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**(2007) 04 DEL CK 0025**

**In the Delhi High Court**

**Case No : Writ Petition (C) . No. 6264 of 2006**

Wing Commander (Retd.) V.S. Tomar

APPELLANT

Vs

Govt. of India and Others

RESPONDENT

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**Date of Decision : 20-04-2007**

**Acts Referred:**

**Citation : (2007) 04 DEL CK 0025**

**Hon'ble Judges : T.S. Thakur, J;S.N. Aggarwal, J**

**Bench : Division Bench**

**Advocate : Present-in-perso, for the Appellant; Sangeeta Tomar, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

S.N. Aggarwal, J.—The petitioner, now a practicing advocate, took voluntary premature retirement from the service of Air Force on 31.12.1997 after serving there for twenty one and a half years in various ranks. He took retirement at the age of about 44 years and at that time he was holding the rank of Wing Commander (Time Scale) to which rank he was promoted on 16.6.1997 shortly before his premature retirement on his request. He was initially granted pension of Rs. 5,779 per month in the rank of Wing Commander (TS). Later on, on the representation of the petitioner his pension was finally fixed at Rs. 6,433 per month admissible to Sqn. leaders since the same was more than the pension payable to Wing Commander (time scale). While fixing the pension of the petitioner at Rs. 6,433 per month, he was granted weightage of eight years of service in terms of GOI letters dated 30.10.1987 and 3.2.1998. As such, service of twenty nine and a half years was taken into account while calculating the final pension of the petitioner instead of twenty one and a half years actually rendered by him at the time of his voluntary retirement. The petitioner has now contended in this writ petition that in view of the judgment of the Supreme Court in the case of Raghu Nandan Lal Chaudhary and Ors. v. UOI AIR 1988 SCC 2125 and also in view of a Division Bench judgment of this Court in D.D. Swami v. Union of

India and Ors. 2005 (3) S.L.J. 269, he is entitled to full pension on completion of 30 years of service instead of 33 years of service. He has, Therefore, filed this writ petition seeking a writ of mandamus against the respondents directing them to pay him full pension on completion of 30 years of service instead of 33 years taken into account at the time of fixation of his pension at Rs. 6,433. The petitioner has also prayed for interest at 9% on arrears from 1.1.1998 till the date of payment of arrears.

2. In response to notice of this writ petition, the respondents have filed their counter affidavit in which they have denied claim of the petitioner for full pension inter alia on the ground that the ratio of law laid down in Raghu Nandan Lal Chaudhary's case and in D.D. Swami's case relied upon by the petitioner is not applicable to the facts of this case because in those cases the pensioner had retired in normal course on reaching the superannuation age of 55 years after completing 30 years of service whereas in the present case the petitioner had sought voluntary premature retirement on his own volition while he was about 44 years of age only. It is stated that the age of retirement for the Wing Commanders at the time the petitioner had sought voluntary retirement was 52 years and since the petitioner had sought voluntary premature retirement at the age of 44 years, he would have continued in service for eight years more had he not taken voluntary retirement. It is contended that in case the petitioner would have continued in service till the age of his retirement then in that event he would have been entitled to full pension. The respondents have prayed for the dismissal of this writ petition.

3. We have heard the petitioner who appeared in person and Ms. Sangeeta Tomar for the respondents. We have also perused the record of the case carefully.

4. The short question that arises for our consideration is whether the benefit of judgments in Raghu Nandan Lal Chaudhary's case and in D.D. Swami's case (supra) wherein it was laid down that those employees whose retiring age is 55 years instead of 58 years, then the qualifying service for full pension should be taken as 30 years instead of 33 years can be extended to the petitioner or not. In our view, there is a fundamental difference between the principle for determining pension laid down in the above mentioned cases and that in the petitioner's case. In Raghu Nandan Lal Chaudhary's case and in D.D. Swami's case the petitioner had retired on attaining the age of superannuation whereas in the present case the petitioner had taken voluntary premature retirement on his own volition. The other difference is that in the above mentioned cases relied upon by the petitioner, the pensioner had retired on reaching the age of superannuation of 55 years on completing 30 years of service whereas in the present case the petitioner took voluntary premature retirement at the age of 44 years though the normal age of his retirement at that time was 52 years. The third difference is that in the cases relied upon by the petitioner, the weightage of three years was directed to be given by the Court for computation of full pension because the age of retirement for other Government servants was 58

years whereas the petitioners in respect of whom such weightage was ordered to be given had retired in normal course at the age of 55 years after completing 30 years of service. Furthermore, the actual service rendered by the petitioner on the date he took voluntary premature retirement was twenty one and a half years and as per policy of the Government he has already been granted weightage of eight years in computation of his pension. In our view, the petitioner is not entitled to any further weightage of service for computation of his pension. The judgments in Raghunandan Lal Chaudhary's case and in D.D. Swami's case cannot be taken in aid for granting the relief prayed for by the petitioner in this petition.

5. For the foregoing reasons, we do not find any merit in this writ petition which fails and is hereby dismissed without any order as to costs.