

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1562 OF 2024**

Ex-CPL Surendra Kumar Tripathi)
Resident of 1E-601, Laxmi Park,)
Kanchangaon, Thakurli, P.O. Tilak Nagar,)
Dombivalli District : Thane – 421 201)Petitioner

V/s.

1. Union of India)
Through The Secretary,)
Ministry of Defence,)
South Block, New Delhi – 110 011)
2. Chief of the Air Staff,)
Air Head Quarters,)
Vayu Sena Bhavan,)
New Delhi – 110 011)
3. Joint Controller of Defence Accounts,)
(Air Force), Subroto Park,)
New Delhi – 110 011)
4. Armed Forces Tribunal)
7th Floor, MTNL Building,)
AG Bell Road, Malabar Hill,)
Mumbai – 400 006)Respondents

Mr. Surendra Kumar Tripathi, Petitioner present in person.
Ms. Anamika Malhotra a/w. Adv. Mainak Adhikary for the
Respondents.

**CORAM : RAVINDRA V. GHUGE &
ASHWIN D. BHOBE, JJ.
DATE : 5th FEBRUARY, 2025**

ORAL JUDGMENT (PER RAVINDRA V. GHUGE, J.) :

1. Rule. Rule made returnable forthwith and heard finally
by the consent of the parties.

2. The Petitioner seeks to challenge the judgment dated 12th September, 2023 delivered by the learned Armed Forces Tribunal, Regional Bench, Mumbai. Vide the said judgment, the claim of the Petitioner for pro-rata pension has been refused.

3. In this context, the Petitioner has put forth prayer clauses (a), (b) and (c), as under :

(a) To Call for the records and proceedings pertaining to OA No.129/2022 from Ld. AFT Mumbai.

(b) issue an appropriate writ of certiorari or any other writ, order or direction in the nature of certiorari quashing and setting aside the impugned order EX – A.

(c) issue a writ of mandamus or any other writ, order or direction in the nature of mandamus to the respondents to grant pro rata pension from the date of discharge from service of respondents as applicable for the mandate of Ex- E.

4. The original application before the learned Tribunal was filed by the Petitioner under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the relief of grant of pro rata pension. His case was that he was enrolled in the Indian Air Force on 22nd February, 1975. He underwent basic-cum-trade training at the Ground Training Institute, Bangalore. After completing the training

in November, 1975, he was posted to 2202 Squadron Air Force under 12 wing Air Force at Chandigarh. The unit moved out to the final location under No.1 wing Air Force where the Petitioner served upto November, 1978 and then was reposted to No.4 wing Air Force.

5. The Petitioner completed H.S.C./intermediate education from Allahabad Board and Graduation from Agra University, in 1981. The Petitioner also completed his Law degree from Sardar Patel University, Anand. On the basis of such education, the Petitioner applied for the post of Security Officer in Bharat Petroleum Corporation Limited (BPCL). The Petitioner claims that he had applied through proper channel, was shortlisted and was interviewed by the company management on 10th May, 1984. The Petitioner was offered the post of Security Officer and was appointed on 17th December, 1984 at the BPCL refinery at Mahul, Mumbai. The Petitioner was an appointee with the CPSE in terms of the GoI MoD letter dated 19th February, 1987. Based on the same, the Petitioner claimed pro rata pension from the Air Force.

6. It is undisputed that the Petitioner completed 9 years, 9 months and 9 days in the service of the Indian Air Force from 22nd February, 1975 till 7th December, 1984. The Petitioner claimed to be in reserve service from 8th December, 1984 to 7th December, 1986. The Petitioner applied for pro rata pension on 14th May, 2022, after 38 years of quitting the Indian Air Force.

CONTENTIONS OF THE PETITIONER

7. The contention of the Petitioner is that the learned Tribunal has not properly appreciated his case and his claim has been unfairly rejected. We have perused the grounds formulated by the Petitioner in the memo of this Petition. It is stated that though his case was covered by the judgment delivered by the Delhi High Court in ***Brijlal Kumar and Ors. v/s. Union of India and Ors.***¹, since he had completed 9 years, 9 months and 9 days service, Rule 8(9) of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958 would permit rounding of to 10 years and this period should be considered as qualifying service for the purpose of pension. This aspect has been missed/misread by the learned Tribunal and, therefore, the impugned judgment deserves to be quashed and set

1 2020 SCC OnLine Del 1477

aside.

8. It is undisputed that in normal circumstances, a JCO, like the Petitioner, was required to complete 15 years in service. Reliance is placed on Rule 8(9) of the All India Services (Death-Cum-Retirement Benefits) Rules, 1958, which reads as under :

8(9) The qualifying service shall be calculated in six monthly periods. A fraction of less than three months shall not be taken into account and any period between three months and six months shall be treated as six monthly period in calculating the total qualifying service.

9. The contention of the Petitioner is that clause 4 of the communication by the Ministry of Defence, Department of Ex-Servicemen Welfare, D(Pension/Policy), New Delhi, dated 4th November, 2022, addressed to all the Chiefs of the three services as well as the Chief of the Defence staff, indicates that pro rata pensionary benefits would be made available to the JCOs/ORs of the Defence services, on permanent absorption/employment in Central Public Enterprises/Central Autonomous Bodies/Central Public Sector Undertaking.

10. Clause 4 of the communication dated 4th November, 2022, reads as under :

4. JCOs/ORs having not less than 10 years of qualifying service in Defence Service will be entitled to receive pro-rata pension. The pro-rata pension of JCOs/ORs who get absorbed/appointed in Central Public Enterprises / Central Autonomous Body/ Central Public Sector Undertaking will be calculated as per provisions applicable for calculation of pension of regular JCOs/ORs at the time of absorption. Death-cum-retirement gratuity, based on the length of qualifying service of a JCO/OR till the date of his/her absorption will be admissible, as calculated under the DCRG Rules as applicable before absorption.

11. However, clause 5 and 6 of the said communication, read as under :

5. No Pro-rata pension will be payable to a JCO/OR absorbed in a Central Public Enterprises/Central Autonomous Bodies/ Central Public Sector Undertaking with less than 10 years of qualifying service in Defence Service. Further, condonation of short fall in Service shall not be admissible for grant of pro-rata pension, if JCOs/OR has less than 10 years of qualifying service.

6. A JCO/OR who is absorbed/appointed in Central Public Enterprises/Central Autonomous Bodies/Central Public Sector Undertaking on or after issue of this order will be entitled to commutation of a portion of his/her Pro-rata pension as admissible in accordance with the prescribed rules.

12. In view of clause 5 and 6, the contention of the Petitioner is that the provision made applicable to the pensionary benefits, for rounding of his 9 years, 9 months and 9 days service to 10 years, should also be made applicable and it should be deemed that he has completed 10 years of qualifying service in Defence services.

CONTENTIONS OF THE AIR FORCE

13. The Respondents have entered an affidavit in reply dated 15th July, 2024 contending that the Petitioner was discharged from service by the Indian Air Force on 7th December, 1984, not on account of his absorption in a Central Public Sector Undertaking, but, '*at his own request before fulfilling the condition of his enrollment*'. It is further contented that as per Regulation 121, the minimum qualifying regular service required to earn service pension, is 15 years. Service gratuity is available to a person who completes 5 years, but less than the pensionable service of 15 years in terms of Regulation 127.

14. It is further canvased on the basis of the record that since the Petitioner was discharged from regular service on

7th December, 1984, the Pension Regulations for Air Force, 1961 are applicable to him. The Petitioner has not completed 15 years as is required under the said rules and hence, he was not eligible for pension. Consequentially, since the Petitioner had worked for 5 years and more, he was held eligible for gratuity in terms of Regulation 127 and the same has been paid to him.

ON DELAY

15. On the point of delay, it is canvassed that after 38 years of quitting the Indian Air Force, the Petitioner moved a representation on 14th May, 2022, for grant of pro rata pension. We may, however, ignore the objection about such long delay, for the reason that, if the Petitioner would have been entitled for pro rata pension, we would have granted it, since it is well settled by the Hon'ble Supreme Court that pension/gratuity is not a bounty and is a property of the employee.

CONCLUSIONS

16. It is apparent that the communication dated 4th November, 2022 has extended the provisions of pro rata pension to JCOs of the Defence services who join CPE/CAB/CPSU, on

permanent absorption, but, no such pro rata pension would be payable to a JCO absorbed in such Undertaking with less than 10 years in service.

17. The learned Tribunal has recorded that the information available in the records indicates that the Petitioner was discharged on 17th December, 1984 at his own request and that too before fulfilling the condition of enrollment which was a minimum of 15 years for qualifying for pension. The Petitioner did not even wait for completion of 10 years before joining the CPSU and quit employment after working for 9 years, 9 months and 9 days.

18. The learned Tribunal has then recorded that as per Regulation 121 applicable to the Petitioner as in 1984, the minimum qualifying regular service for pension was 15 years. The reservist pension, as per Regulation 136(a), means the prescribed combined colour and reserve qualifying service for earning reservist pension. This is also 15 years. It is only under Regulation 127 that when a person does not complete 15 years for being eligible for pension, he would be entitled for gratuity after qualifying minimum service of 5 years.

19. While dealing with the contention of the Petitioner that the MoD policy letter dated 19th February, 1987 and 4th November, 2022, would be applicable to the Petitioner, the learned Tribunal has recorded the relevant paragraph of the policy letter dated 19th February, 1987, which reads as under :

(2) The provisions of this letter will apply to those who :

(i) While on deputation to Central Public Enterprises exercise on option for permanent absorption and are discharged/permitted to retire prematurely from Defence Services for this purpose.

(ii) Are appointed in Central Public Enterprises on the basis of their own applications sent through proper channel in response to advertisements and are permitted to retire prematurely from service in the Defence Services for the purpose of taking up the appointment in the Enterprises.

20. It is, thus, apparent that the policy that was adopted on 19th February, 1987 was that, an employee had to be on deputation with the CPE by exercising an option for permanent absorption and then permitted to retire prematurely from Defence services for the said purpose. The other category was of a person being appointed in the CPE on the basis of his/her own application sent through proper channel in response to the advertisements. He would also be permitted to retire prematurely from service in the Defence services

for the purpose of taking up the appointment in such Enterprises.

21. The Petitioner contended before the learned Tribunal that he had applied through proper channel and was released by the Air Force. However, there is no evidence to this aspect since the record has been destroyed after having been preserved for a particular period, keeping in view that the Petitioner had raised this ground and approached the Tribunal after 38 years. Hence, there is no record to indicate that he had applied through proper channel. The only piece of documentary evidence available, is the discharge certificate which does not indicate permission to be absorbed in the Enterprise, rather clearly indicates that the Petitioner '*quit employment on his own request before fulfilling the condition of enrollment*'. This would clearly indicate that the Petitioner had personally applied to the Enterprise and had *suo moto* appeared for the exams and the interviews. Hence, the record of the Air Force clearly proving that he had left on his own volition.

22. Considering the above, the law laid down by the Hon'ble Supreme Court in ***Syed Yakooob v/s. K. S. Radhakrishnan***²

² AIR 1964 SC 477

and *Surya Dev Rai v/s. Ram Chander Rai*³, would squarely apply to this case. Merely because a different view could be possible, would not mean that the impugned judgment could be branded as being perverse and erroneous.

23. In the light of the above, we do not find that the learned Tribunal has committed any error. The impugned judgment is sustainable for the reasons assigned.

24. **This Petition is, therefore, dismissed.**

25. Rule stands discharged.

(ASHWIN D. BHOBE, J.)

(RAVINDRA V. GHUGE, J.)

³ 3 AIR 2003 SC 3044 : 2003 (6) SCC 682