

Court No. 1 (E Court)**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 331 of 2021**Friday, this the 06th day of May, 2022**“Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Dharm Raj, Ex Cpl, Service No 715385-K S/o Mahaveer, R/o 3/254, Vinamra Khand, Gomti Nagar, Lucknow-226001.

..... Applicant

Ld. Counsel for the : **Shri Himanshu Singh**, Advocate
Applicant

Versus

1. Union of India, The Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110001.
2. Chief Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110011.
3. OIC Pension & Welfare Wing, Air Force Record office (AFRO), Subroto Park, New Delhi-110010.

.....Respondents

Ld. Counsel for the : **Ms Preeti Mala**, Advocate
Respondents. Central Govt. Counsel

ORDER

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

(a) Issue an order, direction quashing the order dated 12.02.2021, copy of which is already annexed as Annexure No A-1 to the O.A.

(b) Issue an order/direction to the respondents to extend the benefits of pro rata pension to the applicant.

(c) Issue an order/direction to the respondents to extend the benefits of pro rata pension from the date of the discharge of the applicant to till date along with such interest as payable.

(d) Issue an order/direction commencing payment of future pro-rata pension to the applicant; and;

(e) Pass any other order or direction that the Hon'ble Tribunal deems fit, just and proper in the light of the circumstances of the case.

(f) Allow the application with cost.

2. The short question that arises for consideration in this application is whether the applicant is entitled to claim pension on pro-rata basis when he does not have the qualifying service to claim service pension under the applicable service rules.

3. Brief facts of the case are that the applicant was enrolled in Indian Air Force (IAF) as airman on 02.12.1985. During the course of his service he was promoted to the rank of Corporal (Cpl). Pursuant to an advertisement he applied for a job by obtaining prior permission (no objection certificate) from Commanding Officer and subsequently got selected as Scientist 'B' in Defence Research and Development Organisation (DRDO). Accordingly, he applied for discharge from service at his own request and he was discharged from service w.e.f. 13.11.1995. On 27.01.2021 applicant submitted a representation for grant of pro-rata pension for service in Air Force which was denied vide letter dated 12.02.2021 (Annexure A-1). This O.A. has been filed for grant of pro-rata pension.

4. The case of the applicant is that the discrimination meted out to 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 Officers of the IAF are granted such pro-rata pension that benefit is not available to the PBOR in terms of letters/circulars dated 19.2.1987 and 21.04.1988 issued by the MoD. These circulars/letters state 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 the MoD. The eligibility for receiving such pro-rata pension is the completion of ten years of qualifying services in the Defence Services.

5. The applicant points out in the case of certain other PBORs, the benefit of pro-rata pension has been allowed. In this regard the applicant has cited Hon'ble AFT (PB) order dated 10.11.2017 passed in O.A. No. 690/2016, **Ex Sgt Godina Rajasekhar vs Union of India & Ors**, Hon'ble Delhi High Court judgment dated 24.11.2020 passed in writ petition No 98/2020, **Brijlal Kumar & Ors vs Union of India & Ors**, the Hon'ble Delhi High Court judgment in the case of **State of Uttar Pradesh vs Arvind Kumar Srivastava**, (2015) 1 SCC 347 and the Hon'ble Allahabad High Court judgment in the case of **State of U.P. & Ors vs Rajendra Prasad Tiwari**, 2018 (36) LCD 2570 where a direction was issued to the Respondents to consider the petitioners representation for grant of pro-rata pension. It is submitted that the case of the present applicant is not different from the cases referred above and therefore he too would be entitled to that benefit.

6. On the other hand, it is contended in the counter affidavit by the respondents that in terms of the Pension Regulations applicable to the IAF, the minimum qualifying regular service for earning regular pension, in terms of Regulation 121 of the Pension Regulations, is fifteen years. There is no provision in the said Pension Regulations for grant of pro-rata pensionary benefits to PBORs. It is further submitted that the grant of pro-rata pension has been sanctioned to only those persons who approached the courts.

7. We have heard learned counsel for the parties and also considered the above pleadings. The questions before us are of two folds:-

(i) Whether the policy letter dated 19.02.1987 is also applicable to PBORs (and hence this applicant)?

(ii) Whether the shortfall of minimum service of 10 years required by the above policy letter can be condoned?

8. There appears to be no justification put forth by the respondents for denying benefit of pro-rata pension to the PBORs in the IAF except by saying that Regulation 121 of the Pension Regulations does not provide for grant of any pro-rata pension. What is missed is that such pro-rata pension is indeed granted to the Commissioned Officers of the IAF notwithstanding that the Pension Regulations do not envisage such payment. The payment of pro-rata pension to Commissioned Officers is admittedly being made in terms of the letters/circulars dated 19.02.1987 and 21.04.1988 which have been referred to hereinabove.

9. Pro-rata pension is premised on the fact that the Govt servant or Officer in question has not completed the full period of qualifying service for grant of full pension in terms of the applicable Pension Rules. Therefore, what is granted is only that pro-rata pension commensurate with the years of service completed. As per the letters dated 19.02.1987 and 21.04.1988 in the case of Commissioned Officers of the IAF, the minimum period to be completed in service for grant of pro rata pension is ten years.

10. The Respondents have adverted to Regulation 121 of the Pension Regulations applicable to the members of the IAF which mandates completion of 15 years of service to be eligible for pension. There is no doubt that in terms of Regulation 121, for the purposes of regular pension a PBOR in the IAF would be entitled to earn pension only after completing 15 years of minimum qualifying service. However, in the present case we are not concerned with the issue of grant of regular pension but pro-rata pension. Regulation 121 is silent on the aspect of pro-rata pension.

However, circulars/letters dated 19.02.1987 and 21.04.1988 provide for it but confine the benefit to Commissioned Officers only subject to the stipulation that the officer should have completed 10 years of service and should have been (a) permanently 'absorbed' in a PSU thereafter or (b) appointed in such PSUs on the basis of their own applications sent through proper channel and if they are permitted to retire prematurely from service to take up such appointments. In the present case the applicant comes under the provision (b) above as he had applied for higher post in DRDO after obtaining no objection from the Air Force authorities and got selected also. Thereafter, he applied for premature discharge to join his new post in DRDO. The applicant had put in 09 years 11 months and 11 days service prior to discharge which is short of 19 days for completion of ten years service for grant of pro-rata pension. However, since the letters dated 19.02.1987 and 21.04.1988 are not strictly applicable to PBORs, there appears to be a gap in the required policy that could otherwise have covered the applicant's case. Nevertheless, judgments passed by Hon'ble AFT (PB), New Delhi in **Ex Sgt Godina Rajasekhar** (supra) and Hon'ble Delhi High Court in **Brijlal Kumar** (supra) come to the aid of the applicant. In both these judgments it has been held that PBORs are also eligible for grant of pro-rata pension if they serve for atleast 10 years and get selected/absorbed in PSUs in terms of **Brijlal Kumar & Ors** (supra). For convenience sake extracts of para 43Y and 45 are reproduced as under:-

43Y. "xxxxxxxThe circular/letter dated 19th February 1987 does not on the fact of it contain any reason for conferment of benefit of pro rata pension to Commissioned Officers only. We have in this context also perused the counter affidavit in WP (C) No 98/2020 referred to by Mr Sushil Kumar Pandey, Advocate. Though the same sets out the different provisions in the Air Force Act and the Air Force Rules pertaining to Commissioned Officers and Airmen, to contend that the same are treated differently but fails to plead why, while a Commissioned Officer not serving the minimum period of eligibility for earning pension, when being discharged for employment elsewhere in terms of letter/circular dated 19th February, 1987, has been conferred benefit of pro rata pension, a Airman similarly being discharged, has not been conferred the same benefit."

45. However, once we have agreed with the view taken in **Govind Kumar Srivastava** (supra) of the circular/letter dated 19th February, 1987 discriminating Airmen vis-a-vis Commissioned Officers to be without any rational basis, merely because implementation of the said decision qua Airmen carries a heavy financial burden, cannot come in the way of the consequences of holding the same to be discriminatory and order of payment of pro rata pension to Airmen, not following. Reference in this regard may be made to **All India Judges Association vs Union of India**, (1993) 4 SCC 288; **State of Mizoram vs Mizoram Engineering Service Association**, (2004) 6 SCC 218 and **State of Rajasthan vs Mahendra Nath Sharma**, (2015) 9 SCC

540, holding that the State cannot take a plea of financial burden to deny the legitimate dues.”

11. Thus, we can infer that the applicability of provisions of the letter dated 19.02.1987 to PBORs is no longer *res integra* and has attained finality and hence the applicant is to be treated to be eligible for pro rata pension in terms of this letter.

12. The issue that now remains to be adjudicated upon is whether the applicant meets the 10 year minimum service rule for earning pro rata pension. Admittedly, the applicant's service falls short of 10 years by 19 days. Considering that there are several Rules, judgments and policies on condonation of shortfall in service for earning service pension, we consider that it would not be improper to condone the shortfall of 19 days in this case also as a one time special case.

13. Further, we feel it improper to make a hyper technical distinction between PSU and a Govt. Deptt (i.e. DRDO in this case). The applicant was absorbed in DRDO which is nothing but another Deptt of the same Ministry i.e. Ministry of Defence and therefore, even if DRDO is not strictly a PSU, we see no reason to make hyper technical distinction between the two, albeit only for the purpose of grant of pro-rata pension as in this case.

14. In view of the above, we feel that the respondents have failed to answer the principal challenge posed by the applicant i.e. whether circulars/letters dated 19.02.1987 and 21.04.1988 are discriminatory? We are of the view that denial of pro-rata pension to the applicant is violative of Article 14 of the Constitution of India and besides similar cases have been adjudicated by the Hon'ble Delhi High Court and AFT (PB), New Delhi (supra) in favour of those applicants.

15. Accordingly, impugned order dated 12.02.2021 is set aside and applicant is held entitled to grant of pro-rata pension. Respondents are directed to pay pro-rata pension to the applicant w.e.f. his next date of discharge along with arrears within a period of three months from today. Default will invite interest @ 8% p.a.

16. No order as to costs.

17. Miscellaneous application(s), pending if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated : 06.05.2022
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