

COURT NO. 1  
ARMED FORCES TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

OA 357/2016

Shri Bhawani Dutt Notyal ..... Applicant  
Versus  
Union of India & Ors. .... Respondents

For Applicant : Mr. S S Pandey, Advocate  
For Respondents : Mr. Arvind Patel, Advocate

Date- 12 November, 2024


CORAM

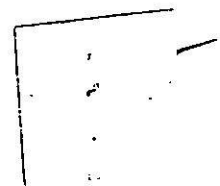
HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON  
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Invoking the jurisdiction of this Tribunal under Section 14, the applicant has called in question tenability of the order dated 23<sup>rd</sup> April, 2015 (annexure A-1) whereby request for grant of pension to the applicant has been rejected on the ground that he has only rendered 15 years and 23 days regular service at the time of his discharge and in accordance to the provisions of regulation of 145 of the Pension Regulation for Army 1961 Part-I, NC(E) he has to render 20 years of regular qualifying service to become eligible for pension.

2. It is the case of the applicant that the terms and conditions of appointment of the applicant entitles him for pension, the subsequent changes in the rules which did not





form the original terms and conditions cannot be imposed upon the applicant to deny him the pensionary benefit.

3. Facts in brief indicate that the applicant was enrolled in the Indian Air Force as a NC (E) on 09<sup>th</sup> July, 1975 and was discharged from service on 31<sup>st</sup> September, 1990. At the time of applicant's discharge, he had rendered 15 years and 23 days of regular service. According to the applicant, he was discharged on fulfilling the terms and conditions of enrollment under Air Force Rules, 1969, Chapter-III, Rule-15 Clause 2(6).

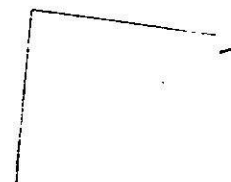
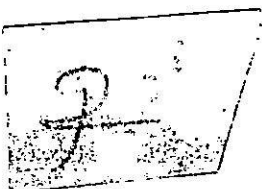
4. It is further the case of the applicant that prior to retirement all formalities for grant of pension/family pension was completed and forwarded to the competent authority and subsequently to the Pension Paying Office and the applicant was recommended for payment of pensionary benefit. Even though all the formalities for grant of pension to the applicant was completed but by the impugned order (annexure A-2) the competent authority informed the applicant that he is not entitled for pension on the ground that he has not completed 20 years of service.

5. Learned counsel for the applicant submitted the written submission on 22<sup>nd</sup> October, 2024 and argued that it is an

admitted position that the applicant was enrolled in the category of NC (E) non-combatant on 9<sup>th</sup> July, 1975 and at the time of discharge he had completed 15 years and 23 days of qualifying service, the respondents also admit the same in Para 1 of their counter affidavit. It is further clear from the records that the applicant was not given extension beyond 15 years on the ground that extension for the period of 20 years was not permissible in the case of non-combatant.

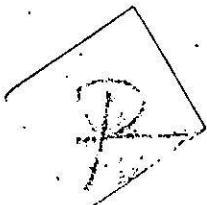
6. It is the case of the applicant that the Pension Regulation for Army was promulgated in the year 1961 where the qualifying service for pension as per Regulation 145 was prescribed as 20 years only for non-combatant in the Army. Based on the same Air Force Instructions 12/69 was promulgated for the non-combatant in the Air Force and Para 24 of the said AFI clearly indicate that "Pension- Retiring, disability and family pensions will be admissible at the rates and under the rules prescribed for similar categories on the Army side. Para 24 of the AFI 12/69 reads as under:-

**"24. Pension- Retiring, disability and family pensions will be admissible at the rates and under the rules prescribed for similar categories on the Army side. In the case of non-combatants drawn from**



“serving civilian employee who have to their credit pensionable civilian (temporary and permanent) service, orders will issue later in regard to counting of such service for pension as NC(E).”

7. It is stated that the Government of India vide letter dated 13.12.1971 in respect of army obliterated the difference of non-combatant and combatant and the qualifying service for pension was initially fixed at 18 years but subsequently in 1973 Para 143, 152 of the Pension Regulation of the Army was modified and the qualifying service was reduced to 15 years to be eligible for pension for the combatant, the above Pension Regulation for the Army according to the applicant i.e., Pension Regulation for the Army, 1961. In support of the aforesaid contention applicant placed reliance on the position indicated by a Coordinate Bench of this Tribunal in OA 495/2015 Ex NC(E) Banbari Lal Vs. Union of India and Ors. decided on 19<sup>th</sup> May, 2016 and refers to Para 9, 10 and 11 of the aforesaid judgment to canvass his contention that according to rules applicable to the Army the period of qualifying service for pension was 15 years and the distinctions between combatant and non-combatant has been removed.



8. It is the case of the applicant that based on the aforesaid position when the applicant joined the service on 9<sup>th</sup> July, 1975 under AFI 12/69 in accordance to the provisions of Para 24 of the Pension Regulation of the Army, the applicant was entitled for Pension after serving for 15 years but now by relying upon the AFI 14/1980 and Para 24 thereof, so also on the basis of government's decision taken at the time of implementation of 4<sup>th</sup>, 5<sup>th</sup> CPC and the 6<sup>th</sup> CPC, respondents contend that the qualifying service for earning pension is 20 years which according to the applicant is unsustainable in law. It is the contention of learned counsel for the applicant that the basic terms and conditions of the service which includes the right to receive pension upon superannuation as applicable at the time of notification of the post or at the time of appointment cannot be later on altered to the prejudice of the incumbents of the post after commencement of the selection process and the contract of appointment is finalized as per the notified procedure. On this ground, it is the case of the applicant that change of service condition after joining of the applicant is arbitrary, erroneous and unreasonable. Applicant placed reliance on the judgment of the Hon'ble Delhi High Court in

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the case of Inspector Rajendra Singh and Ors. Vs. Union of India and Ors. 2017 SCC Online Del 7879 and in the case of Pawan Kumar and Ors. Vs. Union of India and Ors. WP(C) 12712/2021 (Neutral Citation No. 2023/DHC/000201 in support of his contention.

9. Respondents have refuted the aforesaid submissions of the applicant and it is their case that this Tribunal does not have jurisdiction to entertain this application. However, they admit the fact that the applicant was enrolled in the Indian Air Force on 09.07.1975 and at the time of discharge on 31.09.1990 under the clause pertaining to fulfillment of condition of enrollment he was discharged after rendering 15 years and 23 days of service. However, it is their case that the NC(E) in the Indian Air Force are governed by AFI 12/69 and Para 24 of the same deals with pension which stipulates that the pension will be admissible to the members of the Indian Air Force in accordance to the rules prescribed on the similar categories on the Army side. It is stated that AFI 12/69 was superseded by AFI 14/80 and as per provisions of AFI 14/80 the minimum regular qualifying service required to earn pension for NC(E) is 20 years, i.e., in accordance to the provisions of Pension Regulation 145 as



applicable in the case of the applicant. It is also clarified that the Air Headquarters vide letter dated 02.05.1996 as per AFI 14/80 read along with Regulation 145 of Pension Regulation for Army, 1961, Part-I an NC(E) in the Army is eligible for pension only after 20 years of regular service. Respondents rely upon Regulation 145 of Pension Regulations for the Army-1961 (Part-I) and Air Headquarter letter dated 2<sup>nd</sup> May, 1996 and submit that keeping in view the order that have come on record, the service rendered by the applicant is less than 20 years, i.e., only 15 years and 23 days and the applicant is not entitled to benefit.

10. While hearing the matter on 29.08.2023 we had directed the respondents to produce the original terms and conditions of contract along with AFI 12/69 and AFI 14/80 as referred to in the counter affidavit and the same has been brought on record by way of an additional affidavit by the respondents.

11. Having heard learned counsel for the parties on the issue in question, we find that when the applicant was recruited on 09.07.1975, AFI 12/69 was promulgated and applicable to non-combatant in the Indian Air Force. As per Para 24 of the AFI which is reproduced hereinabove, it is

clearly stipulated that the retiring, disability and family pension will be admissible at the rates and under the rules prescribed for similar categories on the Army side and prior to applicant's joining into service the Government of India vide letter dated 13.12.1971 in respect of Army obliterated the difference between non-combatant and combatant and the qualifying service for pension which was 18 years as per Para 143 to 152 of the Pension Regulation of the Army was deleted and the qualifying service was reduced to 15 years as applicable to the combatant under the Pension Regulation for the Army.

12. In fact in the judgment rendered by this Tribunal in the case of Ex NC(E) Banbari Lal Vs. Union of India and Ors. (OA 495/2015) decided on 19.05.2016, this exact issue has been considered and in the matter of granting pensionary benefit to the employee and while considering so, the provisions of AFI 12/69 dated 1<sup>st</sup> April, 1980 Section 24 thereto has been considered and in Para 9 the rule position has been detailed wherein the rule position as indicated by us in this order is found to be correct and we find that initially before coming into force of the AFI 14/80, the AFI 12/69 was applicable and at that point of time the government of

India letter dated 31.12.1971 was applicable whereby the difference in the Army between non-combatant and combatant was removed and subsequently in the year 1973 the qualifying service for grant of pension was reduced to 15 years for all concerned in the Army.

13. That being so when the applicant joined service on 09.07.1975 the contract of service was governed by AFI 12/69 and as contended by the applicant by applying Para 24 of the Pension Regulation of the Army at the time of joining of service of the applicant the qualifying period for earning the pension was 15 years only. It was only after AFI 14/80 came into force that the qualifying period was increased from 15 years to 20 years. The issue in question therefore would be- "can based on a subsequent amendment to the contract of service, the original contract which entitles the applicant to earn pension after 15 years of service be given effect to in the case of the applicant?"

14. In this regard we may take note of the law laid down by the Division Bench of the Hon'ble Delhi High Court in the case of *Inspector Rajendra Singh (Supra)*, in the said case the petitioner therein was enrolled in the Border Security Force and on selection was required to join the new contributory

pension scheme with effect from January, 2004. As the applicant was already a Sub Inspector selected to the BSF he was deprived of the benefit of old pension as existing under the Central Civil Services (Pension) Rules 1972 and by the time he joined the service of the BSF, the new pension scheme came into force in January, 2004 and due to delay in joining the service in March, 2005 the petitioner therein was denied benefit of Old Pension Scheme under the Central Civil Services (Pension) Rules, 1972. After analysing various principles and taking note of the aforesaid, learned Division Bench held that the basic terms and conditions of the service which includes the right to receive the pension upon superannuation as applicable at the time of notification of the post cannot be unilaterally altered to the prejudice of the incumbent to the post once the selection process has commenced. Reliance has been placed on various judgments in this regard and finally relief was granted on the ground that the petitioner should be treated as a member of Old Pension Scheme and granted all the benefits.

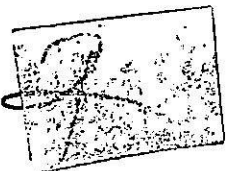
15. Similarly, in the case of *Pawan Kumar (Supra)* in Para 48 the following observations have been made and principle curled out is as under:-

“48. In a recent decision in *ASI/Pharma Biswa Prakash Jena Vs. Union of India*, (2022) 5 HCC (Del) 319: 2022 SCC OnLine Del 2544, wherein one of us (Suresh Kumar Kait,J( being member while dealing with a case where the petitioners working as Pharmacist I CRPF had sought parity with Pharmacist in ITBP, which was denied to them by the Union of India on the ground that they were appointed beyond the period of advertisement and selection process, had relied upon decisions in *Parmanand Yadav (Supra)*, *Avinash Singh (Supra)* and *Rajendra Singh (Supra)* and held as under:-

“11. The respondents cannot change the terms and conditions of service which were applicable at the time of advertisement to the prejudice of the petitioners and that too after their recruitment process is long over. It is trite law that terms and conditions of service applicable at the time of notification of the post cannot be altered to the prejudice of the incumbents to the post after the selection process is completed, as in the instant case.

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15. In the case on hand before us, admittedly, the advertisement was issued much prior to the alleged cut-off date i.e. 29-03-2004 and the recruitment process of the aforesaid petitioners already stood concluded on 26-2-2004 prior thereto. Further the petitioners cannot be penalized for the delay in their appointment after the alleged cut-off date. Furthermore, the petitioners will not and in fact should not lose



their seniority because of the lethargy of the respondents when they cannot be blamed for it and therefore the respondents cannot take benefit of their own wrong.

16. Accordingly, we hold that the denial of the extension of the benefits by the respondents to the petitioners is discriminatory and arbitrary and thus violative of Articles 14 and 16 of the Constitution of India.””

16. After relying upon certain earlier judgments, particularly, the judgments in the case of *Avinash Singh (supra)*, it has been held by the Hon'ble Court that the respondents cannot change the terms and conditions of service which were applicable at the time of advertisement and the terms condition of the service at the time of notification of the post cannot be altered to the prejudice of the incumbent.

17. From the aforesaid reading of judgments and by applying the general principle of law which contemplates that a contract of service entered into cannot be altered to the prejudice of the employee and cannot be a ground for depriving him the benefit of right like pension which had already accrued to him at the time of recruitment.

18. Keeping in view the aforesaid, we allow this application and direct that in the case of the applicant as he has

completed 15 years of service in accordance to the terms and conditions of his engagement, he would be entitled to pension in accordance to the rule applicable at the time of his engagement, i.e., 15 years of service for which he was employed and the pension regulation which enable him to earn pension after completing 15 years of service as per terms and conditions of engagement.

19. Accordingly, we direct the respondents to grant pension to the applicant in terms of the service rendered by him. However, arrears of pension shall be payable to the applicant in view of the law laid down in the case of *Union of India and others Vs. Tarsem Singh [2008 (8)SCC 649]* from a period of 3 years prior to filing of this OA, i.e., on 15.02.2016. Respondents to grant the benefits as directed hereinabove within a period of three months from the date of receipt of this order.

Pronounced in open Court on this 12 day of November, 2024.

  
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[JUSTICE RAJENDRA MENON]  
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

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