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

% ***Date of decision: March 29, 2022***

+ **W.P.(C) 5186/2022 & CM APPL. 15393/2022**

ABINASH KUMAR AND ANR. Petitioners
Through: **Mr. Vikas Tripathi & Ms. Mandavi Pandey, Advocates**

Versus

UNION OF INDIA AND ORS. Respondents
Through: **Nemo.**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present petition has been preferred seeking a declaration that Clause No.1 of Notification No. 8 (3) 86/A/D (Pension/Services) issued by Government of India, Ministry of Defence dated 19.02.1987 is Unconstitutional, ultra vires, void, illegal, arbitrary, unreasonable, discriminatory and unsustainable, as the same extends benefits of pro-rata pension to only commissioned officers of defence service. In addition, quashing of letters dated 17.05.2021 & 05.10.2021 issued by the respondents is also sought.

W.P.(C) 5186/2022



2. Petitioner No.1 claims to have joined the services of the Indian Air Force as an Airman in December, 2006. He was discharged from the services of Indian Air Force vide Order No. RO/2503/1/RW (Dis) dated 10.10.2019 on civil post grounds and thereafter, he joined University of Bihar on the post of Assistant Professor (Political Science). He claims to have applied for grant of pro rata pension with arrears on 04.02.2021 to the respondents. However, the said representation was rejected by the respondents vide its letter dated 17.05.2021.

3. Petitioner No.2 claims to have joined the services of the Indian Air Force as an Airman on 27.06.2006. He was discharged from the services of Indian Air Force on 08.07.2016 and joined the services in IDBI Bank, JNIBF, Hyderabad as Assistant Manager Grade 'A'. Petitioner No.2 also claims to have made a representation on 31.07.2021 to the respondents for grant pro-rata pension, which was rejected by the respondents vide reply dated 05.10.2021.

4. Learned counsel for the petitioners submits that by virtue of Notification no. 28/30/2004-P & PW (B) dated 26.05.2005 and in terms with Rule 37 of Central Civil Services (Pension) Rules, 1972, all employees of Central Government are entitled to grant of pro-rata pension. Further



submits that in view of judgment dated 09.01.2019 in W.P.(C) No. 10026/2019, which is upheld by the Hon'ble Supreme Court, respondents be directed to grant pro-rata pension with arrears to the petitioners for their past services in Air Force.

5. Upon hearing, we dispose of the present petition with direction to respondents to consider the case of petitioners and release pro-rata pension, if found eligible, with appropriate interest in terms of judgment dated 09.01.2019 in W.P.(C) No. 10026/2019 and judgment dated 08.02.2021 in W.P (C) 9905/2019 passed by this Court.

6. With directions as aforesaid, the present petition is disposed of. Pending application is disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(SUDHIR KUMAR JAIN)
JUDGE

MARCH 29, 2022

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W.P.(C) 5186/2022