

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

6.

OA 877/2025 with MA 1290/2025

Cpl Sudhakar Abothula(903534) ACH GD Retd Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Ms. Barkha Babbar, Advocate with
Sushmit Mishra & Sgtr Pankaj Kumar Yadav,
OIC Legal

CORAM

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

ORDER
23.01.2026

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

"A. To quash and set aside the Impugned Order(Annex.A-1) and direct the Respondents to grant pro rata pension by condoning shortfall upto one year in 10 years QS in terms of GoI/Mod Circular dated 14 Aug 2001, by declaring Govt of India/MoD Circular dated 04 Nov 2022 arbitrary to the extend it restricted the benefit of pro rata pension(by creating artificial classification) to Airmen who join Civil post of Govt or public sector and

not to applicant who proceed discharge on compassionate ground or under private employment; and/or

B. To direct the Respondent to grant Pro rata Pension as per ratio of the order of Hon'ble Delhi High Court in SK Sahu(supra);and/or

C. Any other just and equitable order in the interest of justice in the attendant genuine circumstances of the case, to meet the ends of justice."

2. Time is sought on behalf of the respondents to file the counter affidavit. However, in as much as the factum of the impugned order no. dated 18.01.2025 which reads to the effect:-

"GRANT OF PRO-RATA PENSION IRO 903534 EX CPL SUDHAKAR ABOTHUL

- 1. Reference is made to appeal/representation dated 16 Dec 2024, served on behalf of above named Air Veteran, on the subject.*
- 2. The issue brought out in your representation has been examined. As per service record held at this office, your client was enrolled in the IAF on 12 Jan 2004 and discharged from service wef 11 Dec 2013 under the clause" At his own request before fulfilling the conditions of his enrolment". You had rendered 09 years 10 months and 11 days of regular service. By virtue of your length of service, you were eligible for Service Gratuity and Death-cum-Retirement Gratuity(DCRG) in terms of Pension Regulation 127, which had already been paid to you at the time of discharge.*
- 3. Further, Ministry of Defence, Department of Ex-Servicemen Welfare, D(Pension/Policy) vide letter No.1(4)/2007/D(Pen/Policy/Voll.II dated 04 Nov 2022 has stated that no Pro-rata pension will be payable to a JCO/OR with less than 10 years of qualifying service and 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. Hence, your client is not eligible for pro-rata pension."*

having been issued is not refuted by the respondents, the un-refuted facts brought on record thus are to the effect that the applicant was enrolled in the Indian Air Force on 12.01.2004 and was discharged from service w.e.f. 11.12.2013 under the clause "At his own request before fulfilling the conditions of his enrolment." He had rendered 09 years 10 months and 11 days of regular service and was thus paid service gratuity and death-cum-retirement gratuity in terms of Pension Regulation 127 at the time of discharge. It has been stated in this impugned order dated 18.01.2025 that vide the policy letter No.1(4)/2007/D(Pen/Policy/Voll. II dated 04 Nov 2022 dated 04.11.2022, it has been stated that no pro-rata pension would be payable to a JCO/OR with less than 10 years of qualifying service and condonation of shortfall in service shall not be admissible for grant of pro rata pension if the JCO/OR has less than 10 years of qualifying service and thus the applicant was not eligible for grant of pro rata pension.

3. The applicant in the instant case is aggrieved by the action of the respondents of not granting him the benefit of Pro-Rata Pension for the services rendered in the Indian Air Force. The applicant was enrolled in the Indian Air Force on 12.01.2004 and after rendering more than 9 years and 11 months of service was discharged from the Indian Air Force at his own request on 11.12.2013 for taking up an appointment in the Central Public

Enterprises(CPE). The applicant submits that he was discharged from service with due permission of the competent authority through proper channel and he fulfils the condition for the grant of pro-rata pension and is entitled to the grant of the same.

4. The applicant submits that he made a representation dated 16.12.2024 to the respondents requesting for grant of the benefit of pro-rata pension for the services of more than 10 years rendered in the Indian Air Force in terms of judgment dated 19.01.2019 passed by the Hon'ble High Court of Delhi in WP(C) No.10026/2016 titled *Govind Kr Srivastava Vs UOI & Ors.* and a catena of other judgments and in terms of letter/circular No.8(3)/86/A/D(Pension)/Services) dated 19.02.1987 issued by the Ministry of Defence, Govt of India, containing the provisions for the grant of Pro-Rata Pension to the commissioned officers of Armed Forces who after 10 years of service joined a public sector undertaking which had been extended for the benefit of PBORs also.

5. The averments made by the applicant through the OA place reliance on the orders of the Hon'ble High Court of Delhi in WP(C) 12208/2023 titled *Santosh Kumar Sahoo vs. UOI & Ors* dated 27.11.2024 submitting to the effect that in the said case there has been condonation being granted for the period beyond 6 months upto 12 months in terms of verdict of the Hon'ble Supreme Court in *Union of India & Anr Vs Surinder Singh Parmar (2015)3 SCC 404*

Vide order dated 28.03.2025 in the present proceedings, in as much as the Review Petition 9/2025 in WP(C) 12208/2023 was pending before the Hon'ble High Court of Delhi and the matter thus being *sub-judice* there, the matter had been directed to be re-notified after disposal of the said Review Petition 9/2025. Vide order dated 08.08.2025 in Review Petition 9/2025 and Review Petition 157/2025, which had been filed seeking a review of the judgment dated 27.11.2024 in WP(C) 12208/2023 in Santosh Kumar Sahoo *UI & Ors* and in WP(C) 12284/2023 in Radha Krishan Sahoo Vs *UI & Ors*, the said review petitions have been dismissed.

6. Furthermore, the Special Leave to Petition(C) 1126/2025 filed by Santosh Kumar Sahoo to assail the order dated 27.11.2024 in WP(C) 12208/2023 of the Hon'ble High Court of Delhi has been dismissed by the Hon'ble Supreme Court vide order dated 08.12.2025. In view thereof, the common order dated 27.11.2024 in WP(C) 12208/2023 and WP(C) 12284/2023 of the Hon'ble High Court of Delhi till it is set aside by Hon'ble Supreme Court has thus attained finality.

7. In view thereof, the applicant in the instant case is held entitled to the condonation of shortfall of the period till the completion of 10 years for the grant of pro rata of pension in terms of the verdict of the Hon'ble High Court of Delhi in order dated 27.11.2024 in WP(C) 12208/2023 and WP(C) 12284/2023 in the

case of *Santosh Kumar Sahoo (supra)* and *Radha Krishan Sashoo Vs Union of India & Ors.*(supra)

8. The learned counsel for the applicant places reliance on the verdict dated 19.01.2019 of the High Court of Delhi in *Govind Kumar Srivastava Vs Union of India & Ors* in W.P.(C) No.10026/2016 wherein vide para-8 of the said verdict, the Hon'ble High Court of Delhi, held to the effect:

"Para 8- The discrimination meted to PBOR/NCO like the applicant in the matter of grant of pro-rata pension is violative of Article 14 of the Constitution as it is not based on any rational criteria or principle. In other words, while the Commissioned Officer of the IAF are granted such pro-rata pension that benefits is not available to the PBOR/NCOs in terms of letter/circular dated 19.02.1987 issued by the MoD. The circular/letter states that pro-rata pension will be available only to Commissioned officers of the Defence Services on their absorption/appointment in the Central Public Enterprises under the control of MoD. The eligibility for receiving such pro-rata pension is the completion of 10 years of qualifying services in the defence services."

9. The law on 'pro-rata pension' has already been laid down by the Hon'ble High Court of Delhi in the case of *Brijlal Kumar Vs Union of India and Ors* connected petitions 2020 SCC Online Del 1477 and in *Govind Kumar Srivastava Vs Union of India* 2019 SCC Online Del 6425(D B) against which the SLP(C) No.8813/2019 has been dismissed on 26.04.2019, though the question of law was left open.

10. Thus, as the issue referred to under consideration in the present OA is no longer *res integra* in view of the verdicts of the

Hon'ble High Court of Delhi in *Brijlal Kumar Vs Union of India and Ors* and connected petitions 2020 SCC Online Del 1477 and in *Govind Kumar Srivastava Vs Union of India* 2019 SCC Online Del 6425(DB) against which the SLP(C) No.8813/2019 has been dismissed on 26.04.2019 and in OA 690/2016 titled *Ex Sgt Godina Rajasekhar Vs Union of India & Ors* dated 10.11.2017 of the Armed Forces Tribunal (PB) as the facts of the instant cases are in *pari materia* with the facts of the abovementioned cases, as the applicant in the instant case had completed the period of qualifying length of service for eligibility of pro-rata pension of 10 years and the applicant herein is entitled to the grant of pro rata pension, subject to verification of the applicant having been granted a No Objection Certificate by the Competent Authority of the respondents to join the CPE, the OA No. 1877/2025 is allowed.

11. The respondents are thus directed to:

- (a) issue the necessary Corrigendum PPO *qua* the applicant with grant of all pro rata pensionary benefits to the applicant with effect from the date of his discharge till the date of payment subject to the verification (as directed in Para 9) above

12. However, in view of the verdict of the Hon'ble Supreme Court in *Union of India & Ors Vs Tarsem Singh* (2008) 8 SCC 648, the payment of the arrears for the grant of the pro rata pension