

**COURT NO. 3, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 774 of 2019**  
**with**  
**M.A. No. 1375 of 2019**

**In the matter of :**

**Cpl Bhim Kumar (Retd) ..... Applicant**

**Versus**

**Union of India and Ors. .... Respondents**

**For Applicant : Shri Manoj Kr. Gupta, Advocate**

**For Respondents : Shri S.S. Chugh, Advocate**

**CORAM**

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)**  
**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

**M.A. No. 1375 of 2019 :**

Vide this application, the applicant seeks condonation of 2002 days' delay in filing the accompanying OA. In view of the law laid down by the Hon'ble Supreme Court in the case of **Deokinandan Prasad Vs. State of Bihar [AIR 1971 SC 1409]** and in **Union of India & Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371]**, delay in filing the OA is condoned.

MA stands disposed of accordingly.

**O.A. No. 774 of 2019 :**

The applicant, invoking the jurisdiction of this Hon'ble Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'the AFT Act'), has filed the present Original Application (OA), seeking the following reliefs:

- "A. To quash the Impugned order dated 02.04.2019 which is against the Law settled on the subject; and***
- B. To direct the Respondent to grant Pro-rata Pension from the date of discharge ie. 11.10.2013 or from the date on which applicant completes his reserve period, And/or***
- C. To condone the short-fall of 92 days or so in reckoning 10 years of Qualifying service in the Air Force for grant of pro-rata pension; and***
- D. To direct the Respondent that arrears shall be paid to the Applicant with 10% interest.***
- E. Any other just and equitable order in the interest of justice may kindly be passed."***

2. The brief facts of the present case are that the applicant was enrolled in the Indian Air Force on 12.01.2004 for a period of engagement of 20 years. However, in order to take up employment in the Kendriya Vidyalaya Sangathan (KVS), which is a Central Govt. organization, the applicant sought discharge from service 'at his own request' on 11.10.2013 i.e. before fulfilling the condition of enrolment with 02 years reserve liability, after completion of 09 years and 273 days of qualifying service, and thereafter he joined the KVS.

3. That on 19.02.2019, the applicant filed a representation seeking pro-rata pension which was replied to by the respondents vide letter dated 02.04.2019, impugned herein, rejecting his claim for grant of pro-rata pension. Aggrieved by the same, the applicant has filed the present OA.

4. The learned counsel for the applicant put forth the case of the applicant that he was discharged from service with effect from 11.10.2013 and at the time of discharge, the respondents put him in reserve list and that his discharge was followed with 02 years' reserve service w.e.f. 12.10.2013, and, therefore, his

service ought to have been counted including 2 years reserve service which came to be more than 11 years and the same entitles the applicant to get pro-rata pension. The learned counsel contended that it would be unfair and arbitrary to grant pro-rata pension to only commissioned officers as per the policy of the respondents and in support of his contention that there should not be any discrimination in the matter of grant of pro rata pension to PBOR/NCO or a Commissioned officer, the learned counsel placed reliance on various judgments of the Hon'ble Delhi High Court including **Govind Kumar Srivastava Vs. Union of India & Ors. [Writ Petition (Civil) No. 10026/2016]**, in which case, the petition filed by a PBOR seeking pro-rata pension was allowed. The learned counsel also placed reliance on the judgment of the Delhi High Court in **Ex Sgt NK Bose Vs. Union of India [W.P. (C) No. 7145 of 2002]** and the order dated 20.11.2002 passed by AFT (RB) Kochi in **Ex Cpl Padmanabhan PK Vs. UoI [O.A. No. 04 of 2013]** and submitted that the applicant is entitled to the pro-rata pension.

5. The learned counsel further submitted that under the 6<sup>th</sup> CPC recommendations, which were accepted by the Govt. of India/MoD, 'pro-rata pension' was allowed after 10 years of service and as the applicant, after discharge on 11.10.2013 i.e. after rendering 09 years 273 days of regular service, was put in reserve list for two years i.e. upto 10.10.2015, therefore, this period was required to be counted for the purpose of qualifying service for grant of pro-rata pension to the applicant and the respondents committed an error in ignoring the aforesaid fact while considering the representation of the applicant. The learned counsel submitted that there is AFI order vide which the period of engagement will be counted including the regular service as well as reserve service from the date of enrolment. The learned counsel also referred to provisions of AFI orders of different dates to buttress his submissions on counting the reserve service period of the applicant with the regular service rendered by him in the Air Force. For grant of pension, the learned counsel also placed reliance on the judgments of the Hon'ble Supreme Court in Inder Pal Yadav and others Vs. UoI & Ors. [1985 SCR (3) 837=1985 SCC (2) 648], wherein it was held

that similarly situated personnel are entitled to similar treatment, and in Deokinanadan Prasad Vs. State of Bihar [AIR 1971 SC 1409] stating that the right to pension is a valuable right vesting in a govt. servant and it is not a bounty payable on the sweet will and pleasure of the govt. and also on order of AFT (PB) in Surender Singh Parmar Vs. UoI [OA No. 401/2013] with regard to the condonation of shortfall of less than one year service was condoned. In view of the above facts and circumstances, the learned counsel for the applicant prayed that the OA of the applicant seeking pro-rata pension may be allowed.

6. The respondents have adopted the counter affidavit filed in a similar case O.A. No. 89 of 2019 [Ex Cpl Pardeep Kumar Vs. Union of India & Ors.]. and submitted that the respondents have rightly denied the pro-rata pension to the applicant as the applicant has not served for 10 years of qualifying service and as per the policy in vogue, he, being a PBOR, was not entitled to pro-rata pension as the pro-rata pension is a benefit extended to commissioned officers hence the applicant cannot avail the

provisions of letter dated 19.02.1987. The learned counsel for the respondents referred to various provisions given in the Air Force Act, 1961, Pension Regulations and citations to distinguish between officers and Airmen and that the different yardsticks are used in relation to the conditions of their service. The learned counsel further submitted that conditions of service of the Air Force personnel are governed by the Air Force Act, 1961 and thus the applicant has erred in giving reference of the Central Civil Services (Pension) Rules, 1972 in support of his case.

7. With regard to the applicant's contention that he was under reserve list for 2 years and hence this period may also be counted for the purpose of counting of qualifying service, the learned counsel for the respondents submitted that as per Regulation 133, the Reservist Pension for Airmen is covered under Chapter III, Section III, sub-Section II of the Pension Regulations for the Air Force, 1961 Part I and the Airmen those are transferred to the Regular Air Force Reserve are covered under this section; and that the applicant was not transferred

to the Regular Air Force Reserve and was never under any reserve liability and during that period of time, he was working in the PNB as he joined the said PSU in October, 2016, and, therefore, the applicant is not entitled to any pro-rata pension. The learned counsel further submitted that grant of pro-rata pension to the airmen before completion of their engagement conditions, will encourage personnel to seek unscheduled discharges and it will affect manpower, cadre management, command and control in the Air Force service. On the basis of the above submissions, the learned counsel prayed for dismissal of the OA.

8. The applicant has filed rejoinder to the reply of the respondents and cited various judgments and orders of Hon'ble Supreme Court and the Tribunal, including order of Larger Bench of the AFT (PB) in OA 1238/2016 titled Shama Kaur Vs. Union of India, wherein condonation of shortfall in service was condoned while granting second pension to the claimants therein.

## **A N A L Y S I S**

9. We have heard the learned counsel for the parties and perused the records available on record.

10. The matter of discrimination between commissioned officer and the JCOs/ORs for grant of pro-rata pension has been dealt with by the Tribunal in large number of cases and the affected persons were granted pro rata pension by the Tribunal. Thereafter, the Ministry of Defence, Government of India has issued Notification No.1(4)/2007/D(Pen/Policy) Vol-II dated 04.11.2022, specifically extending the benefits of pro-rata pension to Junior Commissioned Officers (JCOs) and Other Ranks (ORs) having not less than 10 years of service and on absorption/appointment to the CPE/CPSE. Hence, the issue of grant of pro rata pension to the PBORs, as the applicant herein, has already been decided vide the aforesaid policy letter dated 04.11.2022. The relevant paras of the updated policy dated 04.11.2022 are reproduced hereunder :

**“2. Extending the provision of pro-rata  
pension to JCOS/ORs of the Defence Services  
who join/joined Central Public**

**Enterprises/Central Autonomous Bodies/  
Central Public Sector Undertaking on  
permanent absorption/`employment was  
under consideration of this Ministry for  
some time. Now, the President is pleased to  
decide that the provision of pro-rata pension  
of the aforesaid letters will also apply to  
those JCOS/ORs who:-**

**(a) While on deputation to Central Public  
Enterprises/Central Autonomous  
bodies/Central Public Sector Undertaking  
exercise an option for permanent  
absorption and are discharged/permited  
to retire prematurely from Defence Services  
for this purpose, or**

**(b) are appointed in Central Public  
Enterprises/Central Autonomous Bodies/  
Central Public Sector Undertaking on the  
basis of their own application sent through  
proper channel in response to  
advertisements and they are permitted to  
retire prematurely from service in the  
Defence Services for the purpose of taking  
the appointment in those Central Public  
Enterprises/Central Autonomous Bodies/  
Central Public Sector Undertaking.**

**3. The pensionary benefits enumerated in this letter are admissible only to those JCOs/ORs who leave the Defence service with proper permission to secure employment in a Central Public Enterprises/ Central Autonomous Body/Central Public Sector Undertaking. A case for grant of these benefits will be initiated by the Service Headquarters only after ascertaining from the Central Public Sector Enterprises/Central Autonomous Body/ Central Public Sector Undertaking concerned that the personnel has actually joined them. All cases for grant of pensionary benefits to JCOs/ORs of Army and their counterparts in Air Force/Navy will be decided by respective Service Headquarters and a separate sanction will be issued in each case.**

**4. JCOs/ORs having not less than 10 years of qualifying service in Defence Service will be entitled to receive pro-rata pension. The pro-rata pension of JCOs/ORs who get absorbed/appointed in Central Public Enterprises / Central Autonomous Body/ Central Public Sector Undertaking will be calculated as per provisions applicable for calculation of pension of regular JCOs/ORs at the time of absorption. Death-cum-retirement gratuity, based on the length of qualifying**

*service of a JCO/OR till the date of his/her absorption will be admissible, as calculated under the DCRG Rules as applicable before absorption.*

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*9. The provision of this letter will be applicable to those JCOs/Ors who are absorbed/appointed in Central Public Sector Enterprises/Central Public Sector Undertaking (on or after 06.03.1985) or Central Autonomous Bodies (on or after 31.03.1987. In such cases there will be a notional fixation of pro-rata pension retrospectively in accordance to the provisions of Govt. letters mentioned at Para 1 above as applicable to him/her and thereafter.....”*

In view of the aforesaid policy promulgation, the submissions made on behalf of the respondents in respect of the eligibility for grant of pro-rata pension to the commissioned officers as per earlier policy dated 19.02.1987 only and not to the PBORs need not be gone into.

11. Further, the contention made by the learned counsel for the applicant that the applicant is to be granted pro rata pension referring to the provisions of the Central Civil Services

(Pension) Rules, 1972 for grant of pro rata pension. We are not inclined to accept this contention of the counsel for the applicant as the applicant was discharged from the service in the Indian Air Force. The personnel subject to the Air Force Act are not governed by the Central Civil Services (CCS) Rules. The Air Force Act and its associated rules and regulations govern the service conditions, conduct, and discipline of personnel within the Indian Air Force. These rules are distinct from the CCS Rules, which apply to civilian government employees in India. Thus, the applicant is governed by the Pension Regulations for the Air Force, 1961 and not the CCS Pension Rules, 1972 as Section 2 regarding applicability of the provisions of the CCS Pension Rules provides for :

***“2. Application – Save as otherwise provided in these rules shall apply to Government servants appointed on or before 31<sup>st</sup> day of December, 2003 including civilian Government servants in the Defence Services appointed substantively to civil services and posts in connection with the affairs of the Union which are borne on pensionable establishments, but shall not apply to –***

***(a)-(g)***

***xxx***

***xxx***

***(h) persons whose terms and conditions of service are regulated by or under the provisions of the Constitution or any other law for the time being in force.***

***[Emphasis supplied]***

12. The applicant herein has rendered 9 years and 273 days of service in the Indian Air Force and he was discharged w.e.f. 11.10.2013 at his own request and thereafter he joined the KVS, hence there is a shortfall of qualifying service of about 92 days. The applicant was discharged from the Indian Air Force in the rank of Cpl, a PBOR. Hence, the applicant is covered under the policy dated 04.11.2022 and perusal thereof reveals that Para 5 strictly stipulates that the JCOs/ORs, absorbed in a Central Public Enterprises/Central Autonomous Bodies/Central Public Sector Undertaking with less than 10 years of qualifying service in Defence service, are not entitled to get pro-rata pension and no condonation of shortfall in service is admissible to those JCOs/ORs in that case. The relevant Para 5 of the policy dated 04.11.2022 reads as under :

***“5. No Pro-rata pension will be payable to a JCO/OR absorbed in a Central Public***

***Enterprises/Central Autonomous Bodies/  
Central Public Sector Undertaking with less  
than 10 years of qualifying service in Defence  
Service, Further, condonation of short fall in  
service shall not be admissible for grant of  
pro-rata pension, if JCOs/OR has less than 10  
years of qualifying service.”***

13. Reliance was placed on a recent judgment dated 27.11.2024 passed by the Delhi High Court in **Santosh Kumar Sahu, Ex Cpl Vs. Union of India & Ors. [W.P. (C) 12208/2023 & CM APPL 69214/2024]**, wherein the Hon'ble High Court in Para 10 held that the provision of the office order dated 14.08.2001, regarding shortfall in qualifying service does not make any distinction between the case of regular pension or a pro-rata pension. However, the Union of India had preferred a review petition against the aforesaid judgment and the said review petition was listed on 08.08.2025, on which date, the Union of India referred to Para 5 of the policy letter dated 14.11.2022 which stipulates that no condonation of shortfall in service can be granted for pro rata pension. The Hon'ble High Court, while dismissing the review petition, held that the circular cannot have a retrospective effect.

14. In this regard, we deem it appropriate to advert to the earlier policy letter dated 19.02.1987 vide which the pro-rata pensionary benefits were granted to the commissioned officers of the Defence services on permanent absorption in Central Public Enterprises, having not less than 10 years of service. Although the policy of 19.02.1987 has not specifically mentioned about the condonation of shortfall in service to such personnel, however, in Para 5 thereof, it is clearly indicated that:

**“5. No pension or service gratuity/Death-cum-Retirement gratuity will be payable to those absorbed in an Enterprise with less than 10 years of service.”**

15. In view of the aforesaid, we are of the considered view that for getting pro-rata pension, a person has to complete at least ten years of service and there is no condonation of shortfall in qualifying service of 10 years stipulated in the said policy letter dated 19.02.1987.

16. Para 3 of the aforesaid policy dated 19.02.1987 also provides for **‘Officers with not less than 10 years’ qualifying service will be entitled to receive pro-rata pension worked**

**out according to the methods givens in Annexure 'A' to this letter."** In Annexure 'A' and 'B', the methods for calculations of the pension for such personnel are stipulated. In Annexure 'A', the period of service taken into account is 'either 20 years of service or more' and at Annexure 'B', calculation of pension process is meant for the personnel who serve less than 20 years of service but not less than 10 years of service. In this scenario, perusal of both the policies dated 19.02.1987 as well as the subsequent policy dated 14.11.2022 makes it clear that the personnel seeking pro rata pension have to complete at least 10 years of service in the armed forces before appointment/absorption in the CPE/Central Autonomous bodies/CPSU. Therefore, in our view, any condonation of shortfall in service for completion of 10 years' qualifying period of service for grant of pro-rata pension is not permissible to both officers as well as PBORs. It is, therefore, opined that there is no retrospective application of policy with respect to the clause of condonation of shortfall of service for PBOR as similar condonation of shortfall for even officers was not permissible vide policy dated 19.02.1987 as brought out hereinabove. It is

also important to note that there was no policy to grant pro-rata pension to PBORs prior to introduction of the Policy dated 14.11.2022 which authorised grant of Pro-rata Pension to PBORs and the said Policy was brought in force with retrospective date of 06.03.1985 for those PBORs absorbed/appointed in CPSE/CPSU or 31.03.1987 for those PBORs who were absorbed in Central Autonomous Bodies, thereby giving similar dates of applicability of Policy as that given to officers for this benefit.

17. A contention was made by the learned counsel for the applicant that after discharge from the Air Force on 11.10.2013, he was kept under reserve list for two years and, therefore, his reserve period may also be taken into account while counting the qualify service for grant of pro rata pension. It has been submitted on behalf of the respondents that after discharge from Air Force, the applicant was not transferred to the Regular Air Force Reserve as per Regulation 133 of the Pension Regulations; the applicant was not serving in the Reserve during the period of his Reserve liability and nor was he recalled for service. As per the applicant's averment made in the OA, the

applicant joined the KVS after discharge, hence, it is understood that the applicant was working in the KVS during the period when he was kept under Reserve liability. Hence, the period of reserve liability cannot be counted with regular service period for qualifying service for the purpose of grant of pensionary benefits.

18. In view of the aforesaid consideration and by virtue of the policy dated 19.02.1987/04.11.2022, the applicant is not entitled for condonation of shortfall in qualifying service and consequently not eligible for grant of pro rata pension.

19. The OA 774 of 2019 is dismissed being devoid of merit. There is no order as to costs.

Pronounced in open Court on this 10<sup>th</sup> day of October, 2025.

**[JUSTICE NANDITA DUBEY]  
MEMBER (J)**

**[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)**

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