$~28 and 30

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

\+ **W.P.(C) 5642/2019**

MOHAMMAD ISRAR KHAN ..... Petitioner

Through: Ms. Aishwarya Bhati, Sr. Advocate with Ms. Pallavi Awasthi, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Vishal Mittal, Sr. Panel Counsel with Mr. Sameer Sinha, GP for R1 to R5.

\+ **W.P.(C) 6524/2019**

WUDALI SRIKANT ..... Petitioner

Through: Ms. Aishwarya Bhati, Sr. Advocate with Ms. Pallavi Awasthi, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Ms. Shubhra Parashar with Mr. V. P. S. Charak and Mr. Kapil Gaur, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **11.12.2019**

Dr. S. Muralidhar, J.:

1. These two petitions raise similar questions of law and are accordingly

disposed of by this common judgment. In both petitions the prayer is for a direction to the Respondents to grant pro-rata pension to the Petitioners from the date of their discharge from the Indian Air Force.

2. The facts in W.P.(C) 5642/2019 filed by Mohammad Israr Khan are that the Petitioner was enrolled in the Indian Air Force ('IAF') on 13th July, 1993. He is a 60% disabled person as per a certificate dated 10.11.2016 issued by CMO, Etawah. A No Objection Certificate ('NOC') was issued on 31st January, 2005 by the Respondents permitting the Petitioner to join Vijaya Bank, a Government undertaking, on the post of Probationary Assistant Manager.

3. After being selected to the post of Assistant Manager Group 'A' in Vijaya Bank, the Petitioner was discharged from the IAF in the rank of Corporal on 2nd April, 2005. The Petitioner's appointment with Vijaya Bank was confirmed by a selection letter dated 4th March, 2005, pursuant to which he joined Vijaya Bank with effect from 4th April, 2005.

4. By a letter dated 25th January, 2019 the Petitioner requested the Respondents for grant of pro-rata pension. By a letter dated 12th March, 2019 the said request was rejected on the ground that the Petitioner had rendered a total of 11 years and 260 days of qualifying service at the time of his discharge from IAF, making him eligible to receive service gratuity and DCRG, which had already been paid to him. Reference was made to a circular dated 16th January, 1996 of the Ministry of Defence, Government of India granting pro-rata pension to a specific set of petitioners "as a special

case", and it was clarified that "this should not be quoted as a precedent for grant of pro-rata pension to other ex-airmen absorbed in PSUs etc." It was stated that pro-rata pension had been sanctioned only to a few ex-airmen in the past who had rendered less than 15 years of qualifying service and been absorbed in HAL on the orders of a court.

5. The facts in W.P.(C) 6524/2019 are more or less similar. The Petitioner Wudali Srikant was enrolled in the IAF on 23rd May, 1995. On 19th April, 2005, an NOC was issued, permitting him to appear for an interview for the post of Probationary Officer in the Oriental Bank of Commerce ('OBC'). The Petitioner joined OBC with effect from 11th July, 2005 as a Probationary Officer pursuant to an appointment letter dated 20th June, 2005. He was discharged from the IAF on 15th July, 2005 in the rank of Corporal. His representation dated 28th March, 2019 for grant of pro-rata pension was turned down by the Respondents by a letter dated 23rd April, 2019.

6. This Court has heard the submissions of Ms. Aishwarya Bhati, learned Senior Counsel appearing for the Petitioners and Mr. Vishal Mittal, Senior Panel Counsel and Ms. Shubhra Parashar, learned counsel for the Respondents.

7. In the counter-affidavit filed in both petitions, it is reiterated that there was a distinction between Commissioned Officers and Airmen and, therefore, the Petitioners could not avail of the benefit of the letter dated 19th February, 1987. A reference was also made to the decision of this Court in ***Ram Singh Yadav v. Union of India (2005) 116 DLT 486 (DB)***. Reference

is also made to Rule 2 (h) of the CCS (Pension Rules), 1972 in terms of which Air Force personnel would be governed by the Air Force Act, 1961, but not the Petitioners.

8. The above submissions have been considered. At the outset, it requires to be noted that an identical question arose for consideration before this Court in W.P.(C) 10026/2016 (***Govind Kumar Srivastava v. Union of India***). By judgment dated 9th January 2019, while allowing the said writ petition, this Court held that there was no justification in denying the benefit of pro-rata pension to Persons Below Officer Rank ('PBOR')/Non-Commissioned Officers ('NCOs').

9. In ***Govind Kumar Srivastava*** (*supra*), this Court observed that there was no explanation why the PBORs/NCOs were singled out for differential treatment in the matter of grant of pro-rata pension by the Central Government, which had by notification dated 30th September, 2000 recognised the eligibility for grant of pro-rata pension to those Government servants absorbed in PSUs who did not at the time of such absorption satisfy the requirements of completing the qualifying service for grant of full pension. It was noted that in the case of Commissioned Officers of the IAF the minimum period to be completed in service for grant of pro-rata pension was 10 years. Since Govind Kumar Srivastava had completed 10 years and 1 month in the IAF, he satisfied this requirement.

10. In ***Govind Kumar Srivastava*** (*supra*), the Court also referred to an order dated 12th September, 1996 passed in W.P.(C) 3471/1996 (***Ex-Corporal***

Swarup Singh Kalan v. Union of India). There the Petitioner was an Ex-Corporal, an NCO. This Court left it to the Respondents to decide whether he was entitled to pro-rata pension notwithstanding a circular/letter dated 19th February, 1987 of the Ministry of Defence which confined such relief only to Commissioned Officers. Pursuant to the above order, the Respondents granted Kalan pro-rata pension by treating it as a "special case."

11. In ***Govind Kumar Srivastava*** (*supra*), reference was made to the decision in ***Ram Singh Yadav v. Union of India*** (*supra*), that was relied upon by the Respondents, in relation to which it was held as under:

> "19. There can be no doubt that in terms of Regulation 121, for the purposes of regular pension a PBOR in the IAF would be entitled to earn pension only after completing 15 years of minimum qualifying service. In fact, that was the very question that arose for determination in the context of the Army in Ram Singh Yadav v. Union of India (supra). However, in the present case we are not concerned with the issue of grant of regular pension but pro-rata pension. Regulation 121 is silent on the aspect of pro-rata pension. It is circular/letter dated 19th February 1987 that provides for it but confines the benefit to Commissioned Officers subject to the stipulation that the officer must have completed 10 years of service and must have been absorbed in a PSU thereafter. The Petitioner here fulfils both criteria but is denied the benefit only because he was a PBOR/NCO."

12. It was further held in paragraphs 21 and 22 as under:

> "21. With the Respondents failing to answer the principal challenge by the Petitioner to discriminatory part of the circular/letter dated 19th February 1987, the Court has no hesitation in holding that the denial in terms of the said

letter/circular of the benefit of pro-rata pension to PBORs/NCOs like the Petitioner is violative of Article 14 of the Constitution.

22. The Court accordingly sets aside the letter dated 6th June 2016 issued by the Respondents as well as the letter dated 26'^ July 2016 issued by the MoD rejecting the Petitioner's request for grant of pro-rata pension. A direction is issued to the Respondents to grant the Petitioner pro-rata pension from the date of his discharge from the IAF in terms of the circular/letter dated 19th February 1987. The consequential orders be issued within a period of eight weeks. The an-ears of pro-rata pension to be paid to the Petitioner within a period of twelve weeks thereafter. A failure to comply with the above direction would entail the Respondents having to pay simple interest at 6% p.a. on the arrears till the date of payment."

13. The Union of India filed S.L.P.(C) 8813/2019 against the above judgment of this Court in ***Govind Kumar Srivastava*** (*supra*). The SLP was dismissed by the Supreme Court by order dated 26th April, 2019 which reads as under:

> "Exemption from filing certified copy of the impugned order is granted.
>
> The special leave petition is rejected.
>
> Question of law left open."

14. The Court is unable to find any points of distinction between the case on hand and that of Mr. Govind Kumar Srivastava. His petition was allowed by the Court for the reasons already noted. Although the Supreme Court, while dismissing the S.L.P. against the said judgment, left the question of law open, no new issue has been pointed out by the Respondents in the present

cases which was not taken note of by the Court in its decision in ***Govind Kumar Srivastava*** (*supra*).

15. For the aforementioned reasons, both petitions are allowed and the impugned orders of the Respondents rejecting the representations of the Petitioners are hereby set aside. The Respondents are directed to grant each Petitioner pro-rata pension from the dates of their respective discharge with the arrears being paid not later than 12 weeks from today, failing which the Respondents would be liable to pay simple interest at 6% per annum on the said sum for the period of delay.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 11, 2019
tr