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

Reserved on: 14th July, 2023
Pronounced on: 18th July, 2023

\+ **W.P.(C) 3042/2023 & CM APPL. 11815/2023**

LT COL PRAVAL PETER RETD & ORS. ..... Petitioners

Through: Mr. Akash Kakade and Mr. Pawan Kaushik, Advocates.

versus

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

Through: Mr. Major Partho Katyayan (Army) for R-1.
Mr. Harish Vaidyanathan Shankar, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat and Mr. Alexander Mathai Paikaday, Advocates with Mr. Vinod Tiwari, G.P.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. The Petitioners, who are 'premature retirees' from the Indian Army and Air Force, held Permanent Commissions prior to their early retirement. They allege that their retiring pension and other related benefits were unjustifiably denied to them due to their inability to complete the stipulated

twenty years of service, which is a prerequisite for receiving a full pro-rata service pension.

2. Owing to circumstances beyond their control, the Petitioners were purportedly compelled to take early retirement after successfully completing ten years of service, but before reaching the twenty-year mark. Despite this early exit being sanctioned by the competent authority, Petitioners express deep dissatisfaction over being deprived of a pro-rata service pension. The basis for their complaint rests on the contention that Respondent-authorities, in their decision, have erroneously presumed that twenty years of commissioned service is an essential pre-condition for receiving the pension, in ignorance of Notification No. 8(3)/86/D(Pension/Services) dated 19th February, 1987 issued by the Ministry of Defence, which permits grant of pro-rata pension to the commissioned officers with ten years of services, who are later appointed in Central Public Enterprises. It was argued that there is no rational basis to preclude Petitioners from pensionary benefits. Petitioners contended that Respondents have conveniently overlooked the periods of pre-commissioning military training and reserve service, which, when accounted for, would cumulatively exceed the qualifying service period of twenty years for grant of service pension. These phases were integral and contributory to their total service tenure and should earn them eligibility for the pension.

3. Based on the afore-noted irregularities in computation of their service periods and application of rules for provision of benefits to them, the Petitioners seek service pension, even on a pro-rata basis, accruing to them on account of their premature retirement.

4. The Petitioners have been pursuing legal remedies for redressal of their grievance. Previously, they filed a writ petition [W.P.(C) 11893/2021], however, given the nature of reliefs sought in the said petition, the same was dismissed *vide* order dated 22nd October, 2021, with liberty to agitate the issue further by filing a public interest litigation ["PIL"], as under:

> *" The petition has been heard by way of video conferencing.*
> *Learned counsel for the petitioner admits that the present writ petition is in the nature of a Public Interest Litigation. However, the said petition has not been filed in the format prescribed for a Public Interest Litigation under the Delhi High Court Rules.*
> *Accordingly, the present writ petition along with pending application is dismissed with liberty to the petitioner to file a Public Interest Litigation on the same cause of action. The rights and contentions of all the parties are left open.*
> *The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail."*

5. Subsequently, on an application [being CM. APPL. 23799/2022], Petitioners elucidated their personal interest in the matter and urged the Court to consider their case within the ambit of the aforesaid writ petition, rather than as a PIL. The Court however, ordered as under:

> *"**CM APPL. 23799/2022 (u/S. 151 CPC)***
> *1. Learned counsel for applicants/petitioners seeks permission to withdraw the present application with liberty to take steps pursuant to order dated 22.10.2021 passed by a Co-ordinate Bench of this Court.*
> *2. Permission granted to take appropriate steps, as prayed for.*
> *3. Accordingly, the present application is dismissed as withdrawn."*

6. In light of the events narrated above, Petitioners filed the instant petition in nature of a PIL, principally seeking a writ of certiorari to annul the existing policy, non-statutory pension regulations, and other associated instructions, including the policy dated 19th February, 1987, which apparently formed the foundation of Respondents' decision to deny benefits of pro-rata pension, and other benefits such as pension commutation and ex-

servicemen status. This is manifest in prayer (i) of the petition, which is articulated as follows:

> "*i. Issue a Writ of Certiorari in Public Interest by calling for the relevant records, the policy, Non Statutory Pension Regulations or any other instructions including the policy dated 19.02.1987 based on which the Respondents have not extended the benefit of Pro Rata Pension to the Petitioners along with other benefits such as commutation of Pension and Ex Servicemen Status Etc as evident from the orders, including order dated 24.04.2019 rejecting the representation dated 28.02.2019 submitted by the Petitioners and thereafter quash the same.*"

7. The impugned communication dated 24th April, 2019, cited in the above-noted prayer clause is Respondents' decision based on Regulation 34 of Pension Regulations for the Army, 2008, which stipulates a minimum qualifying service of twenty years as a pre-requisite for officers to receive service/ retiring pension. The said communication reads as under:

> *"Subject: Grant of Service Pension on pro-rate Basis for pre-mature retiree Officers- reg*
>
> *Sir,*
>
> *Kindly refer to your letter dated 28.02.2019 addressed to Secretary (ESW) on the above mentioned subject.*
>
> *2. It is intimated that as per Regulation 34 of the Pension Regulations for the Army, 2008 (Part-I), the minimum qualifying service required to earn service/retiring pension in case of officers is **20** years. However, as per MoD letter No. 8(3)/86/D(Pension/Services dated 19.02.1987, grant of pro-rata pensionary benefits to the Commissioned Officers of the Defence Services on their absorption/appointment in Central Public Enterprises under the control of the Department of Defence Production or other civil Ministries, will henceforth be regulated it accordance with the provisions of this letter. The provisions of MoD letter dated 19.02.1987 are applicable to only those who (i) while on deputation to Central Public Enterprises exercises an option to permanent absorption and are discharged /permitted to retire prematurely from Defence Services for this purpose, and (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, Officers are entitled to receive pro-rata pension worked out according to the method given in Annexure "A' of the letter.*
>
> *3. MoD letter No. 8(3)/86/D(Pension/Services) dated 19.02.1987 is not applicable to Officers who have pre-maturely retired from service and were not appointed to or absorbed in any PSU."*

8. According to the Respondents, the Petitioners cannot avail the benefit of Ministry of Defence's policy dated 19th February, 1987 as they are classified as premature retirees.

9. At this stage, it would be pertinent to note that the Petitioners are squarely covered under the jurisdiction of the Armed Forces Tribunal Act, 2007, and have a specialized avenue - the Armed Forces Tribunal ["AFT"], for voicing their grievances. However, due to the uncertainty surrounding AFT's competence to hear challenges concerning the validity of subordinate legislations, which includes rules, regulations, notifications, and circulars, the Petitioners chose to file a writ petition before this Court.

10. Fortunately for the Petitioners, a recent verdict by the full bench of this Court in W.P.(C) 9139/2019 titled ***Squadron Leader Neelam Chahar v. Union of India and Others,***[1] has clarified the issue surrounding the competence of the AFT to entertain petitions challenging circulars, statutory rules, regulations, and policies. The Court's conclusion in the said case is summarized as follows:

> *"12. In our considered view, challenge to the 'Air Headquarter Human Resource Policy No. 03/2013" dated 28.08.2013, squarely falls within the term of „vires of statutory provisions' as held in **L. Chandra Kumar v. Union of India'** (supra). Hence, the Armed Forces Tribunal is competent to entertain the present petition and the batch of petitions which have laid challenge to various circulars, statutory rules, regulations, policies and other similar communications issued by the respondent Government and its organs from time to time.*
>
> *13. xx ... xx ... xx*
>
> *14. The outcome of the entire discussion is that the Armed Forces Tribunal is competent to hear the challenge to the vires of the subordinate legislations, rules, regulations, notifications and circulars etc., as and when challenged by the affected parties.*
>
> *15. In view of the above, the reference to the larger bench has been answered as under:*

[1] DHC Neutral Citation No.: 2023:DHC:4578:Db

> *"**The challenge to the Armed Force Human Resource Policy No. 03/2013 can be raised before the Armed Forces Tribunal functioning under the Armed Forces Tribunal Act, 2007.**" "*

11. Given the recent clarity provided by the case referenced above, and taking into account the broader circumstances, we believe that the AFT, due to its specialized nature, would provide a more expedient resolution for the Petitioners' grievances. It is undisputed that the Petitioners have a direct, personal stake in the matter, for which ordinarily, a PIL is not the preferred route. We are also conscious that the present PIL has been filed by Petitioners pursuant to the liberty granted by a coordinate bench, and our decision to relegate the matter to the AFT may appear unfair to them since they have been pursuing legal avenues since 2021, without any relief. However, our understanding relating to the jurisdiction of the AFT, has evolved in the wake of the judgment referenced above. Therefore, it becomes prudent to steer the Petitioners towards a path of redressal that is more fitting, efficient, and effective *i.e.*, the AFT. Adopting this approach aligns with the best interests of the Petitioners and thus, we issue the following directions:

(a) The present PIL is dismissed, along with any other pending applications associated with it.

(b) Keeping in mind the principles outlined in the afore-mentioned judgment of ***Squadron Leader Neelam Chahar,*** the Petitioners are granted the liberty to articulate the grievances urged in this petition before the Armed Forces Tribunal.

(c) All rights and contentions of the parties are left open.

SANJEEV NARULA, J

SATISH CHANDRA SHARMA, CJ

JULY 18, 2023
d.negi