*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 22nd August, 2023
Judgment delivered on: 30th October, 2023

\+ W.P.(C) 6573/2022 & CM APPL. 19992/2022

RAJEEV NAMBIAR AND ORS ..... Petitioners

versus

UNION OF INDIA AND ORS ..... Respondents

Advocates who appeared in this case:

For the petitioners: Mr. Himanshu Upadhyay, Advocate (Through VC)
For the Respondent: Mr. Sanjeev Uniyal, Sr. Panel Counsel with
Mr. Dhawal Uniyal, Advocate (Through VC)
Sgt. A. Prasad, DAV (Air Force)

CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

MANOJ JAIN, J

1. It needs to be assessed whether the petitioners herein are entitled to "pro rata pension" from the date(s) of their respective discharge or not.

2. Petitioners were enrolled in Indian Air Force and held various ranks in the category of PBOR (Personnel Below Officer Rank) and NCO (Non-Commissioned Officer). After serving Indian Air Force between 10 to 15 years, they were discharged under Rule 15 (2)(g)(ii) of Indian Air Force Rules, 1969, being found '*unsuitable for retention in the Air Force'*.

3. Petitioners contend that they are entitled to receive 'pro rata pension' on completion of 10 years of service. They rely on the judgments in *Govind Kumar Srivastava Vs. Union of India & Ors.: 2019 SCC OnLine Delhi 6425* and *Brij Lal Kumar Vs. Union of India & Ors.: 2020 SCC OnLine Delhi 1477*.

4. According to the Petitioners, they had, themselves, never sought discharge from the Indian Air Force and despite spending their prime in the Indian Air Force in most adverse conditions, their services were abruptly terminated on the ground of unsuitability and such action of the Indian Air Force cannot deny them their right to get pension. They also pray that the pre-conditions as laid down in letter no. 8 (3)/86/A/D (Pension/Services) of Ministry of Defence dated 19th February, 1987 for grant of 'pro rata pension' only in case of joining Central Public Enterprises (CPE) be struck down as discriminatory and violative.

5. Petitioners contend that there cannot be any arbitrary distinction between the officers who are able to secure a job in any other governmental organization and those who are not able to secure any such job and, therefore, they should also be treated at par.

6. Respondents have, on the other hand, submitted that the petitioners are governed by *"Pension Regulations for the Air Force 1961"* and as per Regulation 121, the minimum qualifying service for earning 'regular pension' is 15 years. Since the petitioners have put in service of less than 15 years, they are not eligible to seek any pension

as per the aforesaid statutory provision. It is also claimed that, even otherwise, petitioners' contention for grant of 'pro rata pension' is bereft of any substance as they were discharged, being unsuitable for retention in Air Force, and not because they were absorbed or to be absorbed by any Central Public Enterprise or Public Sector Undertaking.

7. Respondents contend that the reliance by the Petitioners on said precedents is misplaced as principle of 'pro rata pension' stands attracted when any such official gets absorbed or employed in any other government organization, through proper channel, and under those circumstances only, the qualifying service is taken as 10 years for grant of 'pro rata pension'.

8. There is no denying the fact that petitioners herein were discharged under Rule 15 (2)(g)(ii) of Indian Air Force Rules, 1969. Relevant details of their posting and discharge are as under:-

S. No.	Name of Petitioner	Date of Enrollment	Date of Discharge	Reason of Discharge	Tenure of Service in IAF
1	Mr. Rajeev Nambiar	10.03.1986	02.02.1998	His service no longer required – unsuitable for retention in IAF	11 yrs. 134 days
2	Mr. Bino Agustine	30.06.1992	22.08.2005	His service no longer required – unsuitable	13 yrs. 22 days

				for retention in IAF	
3	Mr. Rajesh Edathiparambil Vasudevan	03.08.1993	11.12.2005	His service no longer required – unsuitable for retention in IAF	12 yrs. 125 days
4	Mr. Saji Simon	30.06.1992	22.06.2005	His service no longer required – unsuitable for retention in IAF	12 yrs. 353 days
5	Mr. Jayachandran Devendren	15.05.1976	20.08.1986	His service no longer required – unsuitable for retention in IAF	10 yrs. 98 days
6	Mr. Krishna Kumar Govindan	21.08.1985	28.04.1997	His service no longer required – unsuitable for retention in IAF	11 yrs. 182 days
7	Mr. Ramavarma Ram Kumar	19.02.1977	12.11.1989	His service no longer required – unsuitable for retention in IAF	12 yrs. 213 days
8	Mr. Kasturi Ravi	15.04.1981	03.05.1993	His service no longer required – unsuitable for retention in IAF	11 yrs. 296 days

9	Mr. Kola Gopalakrishnaiah	26.08.1977	14.11.1987	His service no longer required – unsuitable for retention in IAF	10 yrs. 77 days
10	Mr. Harjinder Singh Brar	06.09.1974	06.05.1986	His service no longer required	11 yrs. 188 days
11	Mr. Desai Vijaykumar Dahyabhai	22.03.1980	03.09.1990	His service no longer required – unsuitable for retention in IAF	10 yrs. 114 days
12	Mr. Ravi Ramesh Kumar	11.06.1986	07.12.1997	His service no longer required	11 yrs. 169 days

9. Petitioners seem to have mixed up two different concepts i.e. grant of 'regular pension' on completion of minimum qualifying service and grant of 'pro rata pension' on satisfaction of certain pre-conditions.

10. As per Regulation 121 of Pension Regulations 1961, petitioners need to have minimum qualifying service of 15 years for earning 'regular pension'.

11. Since none of the Petitioners have completed 15 years of service, they are not entitled to any regular service pension.

12. Petitioners, however, contend that they are entitled to *pro rata pension* as they have completed 10 years of service. According to the

Petitioners, there cannot be any discrimination between an official who is discharged after 10 years and the one absorbed in any other Central Government service after 10 years of service.

13. Fact, however, remains that the concept of 'pro rata pension' is altogether different one and cannot be treated at par with 'regular pension'.

14. Pro rata pension is given to those officers/officials of the Indian Air Force who are either permanently absorbed in any other Central Government Enterprises/Public Sector Undertaking or appointed in such Central Government Enterprises/PSU when they apply through proper channel and obtain requisite No Objection Certificate (NOC) from the Indian Air Force. This is, however, subject to the stipulation that the concerned officer/official should have completed 10 years of service.

15. Undoubtedly, earlier there was some disparity regarding grant of 'pro rata pension' as such benefit was given to commissioned officers only and it was in that context that the Co-ordinate Bench of this Court in *Govind Kumar Srivastava (supra)* held that the denial of similar kind of benefit of 'pro rata pension' to PBOR/NCO was violative of Article 14 of the Constitution and accordingly respondent was directed to grant 'pro rata pension' to said petitioner who had also rendered 10 years of service.

16. In *Govind Kumar Srivastava (supra)*, petitioner was enrolled in IAF as Airman on 19.06.1998. Pursuant to an advertisement issued

by Air India, said petitioner applied for the post of Technical Officer. 'No Objection Certificate' was also issued by the Indian Air Force permitting him to take up employment with Air India which at the relevant time was a public sector enterprise. Said Petitioner got selected in Air India and was discharged from Indian Air Force on 21.07.2008 i.e. after serving Indian Air Force for 10 years and one month.

17. When *Govind Kumar Srivastava* sought 'pro rata pension', it was declined and it was in the aforesaid backdrop that he had raised the question of discrimination meted out to PBOR/NCO in the matter of grant of 'pro rata pension' claiming that it was not based on any rational criteria or principle. It was contended that only commissioned officers of Defence Services were eligible for grant of pro rata pension on their absorption/joining any such Central Government Enterprises/PSU and no similar benefit was available to them.

18. It was in the aforesaid circumstance that in *Govind Kumar Srivastava (supra)*, it was held that there was no justification for denial of 'pro rata pension' to PBOR/NCO and, therefore, direction was issued to the respondents to grant 'pro rata pension' to said petitioner. Union of India filed a Special Leave Petition being S.L.P. (Civil) No. 8813/2019 against the aforesaid order but the same was rejected by Supreme Court on 26.04.2019, leaving the question of law open.

19. The aforesaid legal position has been reiterated by another Co-

ordinate Bench of this Court in *Brij Lal Kumar (supra).*

20. Clearly, in the present fact-situation, said precedents are not applicable at all.

21. The principle of 'pro rata pension' works in a different domain altogether as the concerned official continues to be in service *albeit* in a different central government organization. Any such official would be entitled to receive pro rata pension (i) if he has already completed 10 years of service and (ii) is permanently absorbed or appointed in any Central Public Enterprise through proper channel.

22. This special provision has been made for them so that on such absorption/appointment in another central government organization, they are not put to any loss. Pro-rata pension is thus premised on the fact that though the officer in question may not have completed the full period of qualifying service for being eligible to receive regular pension, he gets pro rata pension, on existence of certain pre-conditions.

23. Letter dated 19.02.1987 which deals with the subject of grant of pro rata pensionary benefit to the commissioned officers of Defence Services on their permanent absorption in Central Public Enterprises in our view is not suggestive of any discrimination.

24. Pre-conditions mentioned in Paragraph-2 of said letter read as under:-

> *"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.*

25. As noted hereinabove, the principle of 'pro rata pension' does not stand attracted herein as petitioners were neither absorbed nor appointed in any other Central Public Enterprises. They all have been discharged as they were found *"unsuitable for retention in Air Force"*.

26. Since the objective behind grant of 'pro rata pension' is totally different, petitioners cannot draw any parallel. Moreover, there is nothing discriminatory or violative in such policy either. It caters to those officials who get absorbed in other central government organization through proper channel. Since they continue to serve central government organization, principle of pro rata pension has been introduced so that they are not, eventually, put to any disadvantageous position and are not denied pensionary benefits for not completing minimum qualifying service, particularly when they continue to serve one or the other Government Department. This

policy of pro rata pension universally applies to all such officials who choose to continue to serve another central government organization. This policy is, thus, neither meant nor applicable to those who are discharged on the ground of unsuitability or leave Indian Air Force to take up any private assignment/job.

27. The doctrine of equality, enshrined in Articles 14 and 16 of the Constitution of India, is intended to advance justice by avoiding discrimination. It stands attracted when equals are treated as unequals or where unequals are treated as equals. The guarantee of equality does not imply that the same rules should be made applicable in spite of differences in their circumstances and conditions. Although Articles 14 and 16 of the Constitution forbid hostile discrimination, they do not prohibit reasonable classification. Thus, equality means equality as between members of the same class of employees and not equality between members of separate independent classes. A person who is discharged on the ground of unsuitability cannot seek any parity with a person who continues to serve government, albeit, in a different organization.

28. As the very word suggests, the concept of pro rata denotes ‘proportionality’ and as noted already, it is meant for those who continue to serve governmental organization. The letter in question is modelled on Rule 37 of Central Civil Services (Pension) Rules, 1972 which also provides that 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

Government or in or under a body controlled or financed by the Government shall, if such absorption is declared by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined, in accordance with the orders of the Government applicable to him.

29. In *T.S. Thiruvengadam v. Secy. to Govt. of India,* (1993) 2 SCC 174, the Supreme Court, though in a different context, noted that said Rule 37 provides that a Government servant who has been permitted to be absorbed in service in a Central Government public undertaking in public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits in accordance with the orders of the Government applicable to him and went on to hold that the plain language of the rule did not permit any classification while granting the retirement benefits. It also, in no uncertain words, held that all those persons who fulfil the conditions under Rule 37 were a class by themselves and no discrimination can be permitted within the said class. Thus, the impugned letter cannot be said to be discriminatory as there is no unequal treatment amongst the equals.

30. As an upshot of our forging discussion, petitioners are not entitled to any ‘pro rata pension’.

31. Since there is nothing suggesting any kind of discrimination or unequal treatment either, the petition stands dismissed.

32. No order as to costs.

MANOJ JAIN, J

SANJEEV SACHDEVA, J

October 30, 2023*/dr*