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

% **Date of Decision: 4th December, 2020**

+ **W.P.(C) 9843/2020**

EX CPL G MOHAN **.....Petitioner**

Through: Mr.Ganesh Singh, Advocate

versus

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

Through: Mr.Ajay Dignpaul, Advocate

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

C.M. Appl. No.31408/2020 (Exemption from filing original/certified copies, dim and small font annexure)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. The petitioner, an ex-Corporal of the respondents Indian Air Force (IAF), has filed this petition seeking mandamus, directing the respondents IAF to consider the case of the petitioner and to grant pro-rata pension to the petitioner from the date of his discharge i.e. 10th December, 2006.

4. It is the case of the petitioner, that (i) the petitioner was enrolled in the respondents IAF as an Engine Fitter, on 19th March, 1996; (ii) the petitioner was facing some extreme personal/family circumstances and when apprised his seniors of the same, was advised to avail of the prevailing Air Force Orders (AFOs)/policy made for that purpose; (iii) accordingly the petitioner requested for release from service, after 10 years and 8 months of service; (iv) that there was a policy providing for discharge from service on compassionate grounds; (v) that the application of the petitioner was approved and the petitioner discharged/released from service on 10th December, 2006, after completing 10 years and 8 months of regular service and 2 years of reserve service, totaling 12 years and 8 months; (vi) that post release from the respondents IAF “the petitioner had different personal circumstances to manage and find some jobs in private sector as his age for the various government job was expiring and he could not also compete with the candidates who were already under flow of education/coaching/preparations and the petitioner was required to apply in general category only and not as ex-serviceman”; and, (vii) that the petitioner, on 2nd July, 2018, represented for pro-rata pension but which representation was rejected on 24th July, 2018.

5. We have enquired from the counsel for the petitioner, whether not for the claim of pro-rata pension of the petitioner, the jurisdiction would be of the Armed Forces Tribunal (AFT), in accordance with the dicta of a Co-ordinate Bench of this Court in

Ashit Kumar Mishra Vs. Union of India Ors. MANU/DE/3584/2017.

6. The counsel for the petitioner states that this Court, in some other judgments, has entertained writ petitions and granted the relief of pro-rata pension.

7. The relief of pro-rata pension was granted by this Court to Persons Below Officers Rank (PBORs)/ Non-Commissioned Officers (NCOs) in the respondents IAF, for the first time in ***Govind Kumar Srivastava Vs. Union of India*** MANU/DE/0048/2019 (DB) [Special Leave Petition (SLP) (Civil) No. 8813/2019 whereagainst was dismissed on 26th April, 2019]. In ***Govind Kumar Srivastava supra***, the writ petition was entertained because entailed a challenge to the circular/policy dated 19th February, 1987 of the respondents IAF which, though granted the benefit of pro-rata pension to Commissioned Officers, on fulfilling some conditions, did not grant the same benefit on the same conditions to the PBORs/NCOs; it was the contention of the petitioner therein that thus the PBORs/NCOs were being discriminated. Though in the said judgment also, the question of transferring the matter to the AFT was considered but for the reason that the AFT was refusing to entertain challenge to policy/circulars, the petition was retained in this court.

8. The petitioner in the present petition has not impugned any policy or circular of the respondents IAF and has merely made a

claim for pro-rata pension and the case of the petitioner is akin to *Ashit Kumar Mishra* supra and not to *Govind Kumar Srivastava* supra.

9. The counsel for the petitioner has then referred us to Rule 15(2)(f) of the Air Force Rules, 1969 but which merely prescribes the authorities competent to issue an order of discharge of a personnel of the Air Force “at own request”. The same has no relevance here.

10. The counsel for the petitioner has next referred us to AFO 16 of 2008 titled “Discharge from Service on Compassionate and other Grounds: Airmen and NCs(E)”. The same also provides the various grounds on which discharge can be granted, one of which is “compassionate ground” on which the petitioner sought and was granted discharge, and another is “selection to civil post”, as was the case in *Govind Kumar Srivastava* supra and in *Brijlal Kumar Vs. Union of India* 2020 SCC OnLine Del 1477, decided by us recently. The petitioner is thus not covered by the dicta in *Govind Kumar Srivastava* supra and *Brijlal Kumar* supra. We may mention that vide policy/circular dated 19th February, 1987, Commissioned Officers, on discharge after rendering 10 years of minimum service, as distinct from minimum 20 years of service for being eligible for pension prescribed under Regulation 25 of the Air Force Pension Regulations, 1961, were conferred the benefit of pro-rata pension if had been discharged to join the service of a State/Central Government, after obtaining No-objection Certificate

(NOC) from the Indian Air Force. Here, the petitioner, as per his own admission, did not seek discharge for joining any other service but sought discharge on compassionate grounds and thus cannot seek the benefit of the judgments.

11. No other argument has been urged.

12. There is no merit in the petition.

13. Dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 04, 2020

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