

(2020) 09 AFT CK 0020

In the Armed Forces Tribunal

Case No : Transfer Application No. 1, 2, 3, 4, 5, 6, 7 Of 2017, Writ Petition (C) No. 7219, 7221, 7246, 7248, 7251, 7281 Of 2016, LA No. 1, 2 Of 2017, Miscellaneous Application 757, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 1522 Of 2017,

Mohitosh Kumar Sharma And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 29-09-2020

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 49
Pension Regulations For The Army, 1961 — Regulation 121, 132
Constitution Of India, 1950 — Article 14, 19, 33

Citation : (2020) 09 AFT CK 0020

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Ankur Chhibber, V.S. Kadian, Barkha Babbar, Pallavi Awasthi, Barkha Babbar

Final Decision : Dismissed

Judgement

Date of enrollment

in IAF",Date of Discharge,"Service rendered

in IAF","Absorption in

PSU, Government.

Sector, Pvt etc.", "Date of

Representati on", "Date of Rejection

of the representa

tion

14.07.1997,11.12.2009,"TA 02/2017 Om

Prakash Yada 12
 yrs 152 days", "14.12.2009 as
 Assistant
 Administrative
 Officer in LIC of
 India", "26.12.2015 &
 16.12.2016", "06.01.2016 &
 09.03.2016
 19.06.1998, 15.11.2010, "TA 03/2017 Ash it
 Kumar Mishra 12
 yrs 04 months", "01.04.2011 as
 Commercial Tax
 Officer in
 Commercial Tax
 Department of
 Government. of
 Uttar Pradesh", "05.01.2016, 25.01.2016
 05.07.1999, 27.01.2010, "M 04/2917 Dinesh
 Kumar Sharm 10
 yrs 6 months 22
 days", "02.01.2010 as
 Administrative
 Officer in The
 New India
 Assurance
 Company Ltd.", "17.12.2015 &
 27.01.2016", "06.01.2016
 04.05.1998, 01.08.2009, "DI 05/2017 Swami
 Nath Prasad 11
 yrs 02 months 27

days", "03.08.2009 as
Probationary
Officer in
Allahabad Bank", "28.12.2015 &
25.02.2016", "25.01.2016 &
27.04.2016
19.06.1998, 22.05.2009, "TA 06/2017
Subhash Chandra
Tiwari 10 yrs 338
days", "25.05.2009 as Jr.
Telecom Officer,
Bharat Sanchar
Nigam Ltd.", "28.01.2016, 17.02.2016
17.06.1999, 27.10.2010, "16 07/2017 Sonu
Kumar Dubey 11
yrs 4 months 10
days", "11.12.2010 as
Probationary
Officer, State
Bank of India,
PSU", "21.12.2015 &
08.02.2016", "06.01.2016 &
09.03.2016
14.12.2000", "04.03.2011, "OA 1996/20 .I.Z
Anurag (Ex Col)
10 yrs 81 days", "15.03.2011 as
Asstt. Manager,
IDBI Bank, Mum
ba", "02.05.2016, 30.05.2016

11. We have found that there are sufficient number of decisions relied on by both

the parties in support of their respective stands. We have also,,,,,
noticed that an SLP was filed by respondents before the Hon'ble Supreme Court against the decision in the case of Govind Kumar Srivastava (supra),,,,,,
and the SLP was dismissed, however, the question of law was left open by the Apex Court." ,,,,,

12. Since the question of law on this subject is left open, hence we have gone into the minutest details of this case. We have observed that the primary" ,,,,,
contentions of the applicants in the TAsJOA, to justify the grant of pro-rata pension, are as under:" ,,,,,

(i) That the matter has already been settled because, based on the directions of the Hon'ble Delhi High Court in W.P (C) No. 4942 of 1994 (Ex-Cpl" ,,,,,
R.D. Sharma and others v. Union of India and others) and in W.P (C) No. 3471 of 1996 (Ex-Sgt Swarup Singh Kalan v. Union of India and others);,,,,,

the government has considered the matter and under its own discretion, granted pro-rata pension to the applicants. Additionally, the Hon'ble Delhi" ,,,,,

High Court has also passed a series of other orders granting prorata pension to Airmen absorbed in PSUs.,,,,,

(ii) That the Pension Regulations for the Air Force permit pro-rata pension for commissioned officers on absorption in a PSU but not for Airmen," ,,,,,

which is in violation of Article 14 of the Constitution, hence prorata pension must be allowed for Airmen also." ,,,,,

(iii) That the DOPT orders for grant of pro-rata pension after absorption in a PSU, are extremely favorable for civilian employees of the Government," ,,,,,

hence the same benefits must be extended to airmen of the IAF also.,,,,,

13. We have also noted that the respondents, in their reply and during hearing, primarily justified denial of pro-rata pension to airmen on the following" ,,,,,

grounds:,,,,,

(i) That Armed Forces have a special requirement of continuity training and graded progression of military skills due to compulsions of maintaining an,,,,,

effective fighting force. Hence, Airmen join Indian Air Force at a young age and have to sign a bond for a minimum of 20 years of service. Such a" ,,,,,

bond is not required in civil services because of entirely different nature of service conditions. Therefore, the service conditions, as applicable to" ,,,,,

civilian Government employees, including rules of their pro-rata pension, should not be applied on defence personnel." ,,,,,

(ii) That all over the world, there is a minimum years of service which has been specified to earn pension. The desire to earn pension by serving up to" ,,,,,

the minimum qualifying years of service is a great motivation for soldiers to continue in military service. Grant of pro-rata pension even before earning ,,,,,

the normal pension should be an exception and only in public interest because if such early exits become the norm, it is bound to encourage large" ,,,,,

exodus due to difficult service conditions inherent in military service. Maintaining the required manning levels in Armed Forces is a huge challenge and ,,,,,

a large number of countries are resorting to compulsory military service for maintaining their manning levels. Grant of prorata pension to Airmen ,,,,,

seeking premature discharge on grounds of seeking civil employment, has no connection with public interest." ,,,,,

(iii) That the Pension Regulations for the Air Force have got no provision for pro-rata pension for the Airmen. ,,,,,

(iv) That for the first time pro-rata pension was granted to Ex-Cpl R.D. Sharma and 21 others based on the Honible Delhi High Court order in 1996 by ,,,,,

the Government. The court order was primarily for the respondents to consider the grant of pro-rata pension of the applicants. The respondents ,,,,,

decided to grant pro-rata pension to all the applicants. The Government order granting pro-rata pension in this case was an exception and was ,,,,,

specifically mentioned as a `special case' in the Government order. This case was special because an entire Aircraft Manufacturing Depot (AMD) ,,,,,

under the control of IAF was merged with HAL in public interest and these IAF personnel on the strength of AMD had opted for absorption in HAL. ,,,,,

However, merger and absorption of an entire IAF department into HAL is an extremely rare event and the same should not be used as a precedent to" ,,,,,

grant pro-rata pension for every case of individuals joining a PSU on their own free will and without involving any public interest. ,,,,,

14. Before going into the details of this case, it is significant to understand three crucial terminologies and the technicalities associated with them," ,,,,,

because they have a direct bearing on the outcome of this case i.e.: ,,,,,

(A) Terminology (I): Absorption into a Central Public Enterprise (CPE); ,,,,,

(B) Terminology (II): Pro-rata pension; and ,,,,,

(C) Terminology (III): Premature discharge of airmen i.e. the provisions under which Air Force is giving premature discharge to airmen, after" ,,,,,

selection in a civil job.,,,,,,

Based on the submissions of both the parties and the records available with us, we shall consider the details of these three terminologies." ,,,,,,

(A) Terminology (I): Absorption into a CPE.,,,,,,

15. The meaning of the word 'absorption' is, process of assimilation or incorporation. It is also defined 'as a process by which one thing becomes part" ,,,,,,

of another thing'. In this context, when we look into the term 'absorption' into a CPE by a Government employee, it primarily means that, the" ,,,,,,

Government employee has left his original Government department and became a permanent part of a CPE or PSU in public interest, through a" ,,,,,,

process called 'absorption'. Here, we would like to clarify that a PSU is also included within the definition of a CPE. Thus, 'absorption' requires a" ,,,,,,

'lender organization' and a 'borrower' organization. While going through a series of Government orders on deputation and absorption since ,,,,,,

independence, we have specifically noted that though the Government orders have been evolving and changing substantially over the years, however," ,,,,,,

this basic act of lending, borrowing and subsequent absorption, if any, between Government departments was primarily driven by compulsions of public" ,,,,,,

interest. This lending and borrowing of employees was done by many methods, but the most commonly used method was 'deputation' from one" ,,,,,,

Government department to another and was primarily meant to meet the post-independence requirements of the expanding Government ,,,,,,

establishments. The primary aim of this lending and borrowing between the Government departments and PSUs was to ensure that the newly ,,,,,,

created/expanding Government departments and PSUs were provided with an acceptable level of skill sets and experience levels available within the ,,,,,,

Government in a short time frame. Such deputations were mostly on temporary basis permitting the borrowing organization to complete its employee ,,,,,,

selection and training processes within a reasonable time-frame. However, on many occasions, in public interest, the employees who had joined the" ,,,,,,

borrowing organization on deputation were permitted to be absorbed permanently. Normally, such absorptions were meant for employees with specific" ,,,,,,

skill sets or experience level. Deputation as well as absorption of the Government employees was always on a voluntary basis. The individual ,,,,,,

employees were required to volunteer in response to departmental notifications for deputation and absorption. For the Government, it was generally a",,,,,

challenge to motivate Government employees to leave their parent organization and go to another organization in public interest. Hence motivational,,,,,

measures like deputation allowance was introduced as part and parcel of deputation. Similarly, for absorption after deputation in public interest,",,,,,

employee friendly norms for pay protection and pay fixation were introduced. However, there were cases when, due to public interest, employees",,,,,

with pensionable Government job were required to be absorbed in such PSUs where there was no provision for pension. Pension has generally started,,,,,

in all CPEs from early 1990s only. Thus, for motivating such Government employees, who were eligible for pension, to get absorbed in a non-pension",,,,,

providing CPE, in public interest, the Government introduced pro-rata pension for the first time in 1967, about which we shall discuss later. However,",,,,,

as far as deputation and absorption is concerned, we noticed that there are significant differences between the Military and civilian Government",,,,,

employees on this matter. After scrutiny of the evolving Government orders in last few decades, the following picture on absorption is emerging:",,,,,

(a) That, unlike military personnel, the act of lending and borrowing through deputation and subsequent absorption was very common and on a large",,,,,

scale for civilian Government employees for both Central and State Governments. The very nature of governance under the Central and State,,,,,

Governments makes this lending and borrowing of their civilian employees to CPEs, seamless, justified and in public interest because the required skill",,,,,

levels and experience was quite similar in both lending and borrowing Organizations.,",,,,,

(b) On the other hand, the requirement of deputation and absorption of Defence personnel, in public interest, was on a limited scale and was mostly",,,,,

limited to Defence production undertakings, which were directly under the Ministry of Defence like HAL, BHEL, Ordinance factories, Ship building",,,,,

yards, etc.",,,,,

(c) The demand for absorption from the defence production undertakings was normally for commissioned officers only, who had higher entry level",,,,,

qualifications. However, there was a general reluctance on the part of commissioned officers to leave a permanent pensionable job in military and get",,,,,

absorbed in a Defence Production undertaking because it was not very attractive from status, pay or career progression point of view. Hence it was",,,,,

always a challenge for the Government to motivate commissioned officers to get absorbed in a Defence production undertaking.,,,,,

(d) The existing Government orders for Armed Forces permit absorption in a CPE, only for Commissioned officers and not for airmen.",,,,,

16. The whole concept of lending and borrowing of a Government employee, through deputation and absorption was to provide the right skill set and",,,,,

experience to the borrowing department in the shortest possible time. Based on cadre management imperatives, the requirement for deputation and",,,,,

absorption, with eligibility criteria, was always circulated through departmental notifications. Based on these departmental notifications, volunteer",,,,,

Government employees were required to apply for deputation/absorption based on a NOC from the department. Over the years, the procedure for",,,,,

borrowing and lending of Government employees has gradually changed. Brief details of this gradual change are as follows:,,,,,

(i) After the initial years and decades of expansion was over, the Government realized that the liberal provisions of deputation and absorption were",,,,,

being misused by the Government employees. Therefore, from the year 1985, the Government decided to totally stop deputations to a CPE (with a",,,,,

few exceptions) and started the system of immediate absorption into the borrowing organization. In this context, the relevant extract of a Government",,,,,

office memorandum i.e. 5 (25)/83-BPE (PESB) dated 06 March 1985 with subject heading as 'Deputation of Central Government officers to Central",,,,,

Public Enterprises- Review of policy' is self-explanatory and reads as follows:,,,,,

2. In supersession of all extant orders on the subject, it has been decided that deputation of all Government officers including those",,,,,

belonging to Defence Services, to all posts (whether Board- Level or below Board- Level) in Central Public- enterprises should except in the",,,,,

cases mentioned in the following paragraph, not be permitted from the date of issue of this OM. Hereafter such officers could join posts in",,,,,

the central public enterprises only on immediate absorption basis.,,,,,

3(0 However, deputation may be permitted for a maximum period of three years in the case of Chief Executives and regional/Zonal chiefs of",,,,,

Central public enterprises who require continuous liaison and coordination with

State Governments and where expertise acquired in the,,,,,
state Government is needed,,,,,

Â (ii) Thus, it is clear that the Government had initially encouraged lending and borrowing of its employees to PSEs in public interest, through the route" ,,,,,
of deputation which was followed up by absorption, if required. However, in a major shift of policy in 1985, the Government totally stopped the system" ,,,,,
of temporary lending and borrowing through deputation (with few exceptions) and started the new system of only permanent lending and borrowing of,,,,,
Government employees to CPEs, in public interest, through immediate permanent absorption. This permanent absorption was executed after rendering" ,,,,,
a technical resignation from old department.,,,,,,

(B) Terminology (II): Pro-Rata Pension,,,,,

17. Having seen the 'absorption' aspect of this case, we shall now look into the term 'pro-rata pension'. The word 'pro-rata' basically means," ,,,,,

'proportional'. Till Vth Central Pay Commission, full pension i.e. Â© 50% of last pay, was admissible to a Government employee only if he had" ,,,,,

completed 33 years of service. For those employees who had earned their pension by completing the minimum qualifying service (15 years for Military,,,,,
and 20 years in civil) but could not complete 33 years of service required for full pension, pro-rata pension was given. For the first time in 1967, vide" ,,,,,

Office Memorandum dated 16.06.1967, the Ministry of Finance, Department of Expenditure introduced a different meaning to pro-rata pension, by" ,,,,,

authorizing those CPE absorbees who had 10 years or more service to be eligible for pro-rata pension from their old Government department.,,,,,

However, this benefit was prospective and was not extended to pre-16.06.1967 CPE absorbees. The matter was challenged by pre-1967 absorbees" ,,,,,

before the court of law. The matter finally reached Hon'ble Supreme Court in T.S. Thiruvangadam v. Union of India (1993) 2 SCC 174, in that, the" ,,,,,

Government defended the grant of pro-rata pension to CPE absorbees prospectively from 16.06.1967, in public interest, and on the specific ground" ,,,,,
that additional motivation was required to be given to Government employees, so as to ensure adequate number of volunteers to fill up the large" ,,,,,

number of vacant posts in CPEs through absorption. In this case, the Hon'ble Supreme Court granted pro-rata pension to pre-1967 absorbees also." ,,,,,

However, the relevant aspect of this old case is that, it clearly establishes the fact that the origin of pro- rata pension for CPE absorbees (10 years or" ,,,,,,

more service) with effect from 16.06.1967 was primarily driven by public interest of motivating certain Government employees to permanently join ,,,,,,

CPEs through absorption. This aspect of pro-rata pension being provided in public interest is once again reflected in the Government Order No ,,,,,,

4(6)185â?" P&PW (Q), Ministry of Personnel, Public Grievance & Pensions dated 03.01.1995. The relevant extract of this order is as follows:" ,,,,,,

1. The undersigned is directed to say that as per the provisions contained in Ministry of Finance, Department of Expenditure CM. No. F. 24(12)-E." ,,,,,,

V/66 dated 16 June, 196Z permanent Government servants were entitled to the payment of the Pro-Rata retirement benefits on absorption in Central" ,,,,,,

public Sector Undertakings, provided the absorption in Central Public Sector Undertakings was in public interest." ,,,,,,

Thus, it is absolutely clear that the grant of pro-rata pension for CPE absorbees is subject to passing the litmus test of absorption being in public" ,,,,,,

interest. ,,,,,,

(C) Terminology (III): Premature discharge of Airmen after selection to a civil post/service ,,,,,,

18. Having gone through the details of the terminologies 'absorption in a CPE and pro-rata pension; there is one more aspect, which is relevant to this" ,,,,,,

case and needs to be understood i.e. 'the provisions under which the airmen in IAF are discharged half way through their terms of engagement Le at ,,,,,,

about 10 years' service, well before completing their full terms of engagement of 20 years'. We have found this aspect to be very interesting and" ,,,,,,

unique to Air Force, wherein the airmen are enrolled at a very young age. We have further noted that the Air Force has a specific Air Force Order" ,,,,,,

(AFO) which permits premature discharge after selection (with certain conditions) to civil posts/services. This AFO, which permits premature" ,,,,,,

discharge to airmen, has gradually evolved over the years as a balance between individual aspirations and organizational requirements. The AFO" ,,,,,,

permits premature discharge to an airman after 07/15/18 years of service and has certain terms and conditions attached to such discharge. As far as ,,,,,,

the present applicants are concerned, AFO No.14/2008 was in force at the time of their premature discharge. As per the provisions of this AFO, after" ,,,,,,

07 years of enrollment, an airman could apply for Group 'A' posts and also for those posts in Group 'B' which are at higher end of Group 'B' pay," ,,,,,

under the Central/State Government or a PSU. Additionally, as per this AFO, after 15 years of service, airmen could also apply for Group 'A' and 113" ,,,,,

equivalent posts in private sector and after 18 years of service i.e two years before completing their period of engagement, they could apply for any" ,,,,,

job in Government or private sector. As per the provisions of this AFO, if eligible airmen wish to apply for such posts, they will be initially given NOC" ,,,,,

and if selected, they will be discharged from service. The background of the circumstances which has resulted in the issuance of this type of AFO," ,,,,,

authorizing premature discharge, even before completing the full 20 years of service, is as follows:" ,,,,,

(a) The entry age for enrollment as airmen is generally around 16-18 years and except for education trade, the required entry level qualification in" ,,,,,

almost all trades is matric (10th pass) or 10+2 pass.,,,,,

(b) Though entry level qualification was matric or 10+2, the enrolled airmen were required to sign a bond to serve for 20 years due to the" ,,,,,

organizational requirements of graded training and maintaining an effective fighting force. After enrollment and training, a large number of airmen" ,,,,,

were keen to do private studies and become graduates and post graduates. As an organizational policy, all such airmen, desirous of private higher" ,,,,,

studies were permitted to do so and necessary help, in terms of timely leave and adjustment of duties and screening of posting, was extended to them." ,,,,,

(c) Though all avenues of career progression within military, including grant of commission to become an officer, is available to airmen at various" ,,,,,

stages of their service, however, a large number of airmen are very keen at a very early stage of service to complete their graduation/post-graduation" ,,,,,

and leave, Armed Forces after picking up a good job in the civil. In the past, many airmen have approached the courts of law against refusal of Air" ,,,,,

Force to grant them NOC for lucrative civil employments. In almost all such cases, the Courts of Law have taken a stand that an airman enrolled in" ,,,,,

the Indian Air Force joins at a very young age and is normally from a very humble background, therefore, he has a right to aspire for self-improvement" ,,,,,

in his career, hence if he gets a very attractive job in civil, which offers him with much better career prospects, he should not be held back and NOC" ,,,,,

for the new job should be given to him. One of the recent judgements, which is totally in line with many earlier judgments on such cases, clearly re-" ,,,,,

affirms this legal position. This judgment has been given by the Hon'ble Delhi Court in W.P (C) No 554 of 2014 (Cp1 BS Siddha v. Union of India and ,,,,,

others). This is the case of a young airman who had less than 07 years' service, therefore, as per AFO No.14/2008, he was not eligible to apply for a" ,,,,,

civil job. However, he applied for a job in Central Industrial Security Force in response to an open source advertisement. He made a false statement in" ,,,,,

his application, that he has been granted NOC from Air Force. He finally got selected for the job and when the Air Force refused to give him NOC" ,,,,,

and discharge from service, he approached the Honible Delhi High Court. The judgment in his case is a reflection of many other similar judgments in" ,,,,,

the past, for seeking discharge from IAF on the grounds of selection for a better career prospect in the civil. Relevant extract of the judgment in the" ,,,,,

case of Cpl B.S Sidha (supra) is as follows: ,,,,,

17. Court often face a dilemma where competing interests clash, but then it is the duty of the court to solve the same. The dilemma which we" ,,,,,

face in the instant case is of a young man who stands before us and beseeches us that coming from a humble socio economic background," ,,,,,

standing by his family by taking up a job at a young age of 18 and having served the nation for 7 years, first as an airman and then as a" ,,,,,

Corporal with the Air Force, he should be pardoned for a technical wrong information supplied by him and the consequences of he being" ,,,,,

accountable for an action he factored i.e. he would continue to languish and would retire as a JCO whereas joining CISF as an assistant ,,,,,

commandant at the age of 26 years (this is the petitioner's current age) his career prospects may take him to the top most post. ,,,,,

18. Aspirations of the youth of the country, and especially those who come from humble origins need to be nurtured and protected, and in" ,,,,,

our opinion not sacrificed on the altar of punishments. That apart, what purpose would it serve if we hold it against the petitioner: he would" ,,,,,

always have a brooding ill will against the system and will always feel cheated in life of not being permitted to achieve what he could by dint ,,,,,

of hard work. He would be a disgruntled Airman and suffice would it be to state that it is better not to have an employee rather than to have ,,,,,

a disgruntled employee in the organization.,,,,,,

19. The aspirations of the petitioner, his hard work and his achievements when weighed in the scale with the interest of the organization in",,,,,,

the other side, compels us to hold the scale In favour of the petitioner, and we feel that the petitioner deserves a pardon for the wrong",,,,,,

committed by him, and thus we dispose of the writ petition issuing a mandamus to the respondents to issue a No Objection Certificate as also",,,,,,

a discharge certificate and relieve the petitioner from service within a period of one week from today so that the petitioner is able to report,,,,,,

for duties to Central Industrial Security Force service, under Article 19 at the will of the Airman, and the second aspect relates to the",,,,,,

significance and relevance of the AFO issued on this subject by the Air Force. The Hon'ble Supreme Court. in its judgement dated,,,,,,

03.07.2019, in the case of Amit Kumar Roy v. Union of India and others (C.A No 4605-4606 of 2019) has commented on both these",,,,,,

important aspects. The relevant extract of the judgment is as follows:,,,,,,

9. Article 33 of the constitution provides as follows:,,,,,,

33. Parliament may, by law, determine to what extent any of the rights conferred by this part shall, in their application to: the members of",,,,,,

the Armed Forces; or,,,,,,

(b) the members of the Armed Forces charged with the maintenance of public order: or,,,,,,

(c) persons employed in any bureau or other organisation established by the state for purpose of intelligence or counter intelligence; or,,,,,,

(d) persons employed in, or in connection with, the telecommunications system set up for the purpose of any Force, bureau or organisation",,,,,,

referred to in clauses (a) to (c), be restricted or abrogated so as to ensure proper discharge of their duties and the maintenance of",,,,,,

discipline among them.,,,,,,

The Air Force Act 1950 has been enacted by parliament legislating under articles 245 (1) and 246 (1) of the constitution. The specific,,,,,,

legislative entry in the With Schedule is entry 2 of the union list which reads thus:,,,,,,

Naval, military and Air Forces; any other armed forces of the Union." ,,,,,,

The Air Force Act 1950 imposes restrictions on the fundamental rights of the members of the IAF with a view to ensure 'proper discharge of,,,,,

duties and the maintenance of discipline among them'.,,,,,

XX XX XX XX XX XX,,,,,

15. We are unable to accept the submission of Mr. Sankaranarayanan that the appellant had an unqualified right under article 19 (1)(g) of,,,,,

the constitution to leave the service of the Air Force. The provisions of the Air Force Act, those contained in the rules and terms of",,,,,

engagement of the appellant belie such an assertion. AFO 14/2008 emphasizes aspects such as the criticality of the trade and the exigencies,,,,,

of service. They need to be verified and assessed before permission is granted. A person who has been enrolled as a member of the Air,,,,,

Force does not have an unqualified right to depart from service at his or her will during the term of engagement. Such a construction as,,,,,

urged on behalf of the appellant, will seriously impinge upon manning levels and operational preparedness of the armed forces. With the",,,,,

rapid advancement of technology, particularly in its applicability to military operations, there has been a reconfiguration of the human and",,,,,

technological requirements of a fighting force. The Interests of the service are of paramount importance. A balance has been sought to be,,,,,

drawn between the interests of service with situations involving requests from persons enrolled to take civilian employment. This balance is,,,,,

reflected in the provisions contained in the Air Force orders, in this case AFO 14/2008':",,,,,

In the above backdrop, it stands out dearly that even though it is against the interest of a fighting force to prematurely release trained airmen, due to",,,,,

selection in a civil post; however, the same has been accepted in the larger interest of welfare of the airmen, who are generally from a humble",,,,,

background and are enrolled at a very young age. In this particular case, all the applicants have, on their own free will and choice, applied for Group",,,,,

NB posts in the civil side, after completion of seven years of service, in response to open advertisements by Employment News and other open",,,,,

sources inviting applications from eligible Indian citizens. Since these applicants were meeting the age limit of being less than thirty years and were,,,,,

possessing the required educational qualification of being a graduate, as required

in the advertisements, they have applied for the civil job and after" ,,,,,,

final selection, they have been given premature discharge under the welfare related provisions of AFO No.14/2008." ,,,,,,

19. Thus, after having looked into the terminologies 'Absorption into a CPE', 'Pro-Rata Pension' and the provisions of 'Premature Retirement' of" ,,,,,,

airmen after selection to a civil post/service, we shall now address the issue of the entitlement of the applicants to pro-rata pension." ,,,,,,

20. Based on the foregoing, we have noted that the primary arguments favouring pro-rata pension for applicants, in brief, are as follows:" ,,,,,,

(a) Pro-rata pension has already been granted by the Government to Ex-Cpl R.D. Sharma and 21 others and Ex-Sgt Swarup Singh KaI an ,,,,,,

under its own discretion, hence the applicants are also entitled to pro-rata pension after absorption in a CPE." ,,,,,,

(b) That the commissioned officers of Air Force are entitled to pro-rata pension but the Airmen are not entitled. Hence, it is a case of" ,,,,,,

discrimination and violation of Article 14, therefore, the applicants are entitled to pro-rata pension." ,,,,,,

(c) The Hon'ble Delhi High Court has given a series of judgements already mentioned earlier upholding the right of an airmen for pro-rata ,,,,,,

pension, hence the applicants are also entitled to pro-rata pension." ,,,,,,

21. Similarly, the primary argument, in brief, against granting of pro-rata pension to the applicants, is as follows:" ,,,,,,

(a) The applicants had sought voluntary premature retirement before completing their term of engagement under the provision of AFO No. ,,,,,,

14/2008, hence they are not entitled to pro-rata pension." ,,,,,,

(b) Pro-rata pension granted to ex-Cpl RD Sharma and 21 others and Ex Sgt Swarup Singh KaI an by the Government is as a special case ,,,,,,

and cannot be taken as a precedence to grant pro-rata pension to the applicants. ,,,,,,

(c) A commissioned officer and an Airman in the Air Force are two distinct classes based on their nature of work and entry level ,,,,,,

qualifications, hence drawing equality between them may not be appropriate. Additionally, there is no provision in the Pension Regulations" ,,,,,,

for the Air Force for pro-rata pension for Airmen, hence the applicants are not entitled to prorata pension." ,,,,,,

(d) Almost all the Hontle Delhi High Court orders granting pro-rata pension are primarily based on the precedence set by the Government,,,,,

in granting prorata pension to Ex-Cpl R.D. Sharma & 21 others and Ex-Sgt Swarup Singh KaIan. However, in both these cases, pro-rata" ,,,,,

pension was granted by the Government as a special case, hence the applicants are not entitled for the same." ,,,,,

22. In the above backdrop, we are of the opinion that the question as to whether the applicants are entitled to pro-rata pension can best be answered if" ,,,,,

we find an answer to the following five important questions of law associated with these cases viz.: ,,,,,

(1) Whether the discharge of applicants from Air Force under the provisions of AFO No. 14/2008 after selection in a CPE, is akin to absorption into" ,,,,,

the CPE for the purpose of grant of pro-rata pension? ,,,,,

(2) Whether the applicants are entitled for pro-rata pension on similar lines on which the Government had granted pro-rata pension to Ex-Cpl R.D. ,,,,,

Sharma and 21 others and Ex-Sgt Swarup Singh KaIan, as a special case?" ,,,,,

(3) Whether the commissioned officers and Airmen of Air Force form one class for the purpose of Article 14? If so, whether the grant of pro-rata" ,,,,,

pension to commissioned officers of Air Force and not to its Airmen violates Article 14? ,,,,,

(4) Whether the Rules and the Policy on pro-rata pension for civilian Government employees can be applied suo motu on airmen of the Air Force? ,,,,,

(5) Whether the intent of legislation on pro-rata pension conform to the pro-rata pension to Airmen discharged under the provisions of AFO 14/2008? ,,,,,

23. As far as the first question is concerned, we are clear that 'absorption in a CPE' is a fundamental pre-requisite for claiming eligibility to pro-rata" ,,,,,

pension. Additionally, it is also clear to us that the absorption in CPE with pro-rata pension has to pass the litmus test of being in 'public interest'. We" ,,,,,

have also noted that the earlier system of lending and borrowing of Government employees was through deputation, followed by absorption, if" ,,,,,

required. This old system was replaced with a new system in 1985, whereby the act of lending and borrowing was permitted only through immediate" ,,,,,

absorption in the borrowing organization. Thus the fundamental question that arises is, as to whether the discharge of the applicants under the" ,,,,,

provisions of AFO No.14/2008 for joining a CPE, is same as absorption in a CPE?

In this context, we have noted the following important aspects:" ,,,,,

(a) In the case of all the applicants, there is no communication between the borrowing CPE and the Air Force to lend its manpower to them for" ,,,,,

permanent absorption. Additionally, there is no departmental notification issued by the Air Force seeking for volunteers from Air Force to proceed on" ,,,,,

absorption to these CPEs.,,,,,

(b) All the applicants have responded to the job advertisements as published in open sources for general public and decided to apply for the same as,,,,,

per the provisions of AFO No. 14/2008; because they had the required educational qualification and age, in line with the requirement of civilian" ,,,,,

candidates, from general public." ,,,,,

(c) The old trade job of all applicants in IAF was primarily of a technical nature related to aircraft, radars and ground communication equipment and" ,,,,,

has no relationship with their new job in the CPE and State Government, which are primarily of administrative nature. Hence the important" ,,,,,

requirement of borrowing and lending in public interest appears to be missing; because the primary purpose of lending and borrowing a Government,,,,,

servant is to capture the existing skill set and the experience available in the lending organization of the Government, for the benefit of the borrowing" ,,,,,

organization.,,,,,

(d) The permission by Air Force to applicants to apply for a civil job under AFO No. 14/2008, despite the airmen having joined Air Force with a bond" ,,,,,

for 20 years' service, despite large sums of public money having been spent on their military training and despite having restrictions on their" ,,,,,

fundamental rights under Article 33, is purely on personal welfare grounds and not due to any requirement of public interest." ,,,,,

(e) The discharge under AFO No. 14/2008 is given to airmen after 07/15/18 years of service. All the three categories of discharges under this AFO is,,,,,

always 'at own request before fulfilling the conditions of enrollment' and the same reason has been annotated in the official discharge book of all the,,,,,

applicants at the time of their discharge from the Air Force.,,,,,

Thus, in view of the nature of discharge of the applicants, we are of the opinion that the claim made by learned counsel for the applicants that their" ,,,,,

discharge under AFO No.14/2008 is akin to a technical resignation by a civilian Government employee and their joining in CPEs, after initiation of" ,,,,,

selection process by advertisement in Employment News, followed by written test and interview is akin to an absorption in a CPE, is a hyper-technical",,,,,

argument and does not match the ground realities of the discharge. Hence, in our view, the discharge of airmen under the provisions of AFO",,,,,

No.14/2008 is specific to Air Force and is related to the peculiarities of military service conditions. We also feel that the discharge under the provisions,,,,,

of AFO No,14/2008 cannot be compared with any other conditions of discharge or technical resignation of a civilian Government employee. We are in",,,,,

agreement with the contention of the learned counsel for respondents that discharge under the provisions of AFO No.14/2008 is primarily a discharge,,,,,

on welfare grounds and there is no element of 'public interest' involved in this whole process. On the contrary, having selected an individual for military",,,,,

duties, having trained him at high Government cost and thereafter discharging him from service half way through his terms of engagement i.e. during",,,,,

his most productive phase of military career, is a huge loss to the fighting force and also to the public exchequer. However, this loss is being accepted",,,,,

only on the larger grounds of welfare of an airman who had joined at a young age. Hence the discharge of applicants under the provisions of AFO,,,,,

No.14/2008 and their subsequent joining in a CPE/State Government does not make it a case of absorption of the applicants in a CPE/State,,,,,

Government.,,,,,

Whether the applicants are entitled to pro-rata pension on similar lines as granted to Ex Cpl R.D Sharma & 21 others and Ex Sgt S.S Kalan?,,,,,

24. As far as this question is concerned, we have observed that pro-rata pension for airmen, originated with grant of pro-rata pension to ex-Cpl R.D",,,,,

Sharma and 21 others, who were absorbed in HAL in 1965. In this case, the Hon'ble Delhi High Court, vide order dated 09.12.1994 in W.P (C) No",,,,,

4942 of 1994 (Ex Cpl R.D Sharma and others v. Union of India and others) directed the respondents to consider the representation of the applicants,,,,,

for pro-rata pension within two months. The respondents granted pro-rata pension to Ex Cpl R.D Sharma and 21 others vide Government of India,,,,,

letter No. Air HQ/41003/802/PA-III/42/CC/C/D dated 16.01.1996. When we look into of the details of this case, we find that the Government letter",,,,,

specifically mentions that though the airmen are not entitled for prorata pension as per Air Force Pension Regulations, however, they are being",,,,,

granted pro-rata pension as a special case. When we further went into details, to understand as to how it was a special case, the following aspects",,,,,,

have emerged:,,,,,

(a) Ex-Cpl RD Sharma and 21 other airmen were working in an Aircraft Manufacturing Department (AMD) under the Air Force.,,,,,,

(b) In a rare decision of its kind, the Government took a decision to merge AMD under the control of Air Force with HAL, in public interest.",,,,,,

(c) Ex-Cpl R.D Sharma and 21 other airmen working in AMD had volunteered to get absorbed in HAL in 1965.,,,,,,

(d) Since this was a rare case of merger of an Air Force department with HAL, which resulted in the absorption of Ex-Cpl R.D Sharma and 21 other",,,,,,

airmen from IAF to HAL, in public interest, pro-rata pension was granted to the airmen as a special case.",,,,,,

25. In view of the above facts and the special circumstances of the case, we are of the opinion that the grant of pro-rata pension to ex- Cpl R.D",,,,,,

Sharma and 21 other airmen can be classified as a special case. However, when we look at the second case of grant of pro-rata pension by the",,,,,,

Government to a single airman i.e. Ex-Sgt Swarup Singh KaIan, we find that in his case there was no adjudication over the claim for pro-rata pension",,,,,,

by discharged personnel having less than the qualifying service, but only directions were issued for consideration of such claims by the appropriate",,,,,,

authority. In this case, the Government decided to 'extend the pro-rata retirement benefits, as made available to Ex-Cpl R.D Sharma and 21 others to",,,,,,

Ex-Sgt Swarup Singh Ka/an 'vide GoI (MoD) Letter No.Air HQ/41003/802/PA-III/675/CC/C/D(Pen/Sers) dated 08.11. 1996. However, when we",,,,,,

look into the case of Ex-Sgt Swarup Singh KaIan and compare it with Ex-Cpl RD Sharma and 21 others, the following differences emerge:",,,,,,

(a) Ex-Sgt Swarup Singh KaIan (S.S KaIan) was selected for HAL in 1984, under a similar provision as the present AFO No. 14/2008. The AFO",,,,,,

number could have been different at that time. He had obtained a NOC from the Air Force and applied as per open advertisement for direct",,,,,,

recruitment from civilians. After final selection, he was discharged from Air Force on the same lines and principles as the present AFO No.14/2008.",,,,,,

However, unlike Ex-Cpl R.D Sharma and 21 others, who were absorbed into HAL after the merger of an TAF controlled department with HAL; Ex-",,,,,,

Sgt 5.5 KaIan was discharged under the provisions of the above mentioned AFO. He had joined HAL through a direct recruitment process, in",,,,,,

response to open advertisement for direct recruitment of civilian candidates. Hence, prima facie, it did not appear to be a case of absorption.",,,,,,

(b) We have also noted that for all subsequent cases of discharge on grounds of selection for a civil job, (after Ex-Sgt S.S KaIan), under the provisions",,,,,,

of AFO No.14/2008 (or its earlier versions); the respondents and the Government have been consistently denying pro-rata pension on the ground that,,,,,

the airmen have proceeded on voluntary discharge before the completion of their terms of engagement, they have not completed the pensionable",,,,,,

service of 15 years and that there is no provision for pro- rata pension for an airmen in the Pension Regulations of Air Force.,,,,,,

(c) The respondents have consistently maintained the stand, in their counter affidavits and during hearing, that the pro-rata pension to Ex-Cpl R.D",,,,,,

Sharma and 21 others and Ex-Sgt S.S KaIan have been sanctioned as a special case and should not be treated as a precedent. When we look at the,,,,,

relevant Government letter in the case of Ex-Cp1 R.D Sharma and 21 others i.e. Letter No Air HQ/41003/802/PA-III/42/CC/C/D Government of,,,,,

India, Ministry of Defence, dated 16.01.1996, addressed to CDA (Pensions), produced as Annexure-P-3 (CoIly) in the OA; we find the following",,,,,,

annotation about it being a special case has been mentioned:,,,,,

1. I am directed to refer to your office letter No LC/III/AF/84/CWP/4942/96 dated 12-1-96 (received on 15.1.96) on the above subject and to,,,,,

clarify that there is no provision in the Air Force Pension regulations for grant of pro-rata pensionary benefits to ex airmen who have not,,,,,

completed the minimum service of 15 years required to earn military pension. As such ex-Cpl RD Sharma & 21 others are not strictly entitled,,,,,

to any pro-rata pension under existing rules. It is also apparent from the letter no 5/LC/XIII dated 16.6.1965 of general manager HAL,,,,,

Kanpur (copy enclosed) addressed to one of the petitioners (No 218685 Sgt Bannerjee) that the terms of and conditions of absorption did,,,,,

not provide for payment of pro-rata pension to the petitioner.,,,,,,

2. However, keeping in view of the directions of Hontle High Court of Delhi in its order dated 9.12.94 in CWP 4942/94 Ex Cpl RD Sharma",,,,,,

& 21 others vs Union of India, Government has granted pro-rata pension to the petitioners as a special case. Necessary Government",,,,,

Sanction.,,,,,

Thus, after considering all the issues involved in the Government grant of pro-rata pension to ex-Cpl R.D Sharma and 21 others and ex-Sgt 5.5 Kalan",,,,,

as a special case, we are of the opinion that while the case of ex-Cpl R.D Sharma and 21 others being a rare case of merger of an Air Force",,,,,

Department into HAL in public interest, squarely becomes a case of absorption and falls in the category of special case for grant of pro-rata pension.",,,,,

However, we have not been able to find a clear reason, as to why the Government decided to treat the case of ex-Sgt Kalan as a special case for",,,,,

grant of pro-rata pension. If there are special reasons for the same, they are not clear to us. While checking the records, we have noted that the",,,,,

Government have granted pro-rata pension to Ex-Sgt 5.5 Kalan 'by extending the benefit granted to ex-Cpl RD Sharma and 21 others' to him.,,,,,

However, both these cases are on totally different footings. In all subsequent cases after Ex Sgt SS Kalan, the respondents and the Government have",,,,,

not granted pro-rata pension to airmen discharged under the provisions of AFO No.14/2008 or its earlier versions. In fact, there is divergence of",,,,,

opinion regarding grant of prorata pension to a PBOR. On one hand, there are various decisions rendered by Division Bench of the Delhi High Court.",,,,,

In Munshi Singh (supra), a similar question arose before the Division Bench of the Delhi High Court as to whether the petitioners are entitled to claim",,,,,

pension on a pro-rata basis even when they do not qualify for grant of service pension under the rules regulating their service conditions. In that case",,,,,

the Court was concerned with Regulation 132 of the Pension Regulations for the Army, which is pari materia to Regulation 121 of the Air Force and",,,,,

provided that the minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15.,,,,,

years. The High Court referred to various decisions on the issue. It will be advantageous if we reproduce Paragraphs 2, 3 and 4 of the said judgement",,,,,

which read as under:,,,,,

2. A plain reading of the above provision would leave no manner of doubt that pension rules applicable to those serving in the Indian Army,,,,,

and governed by the aforementioned Regulations can claim service pension as a

matter of right only if they have rendered qualifying,,,,,

service of 15 years in that Force. Neither Regulation 132 extracted above nor any other provisions contained in the Regulations for the,,,,,

Army envisage or provide for grant of pro-rata pension to those who have not rendered the qualifying years of service. Learned Counsel,,,,,

for the petitioners were also unable to refer to us any such provision in support of their contention that pro-rata pension was legally,,,,,

admissible to the petitioners or any one of them. That appears to be the position even according to the decisions of this Court to which we,,,,,

may be briefly referred at the stage. In Mahinder Singh (Ex-Sep.) v. Union of India & Ors., 2001 (VI) AD (Del.) 774; Dr. Mukundakam",,,,,,

Sharma,",,,,,

J. as His Lordship then was, had an occasion to examine whether the Pension Regulations for the Army, 1961 envisage grant of prorata",,,,,,

pension. Repelling the contention that pro-rata pension could be granted to the petitioner by reference to Rule 49 of CCS (Pension) Rules,,,,,

and de hors the pension regulations applicable to the Army, the Court observed:",,,,,

5. The decisions on which the Counsel appearing for the petitioners relied during the course of his arguments based on interpretation of",,,,,

the provisions of Rule 49 of CCS (Pension) Rules. Although the Counsel for the petitioner submitted that he is also governed by the,,,,,

provisions of the said rules, I am unable to accept the said contention for the fact that there is a specific provision in the Pension",,,,,,

Regulations applicable to the Army personnel that the minimum service which qualifies for service pension would be 15 years in the case of,,,,,

Army personnel. The petitioner is governed by the said provisions of para 132 of Pension Regulations for the Army, 1961, Part-I, and",,,,,,

therefore, the said provision is also applicable in his case. The pension of the Army personnel is required to be paid as per Pension",,,,,,

Regulations for the Army for making payment of any pro-rata pension for the Army personnel. Reliance on the decisions interpreting the,,,,,

provisions of Rule 49 of the CCS (Pension) Rules is misplaced, for the said provision cannot be made applicable to the facts and",,,,,,

circumstances of the present case""",,,,,,

3. A similar issue arose before a Division Bench of this Court in Ram Singh Yadav v. Union of India & Anr., 116 (2005) DLT 486 (OS).",,,,,

Relying upon the decision in Mahinder Singh 's case (supra) the Court declared that the Pension Regulations for the Army do not provide,,,,,

for grant of pro-rata pension to those who do not have qualifying service to their credit. The Court observed:,,,,,

8. We have gone through the Pension Regulations for the Army. In the said Regulation we could not find any provision which provides for",,,,,

grant of pro-rata pension. Since the petitioner is governed by the Pension Regulations for the Army and not by the CS (Pension) Rules",,,,,

reliance of the petitioner on the CCS (Pension) Rules in support of his contention is misplaced. Reliance of the petitioner on the Ministry of,,,,,

Defence Letter dated February 9, 1987 for grant of pro-rata pension is also misconceived as the said letter deals with grant of pro-rata",,,,,

pensioner benefits to the commissioned officers of the Defence Services on permanent absorption in public sector enterprises. The,,,,,

petitioner, who was enrolled as a Sepoy in the Army, was not a commissioned officer in the Army nor he could be considered as permanently",,,,,

absorbed in a public sector undertaking. Therefore, the said circular is of no assistance to the petitioner. Reliance of the petitioner on the",,,,,

circular of the Ministry of Defence dated April 29, 1997 is again misplaced and misconceived as the said circular deals with grant of pro-",,,,,

rata pension to ex-airmen who were absorbed in public sector undertakings before completing 10 years of service in Government of India.,,,,,

In the said circular it is clearly mentioned that there is no provision in the Air Force Pension Regulation for grant of pro-rata pensionary,,,,,

benefits to ex-airmen on their permanent absorption in the public sector undertakings in case of persons who had not completed the,,,,,

minimum qualifying service of 15 years required to earn military pension."",,,,,

4. To the same effect are the decisions of this Court in Sushila v. IJOI & Ors., 139 (2007) DLT I (DB)=W.P.(C)287/2005 disposed of on",,,,,

20th February, 2007 and Ex. Maj. A. Sivakurnaran v. LIOI & Ors., 145 (2007) DLT 217 (DB)=-WP.(C) 5250/2003 disposed of on 20th",,,,,

March, 2007 In both these cases also similar contentions urged on behalf of the petitioners for payment of pro-rata pension to those who",,,,,

did not have the qualifying years of service were rejected and the writ petitions dismissed. In the light of all these decisions, we see no room",,,,,

for any further debate on the question whether pro-rata pension was admissible to those who did not have the qualifying years of service.,,,,,

The Court further considered the changes made in the Pension Regulations in the light of the recommendation of Pay Commission, which provided for",,,,,

continuance of the existing system of paying lump sum gratuity on service below 10 years and monthly pension for qualifying service of 10 years and,,,,,

more. These recommendations having been accepted by the Government, the petitioners in that case were governed by the same, in preference to",,,,,

Regulation 132. The petitioners in that case relied upon a Resolution/Memorandum dated 18.04.2007 issued by the Ministry of Personnel and Public,,,,,

Grievances and the annexures to the same, which, inter-aka, stated that the recommendation made by the I1/' Pay Commission regarding pension",,,,,

structures for petitioners had been accepted. Repelling the contention, the High Court relied upon the observations made in Sushila's case (supra),",,,,,

wherein it was observed as under:,,,,,

The argument that the Regulation 132 (supra) stands amended because of the recommendations of the Pay Commission and acceptance of,,,,,

the said recommendations by the Government of India in terms of the resolution relied upon by Mr. Dhull needs to be mentioned only to be,,,,,

rejected. The argument it appears proceeds on a total misunderstanding of the legal implication of the recommendations and the resolution,,,,,

accepting the same. A careful reading of para 2 of the annexure to the Government resolution extracted earlier would show that the,,,,,

Government have accepted the recommendations made by the Pay Commission to continue the existing system of paying a lumpsum gratuity,,,,,

for service below 10 years and monthly pension for qualifying service of .10 years and more. What is important is that the recommendation,,,,,

made by the Pay Commission and its acceptance apply only to cases in which the existing rules regulating grant of service pension to the,,,,,

employees provide for payment of pension upon completion of 10 years of qualifying service. The recommendations do not go further to,,,,,

suggest that pension must become payable on completion of 10 years of service even in cases where the existing service rules regulating the,,,,,

grant of such benefit did not provide for such payment. Mr. Dhull was unable to point out any provision in the Pension Regulations or,,,,,

elsewhere according to which pension may have been paid to any ex-Army personnel upon his completing 10 years of service. Indeed there,,,,,

could be no provision in the light of the specific provisions contained in the Regulation 132 extracted earlier stipulating 15 years minimum,,,,,

qualifying service for purposes of pension. In the absence of any existing system of payment of service pension upon completion of 10 years,,,,,

of service prevalent in the Indian Army acceptance of the Pay Commission recommendations by the Government would be of no assistance,,,,,

to the petitioner""",,,,,,

Finally, the Court held as under:"",,,,,,

The recommendations, it is noteworthy, simply envisage continuance of the existing system of payment of pension wherever such system is",,,,,,

prevalent. They do not introduce a new system nor do the recommendations purport to reduce the qualifying service from 15 years to 10 years. So,,,,,

long as Regulation 132 of the Pension Regulations for the Army continues on the Statute Book and so long as the same has not been modified or,,,,,

amended to reduce the qualifying period from 15 years to .10 years or to provide for pro-rata pension, the petitioners cannot stake any claim for such",,,,,,

payment.""",,,,,,

In Govind Kumar Srivastava (supra), the respondents relied upon the decision rendered in Ram Singh Yadav (supra), which was",,,,,,

distinguished on the ground that the question involved in that case was whether in terms of Regulation 121, for the purpose of regular",,,,,,

pension, a PBOR in IAF would be entitled to earn pension only after completing 15 years of minimum qualifying service, but in Govind",,,,,,

Kumar Srivastava's case (supra), the Court was concerned with the issue of grant of pro-rata pension. With due respect, a careful reading",,,,,,

of the judgement rendered by the Division Bench of Delhi High Court goes to show that in that case, the petitioner, who was enrolled in the",,,,,,

Regiment of Artillery was discharged from service being unsuitable for Military service in terms of the provisions of Army Rule 13-111 (V),,,,,,

with effect from 29.06.1974. After discharge, he was also paid his terminal dues, including service and death-cum-retirement gratuity. He",,,,,,

was satisfied with the aforesaid payment and did not claim for payment of any pension for long 25 years after the date of his discharge,,,,,

from service. After expiry of about,,,,,

25 years, the petitioner raked up an issue that he is entitled to payment of full pension or in any case, on pro-rata basis. In rejoinder, he also raised the" ,,,,,

contention that his discharge was illegal. Since there was no prayer in the writ petition challenging the discharge order and the same was highly,,,,,

belated, hence the Court did not enter into that controversy. Relying upon Regulation 132 of the Pension Regulations for the Army, which provided" ,,,,,

that the minimum qualifying service for earning service pension would be 15 years and since the petitioner had rendered only 10 years and 258 days of,,,,,

service, he was held not entitled to service pension. Thereafter, the Court dealt with the issue, whether he is entitled to pro-rata pension and the High" ,,,,,

Court made the observations as reproduced above.,,,,,

26. In that case also, the petitioners relied upon the order in the case of R.D Sharma (supra). It was observed that in view of the directions in the said" ,,,,,

decision, the Government had granted pro-rata pension to the petitioners therein. However, grant of pro-rata pension to the petitioners in that case was" ,,,,,

by way of special case in view of the observations made in the said decision. It was brought to the notice of the Hon'ble High Court that the,,,,,

respondents had filed an appeal in all the aforesaid cases, which was registered as [PA No. 342 of 2000. In the order passed by the Division Bench in" ,,,,,

the said appeal on 29.11.2001, it was observed that the airmen, who completed 10 years of service, were given benefit of pro-rata pension as a special" ,,,,,

case pursuant to the orders of the writ court and qualifying service under Regulation 121 would remain to be 15 years. Accordingly, the order of" ,,,,,

learned Single Judge was set aside.,,,,,

27. As regards the factual matrix of that case, it was held that the petitioner being a PBOR could earn pension only after completing 15 years of" ,,,,,

minimum qualifying service as provided for in Regulation 132 of the Pension Regulation for the Army. There is also no provision in the Army Pension,,,,,

Regulation for grant of pro-rata pension for PBOR. Reference was made to a decision of High Court in AK. Das v. Union of India and others (W.P.,,,,,

(C) No. 2861 of 1999 decided on 20.12.2001), wherein also it was held that in

order to earn pension in the Indian Air Force by the airman, he has to" ,,,,,
render 15 years of qualifying service. Reference was also made to the decision in Mohinder Singh (supra) and it was held that there was no provision ,,,,,
in the Pension Regulation for the Army for making payment of any pro-rata pension for the army personnel. Accordingly, the writ petition was" ,,,,,
dismissed. ,,,,,

28. A similar question also arose before the Kochi Bench of this Tribunal in O.A No. 183 of 2014 in P. Subash Chandra Bose v. Union of India and ,,,,,
others. After detailed discussion, the O.A was dismissed vide order dated 31.08.2015 holding that when there is no provision in the Pension Regulations" ,,,,,
for grant of pro-rata pension to those who do not have the qualifying service for service pension, the claim for pension on pro-rata basis has no basis" ,,,,,
or merit. ,,,,,

29. On the other hand, there are a number of judgments rendered by a Division Bench of the Delhi High Court as relied upon by learned counsel for" ,,,,,
the applicant, wherein pro-rata pension was granted to Defence personnel who had completed 10 years of service. However, a perusal of these" ,,,,,
judgments goes to show that none of these decisions find reference in the judgements relied upon by learned counsel for the applicants viz. Govind ,,,,,
Kumar Srivastava (supra), Mohammed Ishar Khan (supra), Rakesh Kumar (supra), Amit Ranjan Kumar (supra), Rajendra Pandit (supra) and Shiv" ,,,,,
Kumar (supra). In fact, Govind Kumar Srivastava (supra) was decided on 09.01.2019 and remaining decisions were rendered following the order" ,,,,,
passed in Govind Kumar Srivastava (supra). It is not in dispute that a Special Leave Petition was preferred before the Hon'ble Supreme Court ,,,,,
challenging the order passed by High Court. Although that SLP was dismissed, but the question of law was left open. Therefore, we have ventured to" ,,,,,
discuss the legal issue, whether the applicants are entitled to pro-rata pension in view of the Pension Regulations, notifications issued from time to time" ,,,,,
and other precedents. In the above circumstances, after considering all issues, we accept the contention of the learned counsel for the respondents" ,,,,,
that grant of pro-rata pension to ex-Sgt S.S KaI an by the Government was as a special case and, therefore, the applicants are not entitled to the same." ,,,,,
Additionally, we do not agree with the contention of the learned counsel for the

applicants that because Government had granted pro-rata pension to",,,,,

ex-Sgt S.S KaIan on the same lines of ex-Cpl R.D Sharma and 21 others as a special case, therefore, every case of airmen discharged under AFO",,,,,

No.14/2008, including the applicants, are entitled to pro-rata pension.",,,,,

Do Commissioned Officers and Airmen of Air Force Form one Class for the Purpose of Article 14? Does grant of Pro-Rata Pension to,,,,,

commissioned officers of Air Force and not to its Airmen violate article 14?,,,,,

30. Now we come to the third question. This question is important, because the learned counsel for the applicants has submitted that grant of pro-rata",,,,,

pension only to commissioned officers and not to airmen vide GoI, MoD Letter No.8(3)/86/A/D/ (Pensions/Services) dated 19.02.1987 is violative of",,,,,

Article 14, hence the airmen also should be granted pro-rata pension. Article14 of Constitution provides for equality before law. In trying to find an",,,,,

answer to this question, we find assistance from a Constitution Bench (07 Judge) judgment in the case of Budhan Chaudhary v. State of Bihar",,,,,

wherein the Honible Supreme Court has clarified the meaning and scope of Article 14 in the following terms:,,,,,

The provisions of Article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, Chiranjit La!",,,,,

Chaudhary v. Union of India, (1950) 1 SCR 869; State of Bombay v. F. N. Balsara (1951) 2 SCR 682; State of West Bengal v. Anwar Ali",,,,,

Sarkar (1952) 3 SCR 284; Kathi Ran/rig Rawat v. State of Saurashtra (1952) 3 SCR 435; Lachmandas Kewalram Ahuja v. State of Bombay,,,,,

(1952) 3 SCR 710; Qasim Razvi V. State of Hyderabad (1953) 4 SCR 581 and Habeeb Mohamad v. State of Hyderabad (1953) 4 SCR 661.,,,,,

It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now",,,,,

well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In",,,,,

order, however, to pass the test of permissible classification, two conditions must be fulfilled, namely, (0 that the classification must be",,,,,

founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and",,,,,

(ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question.,,,,,

Thus the Constitution Bench of Hon'ble Supreme Court has clarified that a reasonable classification, for the purpose of legislation, does not constitute" ,,,,, violation of Article 14 of the Constitution.,,,,,

31. Now, when we look at the two reasonable classifications within Air Force i.e. commissioned officers and airmen, we find that it certainly meets" ,,,,,

the first criteria i.e. being founded on an intelligible differentia, which distinguishes persons or things that are grouped together from others left out of" ,,,,,

the group. Secondly, as far as second criteria of a reasonable classification is concerned i.e. 'that differentia must have a rational relation to the object" ,,,,,

sought to be achieved by the statute in question', we find that the object of the statute or the policy in question is 'grant of pro-rata pensionary" ,,,,,

benefits'. We have already seen that the purpose of introducing pro-rata pension by the Government in 1967 was to motivate Government employees.,,,,,

to get absorbed in CPEs in public interest and fill up the large number of vacant posts in CPE. It is important to note that the demand for absorption.,,,,,

was primarily for commissioned officers. In particular, there was high demand for commissioned officers with technical qualifications from defence" ,,,,,

production units like HAL, etc. Though commissioned officers were in demand due to higher entry level qualifications and exposure to wider scope of" ,,,,,

military activities due to their nature of work, however, there was a great reluctance on their part to get absorbed in a CPE, due to similar status and" ,,,,,

pay in CPE, with non-availability of pension and poor career progression possibilities. It is in this context that from demand and supply point of view," ,,,,,

the Government issued the policy letter of 1987 granting pro-rata pension to commissioned officers to motivate them to get absorbed in CPEs, in public" ,,,,,

interest. Additionally, it is important to note that a commissioned officer is not authorized to ask for premature retirement on grounds of civil" ,,,,,

employment, even if he is selected as an IAS or IPS officer. There are absolutely no provisions for a commissioned officer on lines of AFO" ,,,,,

No.14/2008 like airmen, to apply for any job in civil except two years before his scheduled retirement or scheduled release as per the terms and" ,,,,,

conditions of service. The Ministry of Defence exercises control over the three wings of Armed Forces and it also exercises control over the Defence.,,,,,

production units. Thus, the only way a commissioned officer can apply for absorption is in response to departmental notifications by its service HQ" ,,,,,

(through 'K' Broadcast) asking volunteers for absorption through departmental channels or in some cases permitting them to apply directly in response,,,,,

to a specific advertisement. Such departmental notifications by service HQ are normally driven by MoD in public interest, It is in this backdrop that the",,,,,

policy letter of 1987 meant only for commissioned officers has to be viewed. When we compare this picture as applicable for commissioned officers,,,,,

with that of Airmen, we find that there has rarely been any demand for absorption of airmen primarily because of low entry level qualifications and",,,,,

limited exposure. When we look at the ground reality, we find that except for the 'exceptional circumstances' under which Ex - Cpl R.D Sharma and",,,,,

21 others got absorbed in HAL, there are hardly any other known cases of absorption in public interest. Almost all other cases of claimed absorption,",,,,

starting from Ex-Sgt 5.5 KaIan since 1984, claiming to be absorbed in a CPE, are cases of applying for a civil job under welfare policy (reflected",,,,,

through AFO No. 14/2008 or earlier version), in response to advertisements for general public for direct recruitment to PSEs. Such kind of joining a",,,,,

CPE for an airman under the earlier system of 'first deputation and then absorption' was simply not possible at all. However, after change of",,,,,

Government policy in 1985 from 'first deputation then absorption' to 'no deputation and direct absorption', all the airmen who have joined CPEs through",,,,,

AFO No.14/2008 like route are claiming to be absorbed and, therefore, demanding pro-rata pension. Thus, considering all issues associated with the",,,,,

concept of pro-rata pension and cadre management of a fighting force, we are of the opinion that because public interest was linked to motivating",,,,,

commissioned officers for joining CPEs, therefore, the letter of 1987 granting pro-rata pension to commissioned officers only was issued by the",,,,,

Government. In these circumstances, considering this policy letter of 1987 as a discrimination against airmen will be a very narrow interpretation and",,,,,

will not be appropriate in view of the ground realities. Viewed thus, we agree with the learned counsel for respondents and are of the opinion that the",,,,,

applicants are not eligible for pro-rata pension on the basis of the above quoted 1987 policy letter for commissioned officers.,,,,,,

Can the Rules and Policy on pro-rata pension for civilian Government employees be suo moto applied on Airmen of the Air Force?,,,,,

32. As far as this question is concerned, we feel that this question is important

because every organization has a requirement to achieve its objectives",,,,,

and manage its cadre accordingly. From the civil side, the rules of pro-rata pension on absorption are extremely liberal and common to all employees",,,,,

whereas in Armed Forces, pro-rata pension and by extension/ absorption is restricted to commissioned officers only. In the civil, it is also common to",,,,,

have entire Government departments merged into PSUs, in public interest, leading to absorption. Additionally, the nature of work culture and work",,,,,

ethics in civil are, by and large, common at Centre, State and PSE level, hence interdepartmental mobility and absorption is more common there. the",,,,,

nature of work and terms and conditions of service. However, there are severe restrictions regarding leaving a Military job before completion of the",,,,,

terms of engagement. These restrictions have been put in place in the Military, due to compulsions of cadre management requirements of a fighting",,,,,

force and are backed by Article 33 of the Constitution. It is because of the compulsions of Military training, that men are recruited at the young age of",,,,,

around 18 years with a bond to serve for 20 years in the case of Air Force. In the Air Force, airmen are enrolled at around the age of 18 years with",,,,,

Matric/10+2 Pass qualification and it is clear to us that every opportunity is given to them for career advancement within the Military in all three wings,,,,,

of Military. They can apply for commissioning as an officer at almost every stage of their career. Additionally, those airmen who become graduates",,,,,

and post-graduates, after being enrolled, are permitted to apply for commission in all the three wings of Military with handsome age concessions not",,,,,

available to civilian candidates. Even with lesser education qualifications i.e. matric or 10+2, they can apply for Branch Commission (similar to SL",,,,,

Commission) in the middle stages of their career as airmen. Towards the end of their career, airmen are also eligible for grant of honorary",,,,,

commission. It is in this context that the Air Force, as an organization, encourages Airmen to acquire higher educational qualifications. There are large",,,,,

instances of airmen getting selected as commissioned officers and rising to the highest level of a three star. It is a matter of record that one airman,,,,,

who was enrolled as a driver in the Air Force, got selected for commissioning at an early stage of his career, and rose to become the Chief of Air",,,,,

Staff (CAS). However, there is a certain percentage of airmen who are very focused and keen in picking up attractive civilian Government jobs only.",,,,

The average upper age limit for applying for civilian Government jobs/jobs in CPE, in Group 'A' and 'B' categories is 30 years with graduation, hence" ,,,,,

most of the airmen interested in civil jobs, work very hard and aim is to get an early discharge from Air Force under the provisions of AFO No." ,,,,,

14/2008. After enrollment, they normally become a graduate by 24-25 years of age and thereafter they keep applying for these civil posts as available" ,,,,,

in open advertisements through Employment News, etc. Since all civil Government jobs and CPEs are pensionable jobs on same lines as any other" ,,,,,

Government job, and on selection the new job provides a career span for next 30-32 years i.e. up to 60 years of age, (beyond what is available in Air" ,,,,,

Force); hence this route of civil employment and discharge is a huge attraction for airmen focused on civil jobs. While there is nothing wrong in young ,,,,,

airmen trying to improve their career prospects through attractive civil employment, their discharge under AFO No.14/2008, on larger welfare" ,,,,,

grounds, is specific to the peculiarities of Military service and cannot be compared to any other form of discharge of a Government employee in civil" ,,,,,

services. Hence the NOC given to a large number of airmen to appear in written exam and interview of Group 'A'/Group 'B' Government posts, is not" ,,,,,

the same as NOC for absorption as applicable to a civilian Government servant. Similarly, grant of 'premature discharge at own request before" ,,,,,

completion of terms of engagement' to the airmen who are finally selected, is not the same as technical resignation for the purpose of absorption in a" ,,,,,

CPE. It is in this context that the rules, as applicable to a civil Government employee for absorption in a CPE, through technical resignation, cannot be" ,,,,,

suo moto applied to airmen for their discharge under the provisions of AFO No.14/2008. Hence we do not agree with the contention of the learned ,,,,,

counsel for applicants that the case of applicants is similar to a civilian Government employee, offering technical resignation to get absorbed in a PSE." ,,,,,

Does the Intent of legislation on Pro-Rata Pension, confirm to the Grant of Pro-Rata Pension to Airmen, discharged under the" ,,,,,

provisions of AFO 14/2008? ,,,,,

35. As far as the fifth and the last question is concerned, in this particular case, it is important to understand the intent of the legislation granting pro-" ,,,,,

rata pension. The whole concept of pro-rata pension is linked to public interest. Pro-rata pension was initiated in 1967 to motivate Government ,,,,,

Servants to join CPEs, which had large number of vacancies which were not getting filled. In 1967, almost all CPEs had no provisions for pension, The",,,,,

system of pension after retirement started in all CPEs from early 1990s. In 2004, the Government changed over to Contributory Pension Fund (CPF)",,,,,

Scheme for all Government employees except Armed Forces. All CPEs also have gradually changed over to CPF Scheme of pension after 2004.,,,,,,

Additionally, we have noted that the Government has clarified that for post-2004 entrants into Government service, only the share of contribution in",,,,,

CPF Scheme will be transferred from lending organization to borrowing organization after absorption in CPE. Thus, effectively the Government has",,,,,

stopped pro-rata pension from post-2004 entrants onwards. However, since the present pension in Defence service has a similarity to pre-2004",,,,,

pattern of civil pension i.e. pension under the CCS (Pension) Rules 1972, therefore, technically pro-rata pension has become an issue in perpetuity for",,,,,

Armed Forces.,,,,,,

36. Life in Armed Forces is demanding, dangerous and difficult. Militaries all over the world face problems of sustaining their required manning levels",,,,,

and many countries have to resort to compulsory Military service to maintain their manning levels. Hence, all Militaries, all over the world, generate",,,,,

motivation for their soldiers to continue in Military service. On this count, minimum qualifying service to earn military pension is a great motivator. We",,,,,

are of the opinion that it could not have been the intent of legislation to reward an airman who has prematurely left Military service after 10 years",,,,,

despite huge investment in his training and grooming; primar / in pursuit of his personal career ambitions for a civilian job and thereafter reward him,,,,,

with two pensions for life; first one from Air Force for his 10 years' service in Air Force (pro-rata pension), starting from the age of 28-30 years for",,,,,

the rest of his life and second from a Government owned CPE/State Government for over 30-32 years of service in his new job, after his retirement at",,,,,

the age of 60 years.,,,,,,

37. To sum up, we are of the considered opinion that the terms and conditions and peculiarities of Defence services are entirely different from civil",,,,,

employment. The Air Force does not have any provision for pro-rata pension for airmen. The discharge of applicants under the provisions of AFO,,,,,

No.14/2008 does not come in the category of absorption. It also does not meet

the criteria of being in public interest. A discharge under the provisions,,,,,
of AFO No.14/2008 is a premature discharge on the request of the individual on welfare grounds. The processing and issuance of NOC by Air Force,,,,,
authorities under the provisions of AFO No.14/2008 to appear in the written exam and interview of a PSE does not make Air Force, the lender",,,,,
organization and the PSE, the borrowing organization. It is simply a case of premature retirement on own request, for self- career improvement. This",,,,,
premature retirement is before completion of the terms of engagement and on the individual's own request; hence this fact is annotated as the reason,,,,,
for discharge in the discharge book officially issued by the Air Force to the applicants. This discharge, on own request, for better career prospects in",,,,,
civil, cannot be converted into a technical resignation and absorption into CPE on hyper-technical grounds, as pleaded by the learned counsel for the",,,,,
applicants. We have noted that all the rules and policy letters quoted in the OA by the applicants in support of their claims are for deputation and,,,,,
absorption of civilian employees and are specific to the terms and conditions and service peculiarities as relevant to civilian Government employees. At,,,,,
best, certain aspects of these rules and policy letters can be applied to those cases of Defence employees which involve deputation and absorption.",,,,,
However, since discharge under the provisions of AFO No.14/2008 is neither a case of deputation nor a case of absorption, therefore, these rules and",,,,,
policy letters do not help the applicants. At this stage, we would like to clarify here that though not planned for in the rules, wherever an actual and",,,,,
genuine absorption of an airman takes place in a PSE, due to any reasons, in public interest; like the case of absorption of Ex- Cpl R.D Sharma and 21",,,,,
others, due to extra-ordinary circumstances of merger of an Air Force department into HAL, the case for grant of pro-rata pension may be",,,,,
considered as an exception. We would also like to add here that, while the welfare of an airman/jawan is important, it cannot be enlarged to the point",,,,,
where it starts hurting organizational interests. The motivation to put in minimum qualifying service to earn military pension is an important pillar in the,,,,,
cadre management of Armed Forces. If minimum qualifying service to earn Military pension is diluted along with an easy exit route, without any",,,,,
apparent public interest, it is bound to snowball into a cadre management problem for the Armed Forces in near future.",,,,,

38. In the above circumstances, after considering all the issues, we are in agreement with the contention of the learned counsel for the respondents" ,,,,,

that ex-Sgt 5.5. KaIan was granted pro-rata pension by the Government as a special case and, therefore, the applicants herein are not entitled to the" ,,,,,

same. Additionally, we do not agree with the contention of the learned counsel for the applicants that because the Government had granted pro-rata" ,,,,,

pension to ex-Sgt SS KaIan on the same lines as that of ex-Cp1 R.D. Sharma and 21 others as a special case, therefore, every case of airmen" ,,,,,

discharged under AFO No. 14/2008, including the applicants, are entitled to pro-rata pension." ,,,,,

39. The T.As and the O.A fail and are dismissed. No order as to costs.,,,,,

40. Miscellaneous applications pending, if any, shall stand closed. Copy of this order be placed on each file." ,,,,,

Pronounced in open Court on this day 29th of September, 2020." ,,,,,