

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

**O.A. No. 2497 of 2023**  
**with**  
**M.A. No. 3548 of 2023**

**In the matter of :**

**Capt Hoshiar Singh (Retd)**

**..... Applicant**

**Versus**

**Union of India and Ors.**

**..... Respondents**

**For Applicant :** Shri Baljeet Singh and Ms. Deepika  
Sheoran, Advocates

**For Respondents :** Shri Prabodh Kumar, Sr. CGSC

**CORAM**

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

**ORDER**

**M.A. No. 3548 of 2023 :**

Vide this application, the applicant seeks condonation of 10852 days' delay in filing the 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. 2497 of 2023 :**

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

***"(i) To direct the respondents to grant pro-rata pension to the applicant from the date of release with all consequential benefits.***

***(ii) To direct the respondents to pay the arrears of pro-rata pension along with interest @12%p.a.***

***(iii) To pass such further order or orders, direction/Directions as this Hon'ble Tribunal may deem fit and proper in accordance with law."***

2. As culled out in the OA, the applicant was enrolled in the Indian Army as a Soldier on 30.05.1979. Upon joining, he successfully completed the requisite training and thereafter served in various units with exemplary conduct, earning the appreciation of his superiors. His service record remained unblemished, and he served in the ranks until 08.03.1985. In recognition of his dedication, discipline, and meritorious service, the applicant was commissioned as a Short Service Commissioned Officer (SSCO) into the Regiment of Artillery in the Indian Army on 09.03.1985.

3. The Government of India, Ministry of Defence, issued Notification No. 8(3)/86/A/D (Pension/Services) dated 19.02.1987, providing for the grant of pro-rata pension benefits to commissioned officers, who were permanently absorbed in Central Public Sector Enterprises (CPSEs). Paragraph 3 of the said notification stipulates that officers with a minimum of 10 years of qualifying service shall be entitled to pro-rata pension, calculated as per the method outlined in Annexure-A of the notification. Further, this benefit was extended to officers, who, having applied through proper channel in response to advertisements, were permitted to seek premature retirement from defence service for joining a CPSE.

4. Subsequently, while serving in the Army, the applicant applied for the post of Security Officer in the New Bank of India, pursuant to a public advertisement. His application was duly forwarded through proper channel, and he was issued a 'No Objection Certificate' (NOC) by the authority competent in the Army prior to his interview. Upon selection, the applicant submitted his release request, which was again processed through proper channel, and was supported by the said NOC. It is submitted that the applicant had already rendered a total of 11 years, 5 months, and 28 days of qualifying service in the

Army before his release. He ultimately joined the New Bank of India as a Security Officer on 27.11.1990.

5. A Writ Petition No. 3471 of 1996 titled **Ex-Cpl Swarup Singh Kalan v. Union of India & Ors.** was filed before the Hon'ble Delhi High Court seeking pro-rata pension, which came to be disposed of on 12.09.1996 with a direction to consider the claim of the applicants therein. In compliance, Ex-Cpl Swarup Singh Kalan and other similarly situated individuals were granted pro-rata pension, indicating that the 1987 policy was extended in practice to non-commissioned officers as well. The applicant, being similarly situated, has a legitimate expectation to be granted the same benefit.

6. The Government of India issued Notification No. 4/61/99-P&PW (D) dated 30.09.2000 (Page 36 of OA) under the powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution of India. Rule 2(8) of the said notification provides that a permanent government servant absorbed into a Public Sector Undertaking or an autonomous body shall be eligible for pensionary benefits based on combined service rendered in both government and such institutions, or may opt for pro-rata pension. This rule is

uniformly applicable to all government employees, thereby eliminating any classification based on discrimination.

7. The Ministry of Defence, Government of India issued yet another 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). The applicant submitted a representation dated 02.12.2022 requesting that his case be considered for grant of pro-rata pension in light of the aforementioned 1987 notification and the judgment of the Hon'ble Delhi High Court dated 09.01.2019 in **Govind Kumar Srivastava Vs. Union of India & Ors.**, WP(C) No. 10026/2016.

8. Further, the Hon'ble Supreme Court in the landmark case of **D.S. Nakara & Others Vs. Union of India [(1983) 1 SCC 305]** held that pension is not a bounty but a right, forming part of the terms and conditions of service. The Court reiterated that the right to pension arises from statutory rules and is enforceable through legal means. It further observed that pension serves as a measure of socio-economic justice and compensates for past services rendered.

9. Rule 37 of the CCS (Pension) Rules provides for pro-rata pension on absorption in or under a corporation, company or body and the same is reproduced below:

***"(1) A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him.***

***EXPLANATION-Date of absorption shall be:***

***(1) In case a Government employee joins a corporation or company or body on immediate absorption basis, the date on which he actually joins that corporation or company or body.***

***(ii) In case a Government employee initially joins a corporation or company or body on foreign service terms by retaining a lien under the Government, the date from which his unqualified resignation is accepted by the Government.***

***(2) The provisions of sub-rule (1) shall also apply to Central Government servants who are permitted to be absorbed in joint sector undertakings, wholly under the joint control of Central Government and State Governments/ Union Territory Administrations or***

***under the joint control of two or more State Governments/ Union Territory Administrations.***

***(3) Where there is a pension scheme in a body controlled or financed by the Central Government in which a Government servant is absorbed, he shall be entitled to exercise option either to count the service rendered under the Central Government in that body for pension or to receive [deleted] retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government."***

10. Rule 37(A) of CCS (Pension) Rules provides about the terms and conditions for the payment of pension on absorption consequent upon conversion of government department into a central autonomous body or a Public Sector Undertaking.

11. On behalf of the respondents, a detailed counter reply has been filed, contending that the applicant was enrolled in the Army as a Soldier on 30.05.1979. He had rendered 05 years, 09 months and 09 days as OR. He was commissioned as Short Service Commissioned Officer (SSCO) w.e.f. 09.03.1985 drawn from the civil through CDS examination conducted by UPSC. He was released from service w.e.f. 26.11.1990 after rendering 05 years, 08 months and 18 days of commissioned service. His total qualifying service comes to 11 years, 05 months and 26 days. However, he took pre-mature retirement w.e.f. 26.11.1990. Therefore, on retirement, he joined a civil post as

security officers in the New Bank of India (Nationalized Bank). He has now represented for grant of pension in terms of AO 49/82 and MoD letters dated 19.02.1987 and 03.02.1998 (Page 90 Annexure R-3). However, as per both the letters coupled with SAI 6/S/65, the applicant is not entitled to any pension or pro-rata pension rather only terminal gratuity, which has already been paid to him. Only SSCO/ECOs drawn from ranks are entitled to pension on completion of 12 years of service (without weightage), and that pro-rata pension is given to permanent commissioned officers on completion of 10 years of service subject to their permanent absorption in a PSU as approved by the competent authority.

12. The applicant has filed the current OA for grant of pro-rata pension in terms of Notification dated 19.02.1987. The policy of pro-rata pension to commissioned officers of Armed Forces is governed under the provisions contained in the said notification. However, these provisions are applicable only to those officers, who are permanently absorbed in the CPE after applying through proper channel and being discharged/permited to retire prematurely from the service. In this regard, pp. 2 and 3 of the *ibid* letter read as under:-

***"Para 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/permitted 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 advertisements and are permitted to retire prematurely from service in the Defence Services for the purpose of taking up the appointment in the Enterprises.*

*Para 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. Illustrative examples as regards the method of calculation of pro-rata pension are also given in the Annexure."*

13. It is submitted that SSCOs are governed by a separate set of Rules (SAI) 6/S/65), which are purely on contractual basis for initial period of five years extendable to another five years at the request of the concerned officer SSOs are drawn from within the ranks (PBORs) and also from the civil through a screening test and through CDS examination conducted by the UPSC. SSCOs officers are governed by Special Army Instructions (SAI) 6/S/65; according to which minimum service required to earn pension is 12 years (without weightage) for SSCOs drawn from the ranks. However, SSCOs drawn directly from the civil are not entitled to any pension irrespective of the length of service, however, they are entitled to retiring/service gratuity equivalent to  $\frac{1}{2}$  month emoluments for each completed six

monthly period of service. The aforesaid terms and conditions of service/pension have been conveyed to the applicant at the time of recruitment/enrollment.

14. It is further submitted that Regulation 168 of PRA 2008 Part-1 (Annexure-R-3) stipulates that minimum qualifying service of 12 years is required of retiring pension to PBOR commissioned as SSCO. However, the officer has not rendered minimum qualifying service of 12 years as per Para 168 of PRA 2008 Part-1. Hence, there exists no provision for grant of pro-rata pension to SSCOs. However, reference may be made to Army Order (AO) 49/82, which stipulates grant of pro-rata pension to Permanent Commissioned Officers subject to certain conditions. It stipulates that officers permitted to retire prematurely before rendering 20 years of qualifying service are not eligible for pension under provisions of Regulation 25 of the Pension Regulation for the Army, 1961 (Part 1). However, in case of officers permitted to retire prematurely on account of their permanent absorption in PSU after rendering at least 10 years' service are eligible to draw pro-rata pension in addition to pay of the post in the PSU. The pro-rata pension would be calculated on a proportionate basis in relation to the pension entitlement at the end of 20 years of service based on actual number of years of service completed on the date of

absorption. However, in determining the pension entitlement at the end of 20 years, the weightage included in the standard rate of pension would be excluded.

15. The OA, in view of the aforesaid, *sans* merit and deserves to be dismissed, urge the respondents.

### **ANALYSIS**

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

17. It is not in dispute that the applicant has rendered service as a soldier from 30.05.1979 to 08.03.1985 and thereafter he was commissioned as SSCO from 09.03.1985. The applicant took premature retirement from Army through proper channel to join a civil post i.e. Security Officer in the New Bank of India which was a PSU under the Govt. of India and joined the New Bank of India on 27.11.1990 after rendering 11 years, 05 months and 28 days of service in the Indian Army.

18. From the pleadings and averments made in this application which is not denied by the respondents, it is clear that the applicant was released from the Army after following due procedure and the respondents, after going through his application and after following

procedures, granted him permission for retirement to join the New Bank of India (PSU) as Security Officer. The applicant in the present case has served in the Indian Army as a Soldier w.e.f. 30.05.1979 and thereafter he was commissioned as a SSCO with effect from 09.03.1985 and served in the rank of Captain upto 26.11.1990 whereafter he joined a PSU on 27.11.1990. Hence, the applicant has served for total 11 years 05 months and 28 days. As per the policy regarding grant of pro-rata pension, the applicant has claimed for pro-rata pension by filing a representation dated 02.12.2022 and thereafter by filing the present OA.

19. The respondents contested the present OA and referring to the policy letter dated 19.02.1987, stated that the applicant is not eligible for grant of pro-rata pension as the applicant has not completed 10 years of service as a commissioned officer. The relevant para of the aforesaid policy dated 19.02.1987 reads as under :

***“(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/permitted 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 advertisements and are permitted to retire prematurely from service in the Defence Services for the purpose of taking up the appointment in the Enterprises.”***

20. In the instant case, it is admitted that the applicant has served as Short Service Commissioned Officer (SSCOs) from 09.03.1985 to 26.11.1990 and before that he was enrolled as a soldier from 30.05.1979 to 08.03.1985 and thus he has not completed service as commissioned officer for a period of ten years. However, a policy letter dated 04.11.2022, which is an updated policy on the subject of grant of pro-rata pensionary benefits, came into effect and vide that policy JCO/ORs were also made eligible for grant of pro-rata pensionary benefits on permanent absorption/employment in Central Public Enterprises/Central Autonomous Bodies/Central Public Sector Undertaking. Relevant portion of the said policy reads thus :

***“(a) While on deputation to Central Public Enterprises/Central Autonomous bodies/ Central Public Sector Undertaking exercise an option for permanent absorption and are discharged/permitted to retire prematurely from Defence Services for this purpose. Or  
(b) are appointed in Central Public Enterprises/Central Autonomous Bodies/ Central Public***

***Sector Undertaking the basis of their own application sent through proper channel in response to advertisements and are permitted to retire prematurely from service in the Defence Services for the purpose of taking up the appointment in the Enterprises.”***

21. The matter of discrimination between commissioned officer and the JCOs/ORs has been dealt with by the Tribunal in large number of cases and the affected persons were granted pro rata pension by the Tribunal. Accordingly, JCOs/ORs were also included for grant of pro-rata pension having not less than 10 years of service and on absorption/appointment to the CPE/CPSE. In para 9 of the updated policy dated 04.11.2022, it was stated:

***“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.....”***

22. By virtue of the aforesaid policies, the applicant, who has served total 11 years, 05 months and 28 days of service as soldier and also commissioned officer, in our view, is eligible for grant of pro-rata pensionary benefits.

23. The respondents have also objected to the fact that the applicant was commissioned in the Army as Short Service Commissioned Officer (SSCO) and thus the applicant cannot be granted pro rata pension as the provision of pro rata pension is only for permanent commissioned officer. In this regard, we have gone through the provisions of the policy dated 19.02.1987, and nowhere it is stated that the Short Service Commissioned Officers are not eligible for grant of pro rata pensionary benefits. The aforesaid policy dated 19.02.1987 only stipulates that the pro rata pensionary benefits are applicable to those who have not less than 10 years of service as 'commissioned officer'. It does not specifically state about Short Service Commissioned Officer being not eligible for this benefit. Hence, we are of the view that the applicant, having rendered 11 years, 05 months and 28 days service as soldier/commissioned officer, is entitled to grant of pro-rata pensionary benefits.

24. Hence, the respondents are directed to grant pro-rata pension to the applicant from the date of his retirement from service within a

period of six weeks in terms of the circular/letter dated 19<sup>th</sup> February 1987. The consequential orders be issued within a period of eight weeks. The arrears of pro-rata pension to be paid to the applicant within a period of twelve weeks thereafter. However, as the applicant approached the Tribunal after a considerable delay, the arrears be restricted to three years prior to the date of filing of this OA. A failure to comply with the above direction would entail the Respondents having to pay simple interest at 6 % p.a. on the arrears till the date of payment.

25. The OA stands disposed of accordingly. There is no order as to costs.

26. Pronounced in open Court on this 4<sup>th</sup> day of July, 2025.

**[Justice Nandita Dubey]**  
**Member (J)**

**[Rear Admiral Dhiren Vig]**  
**Member (A)**

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