

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

OA 1304/2018

Lt Cdr Prem Nair (Retd).	Applicant
Versus		
Union of India and Ors.	Respondents

For Applicant : Mr. L.S. Chaudhary, Advocate
Mr. Anurag Singh Tomar, Advocate

For Respondents : Mr. Anil Gautam, Sr. CGSC
Mr. R.S. Chhillar, Advocate

CORAM :

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

ORDER

By way of this OA the applicant, who was commissioned in the Indian Navy on 25th November, 1998, and after serving for about 13 years, 9 months and 6 days vide letter No.RS/7121/PR/99 was permitted to retire, seeks a direction to the respondents to grant him service pension as per Regulation 18 of Navy (Pension) Regulations 1964. The reliefs claimed in the application are as under:

"8.1. Direct the respondents to grant pension to the applicant, in terms of Regulations 18, 22 & 23 w.e.f. 01.09.2002 with interest @ 18% p.a.

8.2 Award costs of the proceedings.

8.3 Any other order(s) as deemed fit and proper to secure the ends of justice may be passed.."

2. It is submitted by learned counsel for the applicant that in order to claim pension and gratuity, the applicant was advised to apply directly to CDA (N) Mumbai. After completing all the formalities the applicant did apply for grant of pension and gratuity which was not acceded to by the respondents. Thereafter, the applicant made a representation on 6th May, 2017 requesting respondent No.3 to grant him service pension. This representation, as averred, was not disposed of even after passing of one year as on the date of filing this OA.

3. Further contention of the applicant is that in terms of Appendix IX and Regulation 162 of the Pension Regulations, he is not required to make any representation or application for grant of service pension or gratuity and it were the Naval Headquarters who of their own were required to grant pension and admissible gratuity to him. To claim pension and gratuity, the applicant places reliance on Section 2 of Chapter 11 of the Naval (Pension) Regulations 1964, Section 18 of which states that *"An officer who is permitted to retire from service may be granted service pension in accordance with the Regulations."*

It is further contended that though the minimum period of service for the late entrants to earn pension prescribed under Regulation 19 is 15 years and in other cases 20 years is required, but Regulation 23 provides for certain deductions on pro rata basis in order to cater for deficiency in service and grant of pension at a reduced rate in case the period of standard service, i.e., 20 years is not complete.

4. Learned counsel for the applicant contends that as Regulation 19 is not absolute, it has to be read in consonance with Regulation 18, 22 and 23. It is submitted that there is no bar in Naval Pension Regulations that an individual who has not completed 20 years of service, cannot be granted service pension. Further contention is that Regulation 18 of Navy (Pension) Regulations, which is *pari materia* to Regulation 33 of Army Regulations, defines that "*An officer, who retires on attaining the prescribed age of retirement or permitted to retire from service may be granted retiring pension or retiring gratuity as the case may be in accordance with these Regulations subject to the provisions of Regulation 29 of these Regulations.*"

5. Learned counsel also contends that Regulation 19 is discriminatory in character as it prescribes different periods of service to become eligible to earn pension in the case of late entrants (15 years) and (20 years) in the case of other personnel thereby making a discrimination between these two types of service personnel and thus violates the applicant's rights guaranteed under Articles 14 and 16 of the Constitution of India and creates a class among class. His submission is that there should not be any discrimination and all Naval Officers, whether late entrants or recruited otherwise, should be treated alike. To substantiate his claim on this count, learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Sansar Chand Atri Vs. State of Punjab

and Anr. [(2002) 4 SCC 154] wherein the Hon'ble Supreme Court has held that all the defence personnel are to be treated as a class and there cannot be any class in a class. It is, therefore, claimed that non grant of pension to the applicant is violation of his rights guaranteed under Articles 14 and 16 of the Constitution of India and against the pronouncement of Hon'ble Supreme Court. The applicant further states that in terms of letter dated 5th September, 1990 (Annexure A-6) the respondents are allowing pension to those army personnel who on completion of 10 years sought permanent absorption in Public Sector Undertakings which further discriminates between the officers joining PSUs and other officers.

6. The applicant has also pleaded that Regulation 19 of Navy (Pension) Regulations, 1964 being ultra vires of the Constitution of India, is liable to be set aside and quashed. Further plea of the applicant is that in terms of the report of the 6th Central Pay Commission, as in the case of civil employees, the minimum period of service required for full pension in respect of the defence personnel is also required to be reduced to ten years. Taking shelter of MoD/PCDA Circular No.555 dated 4th February, 2016 the applicant claims pensionary benefits or deficiency in service for service pension on pro rata basis as admissible vide Regulations 18, 22 and 23 of the Navy (Pension) Regulations 1964.

7. The respondents have filed the counter affidavit. The main contention of the respondents is that in terms of Regulation 19 of the Navy (Pension) Regulations 1964 and MoD Letter No.1(6)/98/D/(Pension)/Service dated 3rd February, 1998, the minimum qualifying service of 20 years is required to become eligible for pension and as the applicant is short of about six years of qualifying service, he is not entitled to any pension. It is also their contention that in the armed services there is no provision for grant of pro rata pension if the qualifying service is less than 20 years. Referring to letter No.8(37)/86/A/D(Pension/Service) Government of India, MoD dated 19th February, 1987, issued to Chief of the three forces respondents contend that to seek pro rata pension, the requirement is that the army personnel after taking NOC had been absorbed in Public Sector Undertaking etc. after discharge. Respondents have contended that if an individual's service was terminated at his own request, be it on account of premature retirement/resignation, he may not be eligible for pensionary benefits. The provisions governing premature retirement/resignation are contained in Navy Order 82/03, further amended vide Navy Order 07/2012, which stipulate that an officer *"who by his length of service is eligible for retiring pension or gratuity seeks to leave the service and retirement prior to date of superannuation is termed as 'Premature Retirement'"*. He is not entitled for pension.

8. As regards the applicant's plea of 15 years of qualifying service to become eligible to earn pension in the case of late entrants is concerned, learned counsel for the respondents has submitted that because of certain higher qualifications they join the service at a later date and at the time of retirement have completed 15 years of service. The respondents have contended that the applicant has already been paid Retiring Gratuity to the tune of Rs.4,92,043/-, to which he is entitled. In support of their contentions the respondents have placed reliance on the judgment of this Tribunal in the case of Lt Cdr (Retd) Dilip Bhatnagar Vs. Union of India and Ors. (OA No.773/2018 etc) decided on 15th May, 2018.

9. Having heard learned counsel for the parties and on going through the relevant Navy (Pension) Regulations 1964 and Navy Circulars/Orders, the short question that arises for our consideration is *"whether in the absence of having the requisite qualifying service (20 years) to his credit, the applicant can claim pro rata pension/service pension at reduced rates for deficiency in service under the applicable Rules/Regulations"*.

10. The applicant, to claim pro rata pension, has mainly based his case on Section 2 Regulations 18, 22 and 23 of the Navy (Pension) Regulations, 1964. However, these have to read in conjunction with Regulation 19 as well. These Regulations read as under:

“18. Admissibility – An officer who is permitted to retire from service may be granted service pension in accordance with these regulations.

19. Minimum Service – The minimum period of service qualifying for pension shall be fifteen years in the case of late entrants and twenty years in other cases.

XX XX XX
XX XX XX

22. Rates of Pension – An officer who at the time of retirement has held a substantive rank specified in Column 1 of the Table below and who has rendered qualifying service for a period not less than that specified in the corresponding entry in column 2 of that Table may be granted service pension at the rate specified in the corresponding entry in column 3 of the said Table:

Rank	Period of service	Rate of pension
1	2	3
(a) General List Officers	Years	Rs. Per Mensem
Lieutenant	20	425
Lieutenant Commander	22	550
Commander	24	675
Captain (Less than 5 years in rank)	26	750
Captain (5 years or more in rank)	28	825
Rear Admiral	30	875
Vice Admiral	30	900
Admiral	30	1000
(b) Branch List Officers		
Commissioned Officer	23	190
Senior Commissioned Officer	25	220

23. Deficiency in service: Where an officer has rendered service for a period less than that specified in Regulation 22 for his rank, the amount of service pension payable to him shall be the rate prescribed for that rank reduced by one deduction at the rates specified below for each year or part there of the deficiency in service:

Service Pension	Rate of Deduction
Rs. Per Mensem	Rs. Per Mensem
1000 to 751	30
750-601	20
600-401	15

<i>400-301</i>	<i>10</i>
<i>300-201</i>	<i>5</i>
<i>200 and below</i>	<i>2.50</i>

11. From the above it is seen that to become eligible for pension, as per Regulation 19 of Navy (Pension) Regulations, 1964, the officer should render the minimum qualifying service of 20 years. Thereafter the period of service and rate of pension has been prescribed for each rank both for General List Officers and Branch List Officers in Regulation 22. Further, if there is any deficiency in fulfilling the period of service prescribed in Regulation 22 for any rank but the personnel fulfils the eligibility as prescribed in Regulation 19 is 20 years, then Regulation 23 will come into play for deciding the quantum of pension which is being referred to by the applicant as pro rata pension. The applicant in the case at hand took premature retirement after rendering 13 years 9 months and 6 days' of service; therefore, he does not fall within the ambit of Regulation 19 and hence is not entitled to service pension and nor to claim pro rata pension. The applicant has failed to produce or bring on record any document nor is it pleaded in the OA to bring forth even remotely that he had worked on any civil post or was absorbed in any civil or public sector undertaking in terms of the policies, letters or circulars issued in this regard by Government of India which entitles him to pro rata pension. Para 2 sub paras (i) and (ii) and para 3 of the letter No.8(3)/86/A/D (Pension/Services) dated 19th February, 1987, issued by Government of India, Ministry of

Defence on the subject *'Grant of pro-rata pensionary benefits to the Commissioned Officers of Defence Services on permanent absorption in Central Public Enterprises'* and referred to hereinabove in this regard read thus:

"2. The provisions of this letter will apply to those who:

(i) While on deputation to Central Public Enterprises exercise an option for permanent absorption and are discharged/permited to retire prematurely from Defence Services for this purpose.

(ii) Are appointed in Central Public Enterprises on the basis of their own applications sent through proper channel in response to advertisement and are permitted to retire prematurely from service in the Defence Services for the purpose of taking up the appointment in the Enterprises.

3. Officers with not less than 10 years qualifying service will be entitled to receive pro rata pension worked out according to the methods given in Annexure 'A' to this letter."

Hence, neither is the applicant entitled to service pension at reduced rates as per Regulation 23 nor is he entitled to pro rata pension which is given to individuals who join Public Sector Undertakings/Banks etc. (civil employment) after taking NOC. There is no dispute that the Navy (Pension) Regulations, 1964 are statutory in nature as observed vide order dated 15th May, 2018 by this Tribunal in OA 7773/2018 Lt Cdr (Retd) Dilip Bhatnagar Vs. Union of India and Ors. with connected OAs and, in our opinion, this Tribunal has no power to set aside the statutory regulations and particularly Regulation 19 thereof. So far as the reliance placed by the applicant on the judgment in the case of Sansar Chand Atri (supra) to support the plea that a class

cannot be created in a class is concerned, the facts of the case in the said judgment are not in *pari materia* with the facts of the instant case as the issue for consideration in the case relied upon was whether the applicant could be granted the status of ex serviceman since he sought discharge on his own request. The provisions of Circular No.555 dated 4th February, 2016, as claimed by the applicant do not apply in the present case as this circular relates to implementation of the policy of One Rank One Pension whereas the applicant's case is for grant of pro rata pension/service pension at reduced rates for deficiency in service.

12. The applicant took premature retirement in the year 2002 and it is after a long period of 16 years that he approached the Tribunal for redressal of his grievances in 2018 and it is only in 2017 that the applicant had for the first time made any representation to claim the relief.

13. We thus hold that since the applicant does not possess the minimum qualifying service of 20 years as provided in Regulation 19 of the Navy (Pension) Regulations 1964 read in conjunction with Regulation 22 and 23 and neither has he sought premature retirement to join any civil post like public sector undertaking etc. after taking NOC from Navy, he is not entitled to the benefit of pro rata pension or service pension at reduced rates for deficiency in service.

14. In view of the facts and circumstances of the instant case, as scrutinized hereinabove, since the case of the applicant does not fall

Pronounced in the open Court on this 3rd day of May, 2025.

[JUSTICE ANU MALHOTRA]
MEMBER (J)

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