

**(2020) 01 DEL CK 0174**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 9524 Of 2019

Rakesh Kumar

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

**Date of Decision :** 15-01-2020

**Acts Referred:**

Constitution Of india, 1950 — Article 14

Central Civil Services (Pension) Rules, 1972 — Rule 37, 37A

**Citation :** (2020) 01 DEL CK 0174

**Hon'ble Judges :** Dr. S. Muralidhar, J; Talwant Singh, J

**Bench :** Division Bench

**Advocate :** Pallavi Awasthi, Barkha Babbar

## Judgement

Dr. S. Muralidhar, J

1. The Petitioner who got discharged from the Indian Air Force ("IAF") and was subsequently absorbed in the Bank of Maharashtra ("BoM"), has approached this Court by way of this petition for setting aside a letter dated 21 st February, 2019 issued by the Air Headquarters ("AHQ") rejecting his request for grant of pro rata pension.

2. Although Ms. Pallavi Awasthi, learned counsel for the Petitioner, submitted that the case of the Petitioner stands covered in his favour by the decisions of this Court dated 9th January, 2019 in W.P.(C) 10026/2016 (Govind Kumar Srivastava v. Union of India) and 11th December, 2019 in W.P.(C) 5642/2019 (Mohammad Israr Khan v. Union of India), Ms. Barkha Babbar, learned Standing Counsel for the Respondents, sought to persuade this Court to re-examine the issue by attempting to highlight the distinctions between the facts in the present case and the facts in the aforesaid cases.

3. The background facts, as far as the present petition is concerned, are that the Petitioner was enrolled in the IAF on 21st April, 1997. On 7th February, 2008, the AHQ issued a No Objection Certificate ("NOC") wherein it was mentioned that the

AHQ did not have any objection to the Petitioner appearing for an interview for the post of Probationary Officer ("PO") in the BoM. After he was selected for the post of PO in the BoM, the Petitioner stood discharged from the services of the IAF in terms of a discharge certificate dated 11th March, 2008.

4. On 2nd February, 2019 the Petitioner applied to the AHQ for grant of pro rata pension. This request however came to be declined by the impugned letter dated 21st February, 2019.

5. Ms. Awasthi, learned counsel for the Petitioner, points out that the decision of this Court in Govind Kumar Srivastava (*supra*) was affirmed by the Supreme Court when on 26th April 2019 it dismissed the Special Leave Petition ("SLP") filed by the Union of India against the said decision of this Court leaving the question of law open. Subsequently, this was taken note of by this Court when it decided the case of Mohammad Israr Khan (*supra*), where again the facts were more or less identical.

6. The Court would at this stage like to discuss in some detail its decision in Govind Kumar Srivastava (*supra*), since many of the points urged by the Respondents in their counter affidavit in the present case, stand answered by that decision. In the said decision this Court discussed the letter dated 19th February, 1987 of the Ministry of Defence (MoD) addressed to the Chiefs of the Army, Air and Naval Staff on the subject of grant of pro rata pensionary benefits to Commissioned Officers in the Armed Forces on their permanent absorption in Central Public Sector Enterprises ("CPSEs").

7. The Respondents there argued that the benefit of pro-rata pension in terms of the letter dated 19th February 1987 was available only to Commissioned Officers of the armed forces and not to non-Commissioned Officers ("NCOs") and Persons Below Officer Rank (PBOR). It was further argued that in terms of Regulation 121 of the Pension Regulations 1961 applicable to the IAF, the minimum qualifying regular service for earning regular pension is fifteen years. It was argued that there was no provision therein for grant of pro rata pension to NCOs and PBOR. This Court in Govind Kumar Srivastava (*supra*) negated the said plea of the Respondents and held as under:

"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 foil 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."

8. Further in Govind Kumar Srivastava (supra) there was a discussion of the earlier decision of this Court dated 12th September, 1996 in W.P.(C) 3471/1996 (Ex-Corporal Swarup Singh Kalan v. Union of India), where pursuant to a direction issued by the Court to the Respondents to consider the representation made by that Petitioner for grant of pro rata pension, the Respondents, in fact, passed an order granting him that benefit. This Court in Govind Kumar Srivastava (supra) rejected the plea of the Respondents that the case of Ex-Corporal Kalan should be treated as "a special case".

9. The Respondents in Govind Kumar Srivastava (supra) adverted to Regulation 121 of the Pension Regulations as well as the decision in Ram Singh Yadav v. Union of India (2005) 116 DLT 486 (DB) to argue that the Petitioner should be denied relief. This too was negated by the Court thus:

"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 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."

10. In Govind Kumar Srivastava (supra), the petition was ultimately allowed for the following reason:

"21. With the Respondents failings 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."

11. While in Govind Kumar Srivastava (supra), the Petitioner was earlier serving in the IAF and got subsequently absorbed in Air India, in Mohammad Israr Khan (supra), the Petitioners, after obtaining discharge from the IAF after following the due process, joined as POs in public sector banks. One joined Canara Bank and

the other the Oriental Bank of Commerce. In their cases too, this Court, following its decision in Govind Kumar Srivastava (supra), allowed their prayer for grant of pro-rata pension.

12. From the narration in para 21 of the counter affidavit of the Respondents in the present writ petition it transpires that apart from the case of Ex-Corporal Swarup Singh Kalan (supra), which the Respondents wish to characterise as a "special case", they passed similar orders on 16th January 1996 granting pro-rata pension to Ex Corporal R D Sharma and 21 others pursuant to order dated 9th December, 1994 of this Court in W.P. (C) No. 4942 of 1994. There the Petitioners who were held on the posted strength of the AMD, Air Force Station, Kanpur were subsequently absorbed in Hindustan Aeronautics Ltd. ("HAL") upon conversion of the AMD to HAL, a PSU. This too was considered by the Respondents as a "special case", not to be treated as a precedent. However, for the reasons already discussed by this Court in Govind Kumar Srivastava (supra), there is no distinction between the case of Ex Corporal Kalan, Ex Corporal Sharma and 21 others and the case at hand.

13. In his rejoinder the Petitioner has traced the genesis of the letter dated 19th February 1987 of the MoD extending to defence personnel who get absorbed in the CPSEs the benefit of pro-rata pension, to Rule 37 of the CCS (Pension) Rules which reads thus:

"37. Pension on absorption, in or under a corporation, company, or body:

(1) A Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a Body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub-rule (3) he shall be eligible to receive retirement benefits if any, from such date as may be determined, in accordance with the orders of the Central Government applicable to him."

14. In other words, the Petitioner is right in contending that the MoD has, in issuing the letter dated 19th February 1987, virtually adopted the rationale of Rule 37 of the CCS (Pension) Rules applicable to permanent central government employees, although there are a separate set of pension Regulations for the armed forces. It is further pointed out that the above benefit of pro rata pension was, by a subsequent letter dated 21st April 1988 issued by the MoD, extended even to defence personnel absorbed, after discharge, in central autonomous bodies (CABs).

15. The position is no different for central government employees who are absorbed in nationalised banks and insurance companies. By an Office Memorandum (OM) dated 30th May, 1995 issued by the Department of Pension and Pensioners Welfare (DPPW) it was clarified that "Nationalised Banks including the Reserve Bank of India and State Bank of India and its subsidiaries, the

General Insurance Corporation and its four subsidiaries are to be treated as Autonomous Bodies for the purposes of grant of pro-rata retirement benefit to the permanent Central Government employees who are absorbed by these bodies." Since they were held entitled to pro rata pension, they were not permitted to count the period served in the central government for the purpose of regular pension in such CABs. In the same vein is the Notification dated 30th September, 2000 issued by the DPPW whereby Rule 37A was inserted in the CCS (Pension) Rules, 1972 enabling those serving in the Indian Audit and Accounts Service to avail pro rata pension upon absorption in a PSU or CAB. The DPPW issued yet another OM dated 26th July, 2005 clarifying that all employees of central government or the CABs serving prior to 31st December 2003 and governed by the old pension scheme would take up appointment under a state government by submitting a technical resignation on or after 1st January, 2004 would be eligible for grant of pro-rata pension benefits for the period they served under the central government or CAB.

16. Although it is contended by the Respondents that the aforementioned OMs do not apply to defence personnel, the said OMs read with the letters of the MoD referred to hereinbefore do reflect the consistent and broad policy of the central government to extend the benefit of pro rata pension not only to central government employees but to defence personnel as well. In fact in para 4 of the OM dated 30th May, 1995, MoD was requested to clarify the position to "all concerned authorities under their administrative control." For the reasons already discussed, the Court sees no justification in making a distinction for the purpose of pro-rata pension benefit between such of those defence personnel who are Commissioned Officers and those who are NCOs/PBOR who are subsequently absorbed in CPSEs/PSUs/nationalised Banks and CABs after observing all the formalities.

17. Ms. Babbar, appearing for the Respondents, draws attention to a letter dated 28th June 2019 written by the Directorate of Air Veterans (Legal Cell) to the Department of Public Enterprises ("DPE"), noting that there had been several writ petitions filed in this Court by former members of the Armed Forces for grant of pro rata pension upon their absorption in various Government/Semi-Government, Public Sector Enterprises ("PSEs")/Public Sector Undertakings ("PSUs") on the basis of the same letter dated 19th February, 1987 issued by the MoD. The Directorate of Air Veterans sought a clarification on the definition of a CPSE, and in particular, the difference between a PSU and a CPSE. Another question raised was whether a Public Sector Bank ("PSB") would fall under the category of PSE?

18. In response to the said query, the DPE by a letter dated 9th July, 2019 enclosed an OM dated 22nd May, 2019 clarifying as under:

"Central Public Sector Enterprise (CPSE) is the company under the administrative control of Central Ministry/Department holding more than 50% of the equity by Central Govt. The subsidiaries of these companies, if registered in India wherein

any CPSE has more than 50% equity are also categorized as CPSEs. It also covers certain statutory corporations like Airport Authority of India Food Corporation of India and Central Warehousing Corporation. The shares of CPSEs are held by the President of India or his nominees and managed by Board of Directors which include official and non-official Directors/other shareholders or by the Holding companies. The departmentally run public enterprises, banking institutions and insurance companies are not covered under the definition of CPSE."

19. Ms. Babbar accordingly submits that the BoM, a Nationalised Bank, would not fall within the definition of CPSE and, therefore, the benefit of the MoD letter dated 19th February, 1987 would not be available to the Petitioner.

20. The Court notes that the distinction drawn by the DPE between the CPSE and a PSU for the purposes of grant of pro rata pension has no rational basis. Both are public sector entities. In terms of the policy of the IAF, which governed the request of the present Petitioner at the relevant point in time, an NOC could be granted for absorption of the Petitioner in a PSB or nationalised Bank. In such circumstances, to deny him pro rata pension only because according to the Respondents, a PSB or a Nationalised Bank would not fall strictly within the definition of CPSE, would subject persons like the Petitioner to hostile discrimination. In any event, the above OM dated 22nd May 2019 is without reference to the context in which the query was raised viz., for the purpose of pro rata pension. This explains why it makes no reference to the OM's referred to hereinbefore which govern the issue of grant of pro rata pension to permanent central government employees upon their absorption in CPSEs, PSUs, Nationalised banks, insurance companies, CABs and so on.

21. Even otherwise, the Court finds that many characteristics of the CPSE that are spoken of in the aforementioned OM dated 22nd May 2019 are, in fact, satisfied by many of the PSUs, PSBs/nationalised banks. For the purposes of grant of pro rata pension, therefore, the Court finds no rational basis for drawing such a distinction between those who get absorbed permanently in a CPSE or a PSU or PSB/nationalised bank upon discharge from the Armed Forces. Consequently, the Court is unable to agree with the submission of Ms. Babbar that only because the Petitioner was absorbed in a Nationalised Bank, with the full consent of the AHQ, he should be denied the same relief that was granted in Govind Kumar Srivastava. The Court is unable to find any distinction between the above two cases and the case in hand.

22. For all of the aforementioned reasons, the petition is allowed and the impugned order dated 21st February, 2019 issued by the AHQ rejecting the Petitioner's request of pro rata pension is hereby set aside. The Respondents will grant the Petitioner pro rata pension from the date of his discharge with arrears being paid not later than 12 weeks from today failing which the Respondents would be liable to pay simple interest at the rate of 6% per annum on the said sum for the period of delay.