

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 756 of 2021 with M.A. No. 898 of 2021**Monday, this the 31st day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Service No. 5744561 Ex Hav/Clk Prem Shamsher Rana
S/o Tula Jang Rana
R/o Village – Sahab Nagar, Post Office – Chidderwala,
District – Dehradun (Uttarakhand) – 249204.**.... Applicant**Ld. Counsel for the Applicant : **Shri V.P. Pandey**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi – 110011.
3. Officer-in-Charge Records, 58 GR, PIN-900332, C/o 99 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.

.. RespondentsLd. Counsel for the Respondents : **Ms. Appoli Srivastava**,
Central Govt Counsel**ORDER (Oral)**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

- “(a) To issue/pass an order or direction to the respondents to grant of Pro-rata pension to the applicant for service rendered in Army.
- (b) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.

(c) Cost of the O.A. be awarded to the applicant.”

2. A delay condonation application (M.A. No. 898 of 2021) filed by the applicant for condonation of delay in filing Original Application being not required considering the Hon'ble Apex Court order dated 23.09.2021 on limitation due to COVID-19 is dismissed.

3. Brief facts of the case are that the applicant was enrolled in the Army on 20.11.1969 and was discharged from service on 23.02.1983 after rendering 13 years, 03 months and 08 days of Army service. The applicant was re-employed in Central Bank of India after having been discharged from service. The applicant was superannuated from Bank on 30.01.2012 and he is in receipt of service pension. The applicant represented his case to respondent No. 3 to look into matter for grant of pro-rata pension for his Army service but he has not responded till date. Now, the applicant has filed the present Original Application for grant of pro-rata pension for Army service.

4. Learned counsel for the applicant submitted that applicant was re-employed in Central Bank of India after having been discharged from service. There is a provision under Rule 37-A of Central Civil Services (Pension) Rules, 1972 for pro-rata retirement benefits for the services rendered under the Central Government in accordance with the orders issued by the Central Government. The benefit of pro-rata pension is applicable to all those employees who have been declared surplus, opts for voluntary retirement as per Rule 36(b) of Central Civil Services (Pension) Rules, 1972.

5. Learned counsel for the applicant placed reliance upon judgment of the Hon'ble Delhi High Court in WP (C) 10026/2016, **Govind Kumar Srivastava vs. Union of India and others**, decided on 09.01.2019 in which the Court has held that pro-rata pension is applicable to Commissioned Officers in Indian Air Force but not to PBOR/NCO is violative of Article 14 of the Constitution of India. In another case, the Hon'ble Delhi High Court has also decided the similar issue in W.P. 3471/1996, **Ex-Corporal Swarup Singh Kalan Vs. Union of India & Others**, decided on 12.09.1996 granting benefit to NCOs also. He further submitted that Central Government notification dated 30.09.2000 has recognised the grant of pro-rata pension for those Government servants absorbed in Public Sector Undertaking (PSU) who do not satisfy the requirement of completing the qualifying service for grant of full pension.

6. Learned counsel for the applicant also placed reliance on this Tribunal's judgment in O.A. No. 427 of 2017, **Prem Kumar Yadav vs. Unio of India & Others**, decided on 08.10.2021 and pleaded that applicant has rendered more than 13 years of service with unblemished record. The applicant opted for voluntary retirement under compelling circumstances. The Rule 36(b) authorise the applicant for grant of pro-rata pension and non grant of pro-rata pension will be violation of Article 14 of the Constitution of India. The Hon'ble Delhi High Court has adjudicated the subject matter for grant of pro-rata pension, therefore, applicant be also granted pro-rata pension for service rendered in the Army.

7. On the other hand, Ld. Counsel for the respondents during the course of arguments submitted that respondents do not intend to file counter affidavit in the present case as applicant's case is not covered with Rule 37-A (1) & (8) of Central Civil Services (Pension) Rules, 1972 and judgment of the Hon'ble Delhi High Court in WP (C) 10026/2016, **Govind Kumar Srivastava vs. Union of India and others**, decided on 09.01.2019. She further said that applicant was discharged from service on compassionate grounds after rendering 13 years, 03 months and 08 days of service and all dues were paid to the applicant at the time of discharge from service. Thereafter, applicant joined Central Bank of India. The applicant can claim pro-rata pension only if he was on deputation to any public sector undertaking or autonomous body and was absorbed in his new appointment/service, therefore, benefit of CCS Rules, as claimed by the applicant, is not applicable in this case.

8. Learned counsel for the respondents also submitted that the Hon'ble Delhi High Court order is applicable for PBOR/NCOs also for grant of pro-rata pension but it is not applicable in this case being based on different facts and circumstances as the applicant was neither on deputation to PSU nor he was absorbed in his second service. She pleaded for dismissal of O.A.

9. We have heard learned counsel for both sides and perused the material placed on record.

10. Rule 37-A (1) & (8) of Central Civil Services (Pension) Rules, 1972 being important and relevant to present case is reproduced as under :-

“37-A(1). On conversion of a department of the Central Government into a public sector undertaking or an autonomous body, all Government servants of that Department shall be transferred en-masse to that public sector undertaking or autonomous body, at the case may be on terms of foreign service without any deputation allowance till such time as they get absorbed in the said under-taking or body, as the case may be, and such transferred Government servants shall be absorbed in the public sector undertaking or autonomous body, as the case may be with effect from such date as may be notified by the Government.

(8) A permanent Government servant who has been absorbed as an employee of a public sector undertaking or autonomous body shall be eligible for pensionary benefits on the basis of combined service rendered by him in the Government and in the public sector undertaking or autonomous body in accordance with the formula for calculation of pension/family pension under these rules as may be in force at the time of his retirement from the public sector undertaking or autonomous body, as the case may be or at his option, to receive pro-rata retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the central Government.

11. In the case of **Govind Kumar Srivastava** (supra), petitioner was enrolled in the Indian Air Force and pursuant to an advertisement issued by Air India, he applied for the post of Technical Officer. A No Objection Certificate (NOC) was issued by the Indian Air Force permitting the petitioner to take up employment with Air India which at that time was a PSU. The petitioner was discharged from the IAF after rendering ten years and one month of service by an order issued by the Air India Headquarters and was absorbed there. In this case, the Hon'ble Delhi High Court has held that Circular/letter dated

19.02.1987 provides for grant of pro-rata pension but confined the benefit to Commissioned Officers subject to the stipulation that the officer must have completed 10 years of service and must have been absorbed in a PSU thereafter. The Court further said that the Court is unable to find any such justification or rational basis being put forth by the Respondents to justify the discriminatory treatment. Therefore, Court has no hesitation in holding that the denial in terms of the Circular/letter dated 19.02.1987 of the benefit of pro rata pension to PBOR/NCOs is violative of Article 14 of the Constitution. Hence, benefit of pro-rata pension is also extended/granted to petitioner also.

12. In view of aforesaid discussion, we do not find any irregularity or illegality in denying pro-rata pension to the applicant under the provisions of Rule 37-A(1) & (8) of Central Civil Services (Pension) Rules, 1972 and judgment passed by the Hon'ble Delhi High Court in **Govind Kumar Srivastava** (supra). Since the applicant joined Central Bank of India after discharge from Army service on compassionate grounds and he was neither on any deputation to PSU nor he was absorbed there, hence, benefit of pro-rata pension cannot be extended to the applicant. Rule 36(b) and Rule 37-A (8) is also not applicable as applicant does not fulfil the condition of deputation to PSU and absorption there. There is also no violation of Article 14 of the Constitution of India as alleged by the applicant.

13. The applicant has not been able to make out his case for grant of pro-rata pension. The O.A. is devoid of merit and deserves to be dismissed. It is accordingly **dismissed**.

