

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

G..

OA 388/2019 with MA 939/2019

Ex Cpl Dilip Kumar

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Rakesh Kumar Singh, Advocate

For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate

CORAM

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

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

ORDER
06.02.2024

Vide our detailed order of even date we have allowed the OA 388/2019. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court.

After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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ORDER

OA 388/2019

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

“(a) Quash and set aside the impugned letter No. Air HQ/99798/778926/SP/DAV dated 20.02.2019. And/or

(b) Direct respondents to condone the short fall of deficiency of 09 months and 26 days and grant Service Pension to the applicant wef the date of his retirement along with all retiral benefits. And/or

(c) Direct respondent to pay the due arrear of service pension with interest @12% p.a.

(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost against the respondents.”

2. The applicant Ex Cpl Dilip Kumar was enrolled in the Indian Air Force on 12.01.2004 and was discharged from service on 16.03.2018 under the clause "at his own request" before fulfilling the conditions of enrolment to join a civil post in other organization for better prospects. Prior to discharge from service, the applicant had rendered a total of 14 years and 63 days of qualifying regular service (excluding one day of non-qualifying period due to EOL) and he was not transferred to any Air Force Reserve.

3. The applicant places reliance on Regulation 121 of the Pension Regulations for the Armed Force Personnel 1961 (part-I), Regulation 114 thereof to submit to the effect that though in terms of Regulation 121 of the said Regulations, the minimum qualifying service to earn service pension is 15 years, Regulation 114 of the same provides for under condition of deficiency in service upto six months for eligibility of service pension. *Inter alia* the applicant submits that the Govt of India, Ministry of Defence letter no. 4684/DIR(PEN)/2001 dated 14.08.2001 further provides for condonation of shortfall beyond six months upto twelve months and that in as much as the applicant had put in 14 years, 2 months and 4 days of regular service with the deficiency of nine months and twenty six days only in qualifying in

regular service for pension he is entitled to condonation of shortfall of service of nine months and twenty six days and submits that he is entitled to grant of service pension.

4. Reliance is placed on behalf of the applicant in support of his contentions on the order of this Tribunal dated 10.04.2015 in OA 396/2014 in *Ex AC Hemraj Singh vs. UOI & Ors.*, the verdict of the Hon'ble High Court of Bombay in *Gurumukh Singh vs. UOI & Ors.* in WP(C) No. 430/2005 which struck down Regulation 82(a) for the Pension Regulation for Navy, 1964 which is in *pari materia* to Regulation 114(a) of the Pension Regulation for the Air Force, 1961 and Para 125 of the Pension Regulation for the Army, 1961. The applicant further submits that SLP No. 13893/2007 filed against the judgment dated 22.11.2006 of the Hon'ble High Court of Bombay was dismissed by the Hon'ble Supreme Court on 23.07.2007.

5. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *UOI & Anr. vs. Surender Singh Parmar (2015) 3SCC 404* to contend to similar effect.

6. Inter alia, the applicant submits that when a personnel/employee is given relief by the Court, all other identically situated persons need to be treated alike by extending the benefit or

there would be discrimination and violation of Article 14 of the Constitution of India. Inter alia, the applicant submits that this principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by the Courts from time to time postulates that all similarly situated persons should be treated alike. Reliance in relation thereto was placed on behalf of the applicant on the verdicts of the Hon'ble Supreme Court in the case titled Inder Pal Yadav and Ors Vs Union of India and Ors 1985 SCR(3) 837 and in KC Sharma Vs Union of India 1997(6) SCC 721, to contend to similar effect.

7. The respondents on the other hand placed reliance on the orders dated 31.01.2017 and *Ex CPL Adesh Kumar Singh* in WP(C) 3567/2017 of the Hon'ble High Court of Allahabad, and placed reliance on the orders dated 15.01.2016 in OA 37/2015 in *Ex Sgt Jyotish Prabhakaran* as also on orders of the Hon'ble AFT (RB) Kochi Order dated 17.08.2016 in OA 141/2015 as *Ex Sgt Unnikrishnan Kunnummal Lakshmanan vs Union of India & Ors.*, Hon'ble AFT (PB) New Delhi order dated 11.04.2018 in OA 1674/2016 as *Ex Sgt Chanan Mal vs. Union of India & Ors.* and

Hon'ble AFT (PB) New Delhi order dated 18.05.2018 in OA No. 1675/2016 as *Ex Cpl Mamraj Singh vs UOI & Ors.*

8. The respondents thus submit that the applicant does not fulfill the eligibility conditions and is not entitled to the grant of the condonation of deficiency in qualifying service in as much as he was discharged from the Indian Air Force on 16.03.2018 at his own request and the respondents thus submit that the provisions of the Regulation 114 are not applicable in the instant case and that the applicant is not eligible for condonation of shortfall of deficiency in qualifying service.

9. The applicant further submits that as per para 121 of the Pension Regulations for the Air Force, 1961, it is provided that:

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

Inter alia, the applicant submits that in terms of para 114 of the Pension Regulations for the Air Force 1961, it is provided to the effect:

***"114. Except in the case of-- (a) an individual who is discharged at his own request,
b) an individual who is eligible for special pension or gratuity under regulation 144, or***

(c) an individual who is invalided with less than 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 six months in each case."

10. The Government of India, Ministry of Defence GOI/MoD letter No. 4684/Dir (Pension)2001 dated 14.08.2001 stipulates to the effect:-

"1. Sanction is hereby accorded in pursuance of MOD ID No.34/2001/(O&M) dated 3.8.2001 for delegation of administrative powers with the approval of Raksha Mantri to the Service Hors in respect of the subjects indicated below:

(a)(i).....

(ii).....

(iii).....

(iv).....

(v) Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months.

(vi) Time bar sanction for filing appeals for Ordinary Family Pension. Special Family Pension, disability Pension etc. respect of officers and PBOR beyond 12 months.

(vii) Grant of ex-gratia award to Cadets on death/disability within the Govt. approved terms and conditions.

(viii) Pensionary award to officers dismissed from Service otherwise than with disgrace/cashiered.

(ix) Pensionary award to officers who are discharged, called upon to resign or are retired.

(x) Grant of pension to PBOR dismissed from Service.

- (xi) Grant of Disability Pension to officers.*
- (xii) First appeal against rejection of Ordinary Family Pension. Special Family Pension, Disability Pension/ex-gratia award etc. to officers and PBOR.*
- (xiii) First claim for pension and gratuity submitted after 12 months from due date where Pension Sanctioning Authority is not satisfied with reasons for delay.*
- (xiv) Implementation of judgments delivered by various Courts CATS including those with financial implications where further appeal is not contemplated.*
- (b) Approving Authority in the Services HQrs in respect of the above subjects will be AG/COP AOP/AOA as the case may be. Any further re-delegation of these powers will require prior approval of Ministry of Defence.*
- c) Authenticative Authorities for authenticating of orders/ documents will be the authorities as specified in Ministry of Home Affairs SO No. 2297 dated 03.11.1958. Further, the complaints/ written statement in suits in any court of civil jurisdiction or in writ proceedings by or against the Central Government shall be signed by the authorities indicated in the Ministry of Law's Notification dated 14.02.1990. Any further devolution of powers in this regard will require approval of MHA and Ministry of Law respectively. Proposal for this purpose, if need be, may be initiated by the Service HQrs. and be referred to these Ministries for issue of necessary corrigendum through D(O&M) Section of this Ministry.*
- (d) Concurrence of Integrated Finance shall continue to be obtained wherever required as hitherto for without involving this Ministry."*

11. The respondents further submit that the condonation of deficiency in qualifying service has been allowed in respect of personnel discharged compulsorily due to unsuitability, incompetency, inefficiency etc., as they are compelled to go out from service in order to maintain the highest amount of discipline/efficiency and competency in the Indian Air Force in order to ensure its combat readiness at all times. The respondents further submit that the Govt of India expends considerable time and huge funds for the training of defence personnel and if the provisions for condonation of deficiency in service are made available to airmen leaving service at their own request, then the personnel would start leaving the service 12 months earlier and allowing them the benefit of condonation of deficiency in service would create a bad precedent for other personnel as they would start seeking premature retirement after rendering less than the mandatory service or before completing 15 years of service which will defeat the purpose of the laid down period of engagement framed by the Govt of India. The respondents further submit that the Govt of India spends huge funds on training of defence personnel and to fill the vacancies created by them, fresh recruitment

will have to be carried out which will be an additional burden on the Govt.

ANALYSIS

12. In as much as, the Regulation 114(a) of the Pension Regulations for the Air Force 1961 Part-1 which prohibits condonation of deficiency in service of an individual seeking condonation of a period of six months for completion of 15 years of service to be eligible to service pension or reservist pension if the individual has been discharged on his own request though it permits the grant of said condonation of the shortfall in service to an individual to make him eligible for pension in view of the said Regulation 114(a) or to an individual with less than 15 years of service, service pension or reservist pension by the competent authority after six months in each case has already been held vide the order dated 10.04.2015 of the AFT(PB) in OA 396/2014 in ***Hem Raj Singh Vs Union of India & Ors.*** to be violative of Article 14 of the Constitution of India which being substantially similar to Regulation 82(a) of the Navy Pension Regulations for Navy, 1964 with a challenge thereto having not been repelled by the Hon'ble High Court of Bombay in ***Gurmukh Singh***

(supra), which verdict of the High Court of Bombay(supra) has not been set aside by the Hon'ble Supreme Court in the case of *Surender Singh Parmar & Union of India & Ors*(supra) vide order dated 16.11.2007 having held therein that in the absence of any challenge before the Supreme Court, their Lordships were not inclined to decide the question with regard to Regulation 82(a) of the Pension Regulation for Navy, 1964 which has already been declared ultra vires Article 14 of the Constitution of India by the High Court of Bombay in *Gurmukh Singh* (supra), we thus, do not find any reason to deviate from the conclusion dated 10.04.2016 of the Armed Forces Tribunal (PB) in OA 396/2014 in *Ex Ac Hemraj Singh Vs Union of India & Ors..*

13. As regards the reliance that has been placed on behalf of the respondents to the effect that the statutory provisions of Regulations 114 have also been upheld by the Regional Bench of the AFT at Kochi vide its order dated 15.01.2016 in OA No.37/2015 titled as *Ex Sgt Jyothish Prabhakaran Vs Union of India & Ors* and other similar matters by the Principal Bench of AFT New Delhi the details of which are mentioned below for reference:

(a) AFT(RB) Kochi Order dated 17.08.2016 in OA 141/2015 titled as ***Ex Sgt Unnikrishnan Kunnummal Lakshmanan Vs Union of India & Ors.***

(b) AFT(PB) New Delhi order dated 11.04. 2018 in OA No. 16784/2016 titled as ***Ex Sgt Chanan Mal Vs Union of India & Ors.***

(c) AFT(PB) New Delhi order dated 18.05.2018 in OA 1675/2016 titled as ***Ex Cpl Mamraj Singh Vs Union of India & Ors.,***

the reliance placed on the same is wholly misplaced in as much as the said orders are based on the facts of those cases.

14. The reliance that has been placed on behalf of the respondents on the verdict of the Hon'ble Supreme Court in case titled ***Amit Kumar Roy Vs Union of India & Ors.*** (2019) 7 SCC 369 is equally misplaced in as much as the facts therein are not in *pari materia* to the facts of the instant case.

15. As has also been observed by us hereinabove, SLP No. (Civil)13893/2007 filed by the Union of India against the judgment dated 22.11.2006 of the High Court of Bombay ***Gurmukh Singh Vs Union of India & Ors*** in WP(C) No.430/2005 was dismissed. The provisions of Regulation 82(a) of the Pension Regulations for the Navy, 1964 are in *pari materia* to Regulation 114(a) of the Pension

Regulations for the Air Force, 1961 by which the applicant is governed.

16. Vide order dated 31.05.2013 in OA 363/2019 titled ***Ex CPL Nishant Kumar Vs Union of India & Ors.***, this Tribunal has already granted relief in relation to the prayers made by the applicant thereto, a personnel of the Indian Air Force who sought condonation of shortfall of deficiency of service for 05 months and 23 days for grant of service pension alongwith retiral benefits by observing vide Para 17 thereof to the effect :-

“17. As has also been observed by us hereinabove, SLP No. (Civil)13893/2007 filed by the Union of India against the judgment dated 22.11.2006 of the High Court of Bombay-Gurmukh Singh Vs Union of India & Ors in WP(C) No.430/2005 was dismissed. The provisions of Regulations 82(a) of the Pension Regulations for the Navy, 1964 are in pari materia to Regulations 114(a) of the Pension Regulations for the Air Force, 1961 by which the applicant is governed.”

Vide order dated 06.07.2023 in OA 428/2019 in ***Ex Sgt Sushant Kumar Baral vs. UOI & Ors.*** likewise condonation of shortfall of 10 months and 02 days of service was granted to the applicant thereof who was enrolled in the Indian Air Force and was discharged after

completion of 14 years, 01 months and 28 days of service at his own request before fulfilling the conditions of enrolment.

17. As has also been observed by us hereinabove, SLP No. (Civil)13893/2007 filed by the Union of India against the judgment dated 22.11.2006 of the High Court of Bombay **Gurmukh Singh Vs Union of India & Ors.** in WP(C) No.430/2005 was dismissed. The provisions of Regulations 82(a) of the Pension Regulations for the Navy, 1964 are in *pari materia* to Regulations 114(a) of the Pension Regulations for the Air Force, 1961 by which the applicant is governed.

18. There is no reason for us to differ from our observations in OA 363/2019 in **Ex CPL Nishant Kumar Vs Union of India & Ors.** (supra) and OA 428/2019 in **Ex Sgt Sushant Kumar Baral** (Supra) thus in as much as Regulation 114 of the Pension Regulations for the Air Force, 1961 by which the applicant is governed has been held to be violative of Article 14 of the Constitution of India vide order dated 10.04.2019 of the AFT(PB), New Delhi in OA 396/2014 titled **Ex AC Hemraj Singh Vs Union of India & Ors.** wherein the condonation in shortfall in service of less than 12 months was condoned, the prayer in relation to condonation of shortfall in service to an individual to make

him eligible for pension in relation to Para 114 (a) of the Pension Regulations for the Air Force, 1961 who is invalided with less than 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 upto six months in each case.

19. As already observed by us, the provisions of Regulation 82(a) of the Pension Regulations for the Navy, 1964 has been held to be ultra vires the Constitution of India and the same is no more *res integra* in view of the verdict of the Hon'ble High Court of Bombay in ***Gurmukh Singh Vs Union of India & Ors.*** and the SLP No.(Civil) 13893/2007 filed by the Union of India against the said judgment dated 22.11.2006 was dismissed by the Hon'ble Supreme Court. The provisions of Regulations 82(a) of the Pension Regulations for the Navy, 1964 are in *pari materia* to Regulation 114(a) of the Pension Regulations for the Air Force, 1961 by the which applicant is governed. The facts of the instant case are in *pari materia* with the facts of the cases in ***Ex CPL Nishant Kumar Vs Union of India & Ors.*** and in ***Ex Sgt Sushant Kumar Baral vs. UOI & Ors.*** (Supra).

20. In view of the various verdicts examined and the Govt of India, Ministry of Defence letter No.4684/Dir(Pen)2001 dated 14.08.2001

vide which the condonation of shortfall in qualifying service for grant of pension in respect of PBOR beyond six months and upto 12 months has already been granted, taking into consideration Para 5 of the Govt of India, Ministry of Defence Instructions dated 30.10.1987 in calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year for reckoning qualifying service, the applicant is entitled to claim for the condonation of shortfall in qualifying service for the grant of pension beyond six months also and upto 12 months.

21. In view of the prayer made by the applicant is allowed. The impugned letter No. Air HQ/99798/778926/SP/DAV dated 20.02.2019 is set aside. The shortfall of 09 months and 26 days of qualifying service of the applicant for the grant of service pension is condoned.

CONCLUSION

22. The instant OA 388/2019 is, therefore, allowed with the following directions; that we

“(a) Quash and set aside the impugned letter No.
Air HQ/99798/778926/SP/DAV dated 20.02.2019.

(b) Condone the short fall of deficiency of 09 months and 26 days and grant Service Pension to the applicant wef the date of his retirement along with all retiral benefits.

(c) The respondents shall pay the due arrear of service pension with interest @6% p.a.”

23. No orders as to costs.

Pronounced in the open Court on the 6 day of February,

2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/yogita/