vis Commissioned Officers to be without any rational basis, merely because implementation of the said decision qua Airmen carries a heavy financial burden, cannot come in the way of the consequences of holding the same to be discriminatory and order of payment of pro rata pension to Airmen, not following. Reference in this regard may be made to All India Judges Association vs Union of India, (1993) 4 SCC 288; State of Mizoram Vs Mizoram Engineering Service Association, (2004) 6 SCC 218 and State of Rajasthan vs Mahendra Nath Sharma, (2015) 9 SCC 540, holding that the State cannot take a plea of financial burden to deny the legitimate dues."

11. Thus, we can infer that the applicability of provisions of the letter dated 19.02.1987 to PBORs is no longer res integra and has attained finality and hence the applicant is to be treated to be eligible for pro rata pension in terms of this order.

12. The issue that now remains to be adjudicated upon is whether the applicant meets the 10 year minimum service rule for earning pro rata pension. Admittedly, the applicant's service falls short of 10 years by 19 days. Considering that there are several Rules, judgments and policies on condonation of shortfall in service for earning service pension, we consider that it would not be improper to condone the shortfall of 19 days in this case also as a one time special case.

13. Further, we fell it improper to make a hyper technical distinction between PSU and a Govt Deptt(i.e. DRDO in this case). The applicant was absorbed in DRDO which is nothing but another Deptt of the same Ministry i.e. Ministry of Defence and therefore, even if DRDO is not strictly a PSU, we see no reason to make hyper technical distinction between the two, albeit only for the purpose of grant of pro rata pension as in this case."

8. The respondents fairly do not dispute the settled proposition of law put forth on behalf of the applicant in view of the verdicts relied upon on behalf of the applicant.

9. The law on 'pro-rata pension' has already been laid down by the Hon'ble High Court of Delhi in the case of *Brijlal Kumar Vs Union of India and Ors* connected petitions 2020 SCC Online Del 1477 and in *Govind Kumar Srivastava Vs Union of India* 2019 SCC Online Del 6425(D B) against which the SLP(C) No.8813/2019 has been dismissed on 26.04.2019, though the question of law was left over.

10. Thus, as the issue referred to under consideration in the present OA is no longer *res integra* in view of the verdicts of the High Court of Delhi in *Brijlal Kumar Vs Union of India and Ors* connected petitions 2020 SCC Online Del 1477 and in *Govind Kumar Srivastava Vs Union of India* 2019 SCC Online Del 6425(DB) against which the SLP(C) No.8813/2019 has been dismissed on 26.04.2019 and in OA 690/2016 titled *Ex Sgt Godina Rajasekhar Vs Union of India & Ors* dated 10.11.2017 of the Armed Forces Tribunal(PB) and as the facts of the instant cases are in *pari materia* with the facts of the said case, as the applicant in the instant case had completed the period of qualifying length of service for eligibility of pro-rata pension of 10 years and as the applicant herein joined the State Bank of India as a

Probationary Officer, after issuance of a No Objection Certificate by the respondents issued vide Letter No. Air HQ/40726/4/PA(RC) dated 27.08.2008, the applicant herein is entitled to the grant of pro rata pension. The OA No. 2777/2023 is thus allowed.

11. The respondents are thus, directed to:

(a) pay pro-rata pension to the applicant w.e.f. from the date of discharge along with arrears within a period of three months from the date of receipt of copy of this order failing which the arrears shall attract interest @6% p.a. till the date of actual payment.

12. However, in view of the verdict of the Hon'ble Supreme Court in *Union of India & Ors Vs Tarsem Singh* (2008) 8 SCC 648, the payment of the arrears for the grant of the pro rata pension shall be confined to commence from a period of three years prior to the institution of the present OA.

13. There shall be no order as to costs.

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

(JUSTICE ANU MALHOTRA)
MEMBER (J)

/CHANANA/