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

Date of decision: 27.11.2024

+ **W.P.(C) 12208/2023 & CM APPL. 69214/2024**
SANTOSH KUMAR SAHU, EX CPL 742598-N

.....Petitioner

Through: Mr.Suresh Tripathy &
Ms.Kiran Yadav, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Rishabh Sahu, Sr. Panel
Counsel with Mr.Amit
Acharya, GP & Mr.Sameer
Sharma, Adv.

+ **W.P.(C) 12284/2023**
RADHA KRISHAN SAHOO, EX CPL 742467-A

.....Petitioner

Through: Mr.Suresh Tripathy &
Ms.Kiran Yadav, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Amit Gupta, SPC.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (Oral)

1. By the present petitions, the petitioners have claimed the grant of pro-rata pension from the respective dates of their discharge from service from the Indian Airforce.
2. As these petitions raise common questions of law and facts,



they are being disposed of by this common judgment. For the sake of convenience, we shall be referring to the facts in W.P.(C) 12208/2023, titled ***Santosh Kumar Sahu, EX CPL 742598-N v. Union of India & Ors..***

3. The petitioner was enrolled in the Indian Air Force as Radar Fitter on 15.07.1997. He obtained a No Objection Certificate dated 03.07.2006 for appearing in the interview for the post of Aircraft Technician (Radio) in the Indian Airlines Ltd. Upon his selection to the said post, the petitioner was issued a Discharge Order by the Indian Air Force, dated 18.10.2006, and was finally discharged from service on 02.11.2006, after completing 9 years and 108 days of regular service, as is admitted by the respondents in the Impugned Letter dated 30.11.2022 as well.

4. Placing reliance on the Judgment of this Court ***Govind Kumar Srivastava v. Union of India & Ors.***, 2019 SCC OnLine Del 6425, read with the Office Order dated 14.08.2001, issued by the Ministry of Defence, the petitioner claims the pro-rata pension.

5. The learned counsel for the petitioner submits that in terms of the Judgment of ***Govind Kumar Srivastava*** (supra), an employee of the Indian Air Force is entitled to the grant of pro-rata pension on the completion of 10 years of service. He further submits that in terms of the Office Order dated 14.08.2001, a shortfall in service beyond 6 months and upto 12 months in the qualifying service for the grant of pension, can be condoned. Placing reliance on the Judgment of the Supreme Court in ***Union of India & Anr. v. Surender Singh Parmar***, (2015) 3 SCC 404, he submits that this power of condonation shall be



applicable even for the grant of pro-rata pension.

6. On the other hand, the learned counsel for the respondents submits that in the present case, the petitioners having taken voluntary discharge from service from the Indian Air Force, are not entitled to the grant of pro-rata pension. He submits that the petitioners have not completed the minimum qualifying service of 10 years before taking the discharge, and having taken voluntary discharge from service, the petitioners are not entitled to the benefit of condonation of the shortfall in service in terms of the Office Order dated 14.08.2001.

7. We have considered the submissions made by the learned counsels for the parties.

8. It is admitted in the present case that the petitioners joined the Indian Airlines Ltd. after taking a No Objection Certificate for the same from the respondents. In terms of the Notification dated 19.02.1987, read with the Order dated 04.11.2022, issued by the Ministry of Defence, therefore, the petitioners were entitled to the grant of pro-rata pension, provided they had completed 10 years of qualifying service. The same is the view expressed by this Court in ***Govind Kumar Srivastava*** (supra).

9. In the present case, however, the petitioners have admittedly not completed the 10 years of qualifying service for the pro-rata pension, and there is a shortfall of below 12 months in completing the qualifying service. The petitioners have, therefore, sought the benefit of the Office Order dated 14.08.2001 for condonation of the period of the shortfall in their service. The Office Order dated 14.08.2001, in so far as it is relevant to the present controversy, is reproduced



hereinunder:-

“Sanction is hereby accorded in pursuance of MOD ID No. 34(3)/2001/D(O&M) dated 03-08-2001 for delegation of Administrative powers with the approval of Raksha Mantri to the Service HQs in respect of the subjects indicated below:

xxxxxx

- (v) *Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months.”*

10. The above provision does not make any distinction between the case of regular pension or a pro-rata pension as far as the condonation of the shortfall in Qualifying Service is concerned. It authorises the Competent Authority to grant condonation of the shortfall in the qualifying service for grant of the pension, be it regular pension or pro-rata pension, for the period beyond 6 months upto 12 months.

11. In the present case, the petitioners, having been granted discharge from service to join Indian Airlines on the basis of their own application, were entitled to the benefit of such condonation of the shortfall in the qualifying service. The Supreme Court in ***Surender Singh Parmar*** (supra), has extended the benefit of such condonation to the respondent therein.

12. In view of the above, the Impugned Orders denying the grant of pro-rata pension to the petitioners are hereby set aside. The petitioners, applying the principles of the judgment of the Supreme Court in ***Union of India & Ors. v. Tarsem Singh***, (2008) 8 SCC 648, are held entitled to the grant of pro rata-pension, however, only from a



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period 3 years prior to the date of the filing of the present petitions. Let the necessary orders be passed by the respondents and arrears released to the petitioner, within a period of three months.

13. The petitions along with the pending application are disposed of with the above directions.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 27, 2024/rv/SJ

Click here to check corrigendum, if any