



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

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Date of decision: February 07, 2024

+ W.P.(C) 13404/2018

(50) MAJOR EM REDDY (RETD) ..... Petitioner  
Through: Ms. Archana Rames, Advocate

Versus

UNION OF INDIA AND ANR. .... Respondents  
Through: Mr. Ajay Digpaul, CGSC with Ms.  
Ishita Pathak, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**HON'BLE MR. JUSTICE SAURABH BANERJEE**

**SAURABH BANERJEE, J. (ORAL)**

1. The petitioner, initially enrolled as a Sepoy on 24.12.1960 and served till 31.07.1975 in the Indian Army was granted Special List Commission on 01.08.1975 whereafter he retired at the age of 55 years on 31.01.1995, after serving for 19 years and 5 months in the Indian Army.
2. Subsequently, after his retirement the Ministry of Defence, vide its order dated 14.08.2001, impugned herein, accorded sanction to the Service Headquarters in respect of condoning the shortfall of upto 12 months in qualifying service for grant of pension in respect of Personnel Below Officer Rank<sup>1</sup>.
3. As such, the petitioner approached the Hon'ble Armed Forces Tribunal, Principal Bench, New Delhi<sup>2</sup> in the year 2018 assailing the

<sup>1</sup> Hereinafter referred to as 'PBOR'.

<sup>2</sup> Hereinafter referred to as 'AFT'.



Government of India, Ministry of Defence order dated 14.08.2001 as being *ultra vires* and discriminatory to the Commissioned Officers like him primarily as there is no *intelligible differentia* qua the same, however, the same was dismissed vide order dated 09.05.2018 as Hon'ble AFT was not the appropriate forum.

4. On 23.07.2018, the petitioner then filed a Statutory Appeal before the Secretary, Ministry of Defence, which was dismissed vide order dated 30.10.2018.

5. By way of the present petition under Article 226 of the Constitution of India, the petitioner assails the Government of India, Ministry of Defence order dated 14.08.2001 and it is the case of the learned counsel for the petitioner that, being *ultra vires* and discriminatory to the Commissioned Officers like him, there is no *intelligible differentia* qua the same. Relying upon "***Re.: Colonel GLN Keshav vs. Union of India***" TA 87/2009 dated 25.02.2015, wherein the Hon'ble AFT quashed a discriminatory policy governing Compensatory Field Area Allowance.

6. *Per contra*, learned CGSC submits that the terms of service of the PBORs and the Commissioned officers are different, therefore there exists a *reasonable nexus* between the classification made and object of the policy.

7. This Court has heard the learned counsels for both the parties and perused the documents on record as also gone through the judgments relied on by them.

8. The short point for adjudication before this Court is qua entitlement of parity by the petitioner, who retired as a Commissioned Officer, with the POBR's. In fact, the petitioner who retired as a Commissioned Officer, by way of the present petition, seeks parity with the PBOR's.



9. While adjudicating the above this Court has to bear in mind that, *admittedly*, the rank, the post, the nature of duties and the service rendered, the salary and the benefit/s available alongwith the other modalities to the petitioner who retired as a Commissioned Officer, are very much different and are in no way similar and/ or connected with those of the PBOR's. It has also to borne in mind that, the petitioner who retired as a Commissioned Officer is from a different Class altogether, separate from the PBOR's. As such, under the aforesaid circumstances, the petitioner has no vested or inherent and / or legal right of any claims with the POBR's.

10. It is for these reasons that the Legislature wisely chose to take a policy decision at the time of coming out with the impugned letter dated 14.08.2001. The same is borne from what are contained in the impugned letter dated 14.08.2001, relevant portions thereof are reproduced hereunder:-

*"5. The case has been examined in consultation with Controller General of Defence Accounts and the following facts emerged:*

- i. MoD vide order no. 4684/DIR (PEN)/2001 dated 14.08.2001 had inter-cilia delegated the administrative powers to the Service Hqrs. For condonation of shortfall in qualifying seiwice for grant of pension in respect of PBORs (Personnel Below Officer Rank) beyond 6 months upto 12 months.*
- ii. Rule 44. of Pension Regulation for the Army, part-1 (2008) provides condonation of deficiency in service upto 12 months in case of PBORs for making them eligible for pension/gratuity.*
- iii. The rules/provisions for condonation of shortfall in qualifying service exist only for PBORs and not for commissioned officers. This is so because they have different terms and conditions of service. PBORs are recruited as per specific terms of engagement which varies for different posts.*
- iv. Minimum qualifying service to earn service pension for PBORs is 15 years. However, maximum term of engagement varies from 15 to 21 years. If an individual in sepoy rank (with 15 years maximum term of engagement) happens to have any small period which is declared as non-qualifying service, he would not be*



*eligible for grant of service pension. Condonation of shortfall in qualifying service upto 12 months is therefore, allowed so that such PBORs are not deprived of pensionary benefits by a small margin of non-qualifying service. The possibility of falling short of qualifying service is very high for PBORs where maximum terms of engagement varies from 15 to 21 years.*

- v. *Commissioned officers join the Armed Forces generally in the age group of 21 to 25 years and retire on attaining the age of superannuation for particular rank (varying from 52 to 60 years). Minimum qualifying service to be rendered for earning service pension in case of officers is 20 years. If an officer retires in the rank of Lt. Col. Where age of superannuation is 56 years, he would have put in 25 to 30 years of service and any non-qualifying service of 12 months or so would not jeopardize his chance of earning pension. Therefore, no logical case can be put forth for making provisions for condonation of qualifying service in the case of Commissioned Officers.”*

11. What emerges therefrom is that on one hand a Commissioned Officer join the Armed Forces generally in the age group of 21 to 25 years and retire on attaining the age of superannuation for particular rank varying from 52 to 60 years and the minimum qualifying service to be rendered for earning service pension in case of such a Commissioned Officer is 20 years. As such, if a Commissioned Officer retires in the rank of Lt. Col. where the age of superannuation is 56 years, he would have put in 25 to 30 years of service and so any non-qualifying service of 12 months or so would not jeopardize his chance of earning pension. Therefore, no logical case can be put forth for making provisions for condonation of qualifying service in the case of a Commissioned Officer.

12. While on the other hand in the case of PBOR's, though the minimum qualifying service to earn service pension is 15 years, however, the maximum term of engagement varies from 15 to 21 years. Therefore, if an



individual in Sepoy rank with 15 years maximum term of engagement happens to have any small period which is declared as non-qualifying service, he would not be eligible for grant of service pension. Condonation of shortfall in qualifying service upto 12 months is therefore allowed so that such PBORs are not deprived of pensionary benefits by a small margin of non-qualifying service. Moreover, the possibility of falling short of qualifying service is very high for PBORs where a maximum term of engagement varies from 15 to 21 years.

13. The same being the position, as the said letter dated 14.08.2021 is an outcome of a Policy Decision, it is a purely discretionary matter arrived after due deliberations by an expert body after applying its mind. The Legislature wisely chose to take a policy decision at the time of coming out with the impugned letter dated 14.08.2001. As per settled law, the scope for interference by this Court under Article 226 of the Constitution of India are/is in such matters involving a Policy Decision under the aforesaid circumstances, are extremely limited [*Re.: State of Punjab & Ors. Vs Ram Lubhaya Bagga & Ors.* (1998) 4 SCC 117 (para 25) and *Re.: Ugar Sugar Works Ltd. Vs Delhi Administration & Ors* (2001) 3 SCC 635 (para 18)].

14. Taking all the aforesaid cumulatively, this Court does not find any fault with the impugned letter dated 14.08.2001, more so when there is, and can be, no discrimination of the petitioner who retired as a Commissioned Officer with the PBOR's. Interestingly, the petitioner has also not raised the above issue. Moreover, as the petitioner has neither questioned nor challenged the legitimacy or the decision-making process or the applicability thereof, there is no occasion or cause or ground for this Court to dwell into the same.



15. Thus, since the petitioner has not been able to make out any case in his favour which can prompt this Court to allow the present petition and grant the reliefs therein, for the existing facts and circumstances involved, the afore-stated discussions coupled with the reasoning/s therewith as also the settled position in law, there is no cause to allow the present petition.

16. Accordingly, the present writ petition is dismissed with no order as to costs.

**SAURABH BANERJEE, J**

**V. KAMESWAR RAO, J**

**FEBRUARY 7, 2024**

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