

\$~7

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

+ **W.P.(C) 10026/2016**

GOVIND KUMAR SRIVASTAVA Petitioner

Through: Ms. Pallavi Aswasthi, Advocate.

versus

UNION OF INDIA & ORS. Respondents

Through: Ms. Suparna Srivastava and
Ms. Sanjna Dua, Advocates for R-1 to
R-5.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

%

ORDER
09.01.2019

Dr. S. Muralidhar, J.:

1. As far as the preliminary objection of the Respondents to the maintainability of the present petition is concerned, the learned counsel for the Petitioner has placed before the Court an order dated 31st July 2018 passed by the Armed Forces Tribunal (AFT) Principal Bench which *inter alia* holds that the challenge to the circulars cannot be entertained by the AFT in terms of Section 14 of the Armed Forces Tribunal Act, 2017 (AFT Act) as it “does not give power of issuance of writ” to the AFT.

2. Counsel for the Respondents, on the other hand, relied upon the judgment in *L. Chandra Kumar v. Union of India (1997) 3 SCC 261* and in particular

the observation in para 93, whereby, the Supreme Court recognized the power of the Central Administrative Tribunals (CATs) “to test the virus of subordinate registrations and rules.”

3. As far as the present case is concerned, challenge is laid to a letter/circular No. 8 (386)/AFT (Pension/Services) dated 19th February 1987 issued by the Ministry of Defence (MoD) to the effect that it grants the benefit of pro rata pension only to the Commissioned Officers of the Defence Services and not to the Non Commissioned Officers (NCOs)/Persons Below Officer Rank (PBOR) of the Defence Services. The challenge is, therefore, not to any subordinate legislation as such. Going by the order dated 31st July 2018 of the AFT such a challenge would not be entertained by it.

4. Consequently, the preliminary objection raised by the Respondents to the maintainability of the present petition is hereby rejected.

5. Turning to the merits, the background facts are that the Petitioner was enrolled with Indian Air Force (IAF) as Airman on 19th June 1998. In 2003, he was promoted to the rank of Corporal. Pursuant to an advertisement issued by Air India, the Petitioner applied for the post of Technical Officer on 10th January 2007. On 4th July 2008 a No Objection Certificate (NOC) was issued by the IAF permitting the Petitioner to take up employment with Air India which at the relevant time was a Public Sector Undertaking (PSU).

6. The Petitioner was discharged from the IAF by an order issued by the Air India Headquarters on 21st July 2008. As a result the Petitioner served in the IAF for ten years and one month. On 8th August 2008 he joined Air India as

a Technical Officer and has continued there ever since.

7. The Petitioner applied to the IAF on 29th April 2016 for grant of pro-rata pension. This was rejected by the Respondents by letter dated 6th June 2016. A further representation made by the Petitioner was rejected again by the Ministry of Defence (MOD) by a letter dated 26th July 2016. Thereafter the present petition was filed.

8. The case of the Petitioner is that the discrimination made to PBORs/NCOs like the Petitioner 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/ NCOs in terms of letter/circular dated 19th February 1987 issued by the MoD. That 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 the MoD. The eligibility for receiving such pro-rata pension is the completion of ten years of qualifying services in the Defence Services.

9. The Petitioner points out in the case of certain other PBORs/NCOs, the benefit of pro-rata pension has been allowed. In particular, reference is made to the order passed by this Court on 12th September 1996 in Writ Petition No. 3471/1996 (*Ex-Corporal Swarup Singh Kalan v. Union of India*) where a direction was issued to the Respondents to consider the Petitioner's representation dated 9th November 1994 for grant of pro-rata pension. Pursuant thereto the Respondents have passed orders granting him that

benefit. It is submitted that the case of the present Petitioner is no different from that of Ex-Corporal Kalan and therefore he too would be entitled to that benefit.

10. The third ground is based on notification dated 30th September 2000 of the Central Government in respect of Persons of the Indian Audit and Accounts Department. That notification amends the CCS (Pension Rules) by inserting Rule 37 A and allows pro-rata pension to a Government Servant who upon being sent on deputation to PSU is absorbed there. It is accordingly contended that pro-rata pension has been allowed even to other Government Servants who get absorbed in PSUs whereas it is denied to persons like the Petitioner.

11. In response to the petition, 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 “a few Ex-Airman who had less than fifteen years of qualifying service and were discharged from Indian Air Force on being permanently absorbed in HAL during 1960-70, exclusively on the directions passed by the Courts of law and subsequent Government orders for its implementation.”

12. The Respondents have treated the case of Ex-Sergeant Kalan as a ‘special case’ and only because there was an order passed by this Court in

his favour. According to the Respondents, the case of Ex-Sergeant Kalan “should not be quoted as requisite for grant of Pro Rata Pension to other Ex-Airmen absorbed in the PSUs etc.”

13. This Court heard learned counsel for the parties and also considered the above pleadings. There appears to be no justification put forth by the Respondents for denying benefit of pro-rata pension to the PBORs/NCOs 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 letter/circular dated 19th February 1987 which has been referred to herein before. It is for this reason that the validity of that circular/letter is being challenged by the Petitioner as being discriminatory and violative of Article 14 of the Constitution.

14. The basis for this differential treatment being accorded to NCOs/PBORs like the Petitioner in the matter of grant of pro-rata pension has not been satisfactorily explained by the Respondents. Further, the Respondents have also not explained how even in the Central Government, there is a notification dated 30th September 2000 recognizing the grant of pro-rata pension for those Government Servants absorbed in PSUs who do not at the time of such absorption satisfy the requirements of completing the qualifying service for grant of full pension. In other words, why the NCOs/PBORs are singled out for a differential treatment in the matter of

grant of Pro Rata Pension is not explained by the Respondents.

15. The very expression 'pro-rata pension' is premised on the fact that the Government 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. In the case of the Commissioned Officers of the IAF, the minimum period to be completed in service for grant of pro rata pension is ten years. The Petitioner satisfies this requirement as he has completed ten years and one month in the IAF.

16. Ex-Sergeant Kalan was also an NCO like the present Petitioner. He approached this Court for a direction that the Respondents to grant of pro rata pension. By that time, the letter/circular dated 19th February 1987 was already in force. In terms thereof, he would not be entitled to grant of pro rata pension as he was not a Commissioned Officer. Like the Petitioner, Ex-Sergeant Kalan was also absorbed in a PSU after completion of ten years of service. The Court has perused the order dated 12th September 1996 passed by writ Court in WP No. 3471/1996 filed by Ex-Sergeant Kalan. The operative portion of the said order is only that the Respondents should consider the Ex-Sergeant Kalan's representation dated 9th November 1994 within eight weeks from the date of the communication of the Courts order to the Respondents. In other words, the Court itself did not decide the issue whether Ex-Sergeant Kalan was entitled to the pro-rata pension notwithstanding that the circular/letter dated 19th February 1987 confines the grant of such relief only to Commissioned Officers. The Court left it entirely

to the wisdom of the Respondents to allow or reject Ex-Sergeant Kalan's representation. Pursuant thereto the Respondents granted Ex-Sergeant Kalan pro-rata pension. In the affidavit filed before the Court, the only explanation is that they treated his case as "a special case". There is no attempt made in the counter affidavit to explain what factors weighed with the Respondents to treat his case as "a special case".

17. It is also not disputed by the Respondents that in terms of both the Petitioner and Ex-Sergeant Kalan being PBORs/NCOs, there is no distinction whatsoever. If there is any other distinguishable factor, then the Respondents are silent about it.

18. 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. Reference is also made to the decision in ***Ram Singh Yadav v. Union of India (2005) 116 DLT 486 (DB)***.

19. There can be 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. In fact that was the very question that arose for determination in the context of the Army in ***Ram Singh Yadav v. Union of India (supra)***. 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. It is circular/letter dated 19th February 1987 that provides for it but confines 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 Petitioner here fulfils both criteria but is denied the benefit only because he was a PBOR/NCO.

20. A weak attempt was made by learned counsel for the Respondents to suggest that the Petitioner was not permanently absorbed in Air India and therefore his case may stand on a different footing. Apart from the fact that this is factually incorrect, the question really is whether there is any rational basis for holding a NCO/ PBOR like the Petitioner disentitled to pro rata pension in terms of the letter/circular dated 19th February 1987, once such PBOR has fulfilled all other conditions for grant of pro rata pension viz., completion of ten years of regular service in the Defence Services followed by absorption in a PSU. The Court is unable to find any such justification or rational basis being put forth by the Respondents to justify the discriminatory treatment. The explanation put forth that grant of the benefit to Ex-Sergeant Kalan was because his was “a special case” and should not be treated as a precedent, and on that basis to deny the Petitioner who is identically placed the same relief, does not stand legal scrutiny.

21. With the Respondents failing to answer the principal challenge by the Petitioner to discriminatory part of the circular/letter dated 19th February 1987, the Court has no hesitation in holding that the denial in terms of the said letter/circular of the benefit of pro rata pension to PBORs/NCOs like the Petitioner is violative of Article 14 of the Constitution.

22. The Court accordingly sets aside the letter dated 6th June 2016 issued by the Respondents as well as the letter dated 26th July 2016 issued by the MoD

rejecting the Petitioner's request for grant of pro rata pension. A direction is issued to the Respondents to grant the Petitioner pro rata pension from the date of his discharge from the IAF in terms of the circular/letter dated 19th February 1987. The consequential orders be issued within a period of eight weeks. The arrears of pro rata pension to be paid to the Petitioner within a period of twelve weeks thereafter. 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.

23. The petition is disposed of in the above terms. Order be issued *dasti*.

JANUARY 09, 2019

nk

S. MURALIDHAR, J.

SANJEEV NARULA, J.