

FORM NO – 21
(See Rule 102 (1))

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

APPLICATION NO: O.A. 125 OF 2012

DAY, THIS 7TH DAY OF FEBRUARY, 2014

CORAM: **Hon’ble Mr. Justice Raghunath Ray, Member (Judicial)**
 Hon’ble Lt. Gen. K.P.D.Samanta, Member (Administrative)

Lt. Col. Ardhendu Pal,
Military Hospital, Panagarh,
West Bengal-713420

- Versus –

..... Applicant

1. Union of India
Service through the Secretary,
Ministry of Defence,
New Delhi-110 011
2. The Chief of Army Staff through,
Adjutant General (DGMS-Army)
Army Headquarters
New Delhi-110 011
3. The DGAFMS,
M/o Defence,
L Block, New Delhi-110 011

..... Respondents

For the applicant: Major K. Ramesh, Advocate

For the respondents: Mr. Anand Bhandari, Advocate

O R D E R

Per Hon'ble Lt. Gen. K. P. D. Samanta, Member (A):

In this original application, the grievance ventilated by the applicant, who is a short service commissioned medical officer in the Army Medical Corps (AMC), is that his prayer for Departmental Permanent Commission (DPC) in the said service, i.e. AMC has been wrongfully and illegally denied by the respondents by wrong calculation of his age, as a result of which he has been deprived of pension benefits despite rendering about 19 years of service.

2. The applicant was initially commissioned in the Army Medical Corps (AMC) as a direct entry Permanent Commissioned (PC) Officer on 29-6-1992 with ante-dated seniority from 22-12-1991. At the time of his entry as a PC officer in the AMC, his age was 29 years 6 months and 23 days, i.e. below 30 years, which is the maximum age limit for induction as a direct entry PC officer in the AMC. Subsequently, due to compulsions of domestic problems, the applicant had to resign from the Commissioned Service and his resignation was accepted by the Central Government; and he was released w.e.f. 2nd April 1997. However, after his domestic conditions stabilized, the applicant applied for and was granted Short Service Commission (SSC) in AMC w.e.f. 13-2-1999. The applicant was also granted ante dated seniority for his earlier PC Service which was counted for seniority and promotion.

3. As per extant policy decision as contained in Army Instruction No.75/78 the tenure of SSC officers is five years which was extendable by another 5 years subject to certain conditions mentioned in the said policy decision.

4. The applicant completed his tenure of 5 years of service as SSC officer but he was not granted 2nd extension of another 5 years by the respondents and instead he was sought to be released w.e.f. 13.2.2004. Against such non-extension of service for the second spell of five years, the applicant approached the Hon'ble Delhi High Court by filing a writ petition and in terms of the Order of the Hon'ble Delhi High Court in CWP 4561/2004; the respondents granted him second extension till 13.2.09. Subsequently, the total tenure of SSC officers was raised by the Govt. from 10 years to 14 years and the applicant was also granted the said benefit of the amended rules and was granted further extension of 4 years from 13.2.09 and his total tenure of 14 years service as SSC Officer would end on 13-2-2013. Accordingly, a notification dt. 12.7. 2012 was issued indicating that the applicant would be released w.e.f. 13.2.2013.

5. After joining as SSC officer in AMC in the February, 1999, the applicant applied for Departmental Permanent Commission (DPC) on several occasions, viz. in July 2000, March 2001, August 2001 and March, 2002. On all these occasions his case was not considered on the ground that he was over-aged, i.e. above 30 years of age and/or being on second tenure. The applicant felt aggrieved by such rejection of his case for Departmental Permanent Commission (DPC) by the respondents. Being aggrieved, he preferred a statutory complaint on 28-3-2008 seeking permanent commission by way of reckoning his age from the initial date of direct permanent commission in AMC in June 1992, instead of reckoning it from the date of joining in the SSC in February 1999, which was rejected by the Central Government on 29-1-2009 (page 20 of the OA). Subsequently, the applicant submitted another statutory complaint with additional prayers on 17-11-2011 and when he did not receive any response from the

respondent, he has approached this Tribunal by filing the instant original application challenging inter alia rejection of his prayer for permanent commission on the ground of age bar and also the rejection of his statutory complaint vide order dt. 29.1.09 as also the release order dated 12.7.12.

6. The other contention of the applicant is that he has rendered total combined service of 19 years as PC officer and SSC officer. However, since he could not complete 20 years of total service, he is not eligible to get any pension benefit which is wholly unjustified and prejudicial to his interest. The case of the applicant is that his applications for permanent commission made on several occasions during his tenure as SSC officer in AMC were rejected wrongly on the ground of being over-aged. The claim of the applicant is that his age should be counted from the date when he initially joined as direct entry PC Officer in AMC in the June 1992 when he was below 30 years; but the respondents have counted his age from the date when he joined AMC as a SSC officer in February 1999, which, according to the applicant, is illegal and arbitrary. That apart, the applicant has also cited several instances where SSC officers like him were granted Departmental PC even at much higher age, and in one case even at the age of 49 years, whereas the applicant's case was turned down on the ground of age bar which is a clear case of hostile discrimination against him violating the provisions of Articles 14 and 16 of the Constitution.

7. Making all these allegations, the applicant has prayed for the following main reliefs:

- a) To quash the order dated 12-7-2012 by which the applicant was directed to be released from service with effect from 13-2-2013 (page 18 of OA) as also the order

dated 29-1-2009 (page 20) by which his statutory complaint dated 28-3-2008 was rejected.

- b) He has also prayed for grant of departmental PC following the precedents and be allowed to continue in service till the age of superannuation. Alternatively, he has prayed for waiver of one year and few months of service so that he can be made eligible to get pension.

8. The respondents have opposed the application by filing a reply affidavit in which they have admitted that the applicant was granted Direct PC in the Army Medical Corps (AMC) w.e.f. 22-6-1992 in the rank of Captain with ante-dated seniority from 22-12-1991 as per the provision of Army Instruction No.74/76. However, the applicant after serving for 4 years 9 months and 11 days voluntarily applied for resignation due to pressing domestic problems. The prayer for resignation was accepted by the Government and he was released with effect from 2-4-1997. Subsequently, after a gap of about two years, the applicant applied for joining SSC in AMC and he was granted such commission in the rank of Captain on 13-2-1999 in terms of provision of AI 75/78, as amended from time to time. His age at the time of joining as SSC officer was 36 years 2 months and 14 days. His past full commissioned service was, however, taken into consideration for fixing seniority; he was accordingly granted seniority from 2-11-1993 and was also granted promotion from the date of joining in the SSC.

9. It is further stated that on completion of 5 years of contractual service as SSC officer the applicant was sought to be released with effect from 13-2-2004 because after counting his past service as full Commissioned Officer (from 2.11.93 to 13.2.04), his total service came to be more than 10 years and therefore as SSC officer he could not

have continued beyond 10 years as per prevalent rules. However, the applicant moved the Hon'ble Delhi High Court by filing Writ Petition No.CWP 4561/2004 and as per the decision of the Hon'ble Delhi High Court dated 17-9-2004 the applicant was granted extension of service for another 5 years from 13-2-2004 to 13.2.09. Subsequently, as per amended policy decision to raise the total service of SSC officers from 10 to 14 years, the applicant was granted further extension of 4 years from 13-2-2009 which would end on 13-2-2013.

10. In the meanwhile, the applicant applied for Departmental PC in the year 2000, 2001 and 2002, but such prayers by him were rejected on the ground of being over aged/being in second tenure. The applicant preferred a statutory complaint which was considered and rejected by the Central Government on 29-1-2009. Subsequently the applicant submitted another statutory application on 17-11-2001 wherein he prayed for counting his age from the date of his first appointment as Permanent Commissioned Officer and to condone the break-in-service for a period of 1 year 10 months and also for pension and related benefits.

11. It is contended by the respondents that as per Army Instruction No.74/76 the SSC officers applying for consideration of departmental PC must not have attained the age 30 years as on 31st December of the year in which they have applied, subject to the condition that they have already rendered 2 years as SSC officer and did not complete 9-1/2 years of service as such. However, officers already serving in second tenure or subsequent tenure, if not done in continuation of first tenure, will not be given any chance for Departmental PC.

12. It is submitted by the respondents that since the applicant was on second tenure, i.e. the first tenure being the term as a PC officer, from which he resigned earlier, which was counted for grant of benefit of antedated seniority and promotion as SSC Officer, the applicant's case could not be considered for departmental PC as there was break and he was also not within the prescribed age limit of 30 years. The respondents have therefore submitted that the application has no merit, for which it should be rejected.

13. We have heard Major K. Ramesh, learned counsel for the applicant and Mr. Anand Bhandari, learned counsel for the respondents at length and have perused the documents placed on record along with various Army Instructions relied upon by both parties.

14. Major Ramesh, the learned counsel for the applicant has mainly focused on two aspects in his arguments. His first plank of the argument is that the applicant was wrongly denied departmental PC (DPC) during the year 2000 and onwards when he applied for such DPC while working as a SSC officer, on the ground that he was over-aged. Such decision was taken by the respondents counting his age on the date of his joining as SSC officer with effect from 13-2-1999. Obviously at that point of time he was more than 30 years of age, the date of birth being 29.11.1962. According to Major Ramesh, the learned counsel for the applicant, the respondents ought to have calculated the age from the date when the applicant first joined as a direct PC officer in the year 1992. At that point of time admittedly he was below 30 years of age. The contention of Major Ramesh is that even on his joining as SSC officer in February 1999, his past full commissioned service was counted for the purpose of seniority and promotion; therefore, while considering his case for departmental PC as SSC officer, the age should also have been counted from that

date and in that event, his case could not have been rejected on the ground of being overage.

15. The second contention of Major Ramesh is that the respondents in the past have allowed many SSC officers to PC even beyond the age of 30 years in relaxation of rules, as will be evident from the annexed notifications (Annexure-13 collectively). The applicant has also given a chart at page 9-10 of his application indicating that previously at least 22 SSC officers have been granted PC beyond the age of 30 years. Therefore, it is contended by Major Ramesh that denial of this benefit in the case of the applicant amounts to hostile discrimination which is unwarranted, uncalled for and wholly unjustified.

16. Major Ramesh has also drawn our attention to the documents annexed at pages 35 and 38 of the OA. The document at page 35 is a Govt. order dated 19-5-81 wherein sanction of the President was granted for grant of PC to several emergency commissioned (EC) and SSC officers by relaxing the age criteria. Such relaxation was effective for a period of three years. Similarly the document at page 38 is also a Govt. order dated 9-4-97 wherein also sanction of the President was granted to allow SSC Officers who were in service and were not eligible for applying for PC as per existing age criteria; one more chance in relaxation of age limit etc as a one time measure was accorded. It is contended by the Id. counsel for the applicant that following such precedents, the applicant's case should also be considered for relaxation of age because there is no other bar in considering his case except the age bar.

17. The learned counsel for the applicant has also made an alternative argument that the applicant has rendered 19 years of combined service as a PC officer and SSC officer;

and if he is allowed to serve for one more year or if his shortfall of little over one year of service to complete 20 years is condoned, then in that event he would be eligible to get pension. It is submitted by the learned counsel for the applicant that after rendering of 19 years of service if the applicant is not granted any benefit of pension it will not only be travesty of justice but also very unfortunate.

18. The learned counsel for the respondents on the other hand has contended that the applicant has prayed for departmental PC as a SSC officer. Therefore it is quite reasonable that his age should be counted from the date when he joined as SSC officer and not as PC officer, because both the types of entry do not stand on equal footing and are governed by different Army Instructions. It is, however, admitted that as per rules the past permanent commissioned service of the applicant was taken into consideration for the purpose of seniority, pay etc. in SSC. Departmental PC is, however, a different concept and governed by different set of rules and therefore, the applicant cannot claim that his age should be counted from the date of initial appointment in 1992 instead of 1999 when he joined as an SSC officer. Moreover, it was not a continuous service; he had a clear break in service for more than one year before he decided to join the AMC as a SSC officer.

19. So far as the other contentions regarding prayer for pension and related benefits are concerned, it is submitted by the learned counsel for the respondents that SSC is a contractual service, whereas the PC is a regular service. Thus, both the services are different in nature and their terms and conditions differ with each type of entry being guided by different set of rules. SSC officers are not entitled to any pension, i.e. it is non pensionable service. Therefore, the two services cannot be tagged or combined together

for counting eligibility for pension. That apart, since the applicant had earlier resigned from PC Service he is also not eligible for waiver/condonation of short fall or break in service, as per rules. Mr. Bhanadari, the Id. Counsel for the respondents brought to our notice the provisions contained in Reg. 26 of Pension Regulations for the Army 1961 (Revised) that stipulates the kind of service which can be considered as eligible for counting towards qualifying service for pension. The ibid Regulation lays down that a PC officer can count his past SSC service towards eligibility for pensionable service, but the converse is not as per the ibid rule; implying that a SSC officer cannot count any of his past service including regular PC service as in the instant case towards pensionable service mainly because SSC is a non-pensionable contractual service. To further strengthen their case the respondents have filed a supplementary affidavit on 24 Jul 2013 and cited a judgment of Delhi High Court (113 (2004) DLT 338, Ex Captain RS Dhull vs. UOI and Others) as annexure 'B'. Mr. Anand Bhandari, the Id. counsel for the respondents has drawn our attention to Para 7 of the ibid judgment, which is quoted as under:-

"7. A bare reading of the aforesaid provision would clearly establish that the submission as aforesaid is fallacious and without any substance. This provision has been incorporated to give the benefit of service rendered prior to regular commission for the purpose of evaluating the qualifying period for pension. The provision is applicable to an officer who has rendered service as a permanent regular commissioned officer. It merely provides that if an officer has rendered service as a permanent regular commissioned officer, which is preceded by earlier service on short service commission or any other commission, then such prior service rendered by him would be counted and qualify for pension. The said provision, however, is not applicable when the service rendered by an officer is only short service omission/emergency service commission and not at all on permanent regular commission".

20. We have given our thoughtful consideration to the rival contentions.
21. The main questions that arise for our consideration are:

- a) Whether for the purpose of determining eligibility for grant of departmental PC, the age of the applicant is to be counted from the date of his initial permanent commission or from the date of joining SSC?
- b) Whether the applicant is entitled to get pension and related benefits by combining his earlier permanent commissioned service and SSC service?

22. It is not in dispute that the applicant was initially inducted in the AMC on 22-6-1992 with ante-dated seniority from 22-12-1991 as a direct entry PC officer. The terms and conditions of direct entry PC in the AMC are governed by Army Instruction No.74 of 1976, a copy of which is annexed as Annexure R1 to the reply affidavit filed by the respondents. It is also the admitted position that after serving for 4 years 9 months and 11 days as a PC officer, the applicant resigned due to compelling family circumstances and his resignation was accepted; he was released with effect from 2.4.97. However, after a gap of 1 year 10 months and 10 days, the applicant again joined the AMC as a SSC officer on 13-2-1999. The terms and condition of Short Service Commissioned Officers are governed by Army Instruction No. 75 of 1972, a copy of which is annexed as Annexure R2 to the reply. It is also not disputed that at the time of joining the SSC, the applicant was aged 36 years 2 months and 14 days, his date of birth being 22-11-1962. It is pertinent to mention that as per Para 4 of AI 74 of 1976, candidates applying for direct PC must not be more than 30 years of age on 31st of December of the year of receipt of application from them. Age limits for those possessing higher qualifications are progressively more, which is not the case with the applicant. As per rules, his past service as a PC officer for the period from 22.6.92 to 2.4.97 was taken into consideration for the purpose of grant of seniority and promotion etc. in SSC as per rules.

23. Now, as per provision of Army Instruction No. 74 of 1976, departmental PC in AMC is granted to the serving SSC officers. In this context it will be relevant to point out that it is provided in para 1(b) (ii) of the said AI that –

“Serving AMC/SSC/EC/Reserve Officers will also be eligible to take up AMC Examinations for grant of Permanent Commission along with other civilian candidates **provided they are within the age limit as per para 4(a) below on 31st December of the year of receipt of application and found eligible in all respects**”. (emphasis supplied by us by bold annotation)

Further, Para 4(a) of the aforesaid instruction provides as follows:

“Age limits:-

4. (a) Candidates must not have attained 30 years of age on 31 December of the year of receipt of application from them. But in the case of candidates possessing additional medical qualifications, the following age limits will apply:-

- (i) Those possessing post-graduate Diploma like DOMS, DPH, DA etc. 31 years
- (ii) Those possessing post-graduate Qualifications like MD, MS etc. 35 years
- (iii) Those possessing high post-graduate Qualifications like FRCS, MRCP, MRCOG etc. 36 years
and have served in their specialties under recognized medical institutions for a period of at least 5 years vide para 1(c) above”.

Note: The above age limit in (i), (ii) and (iii) will be operational up to 31.12.1976 or till issue of fresh instructions whichever is earlier.

(b) A candidate with previous commissioned service in the Army Medical Corps will be entitled to extension of the above age limits as given below:

- (i) Full period of previous reckonable service if such service was rendered while in possession of a medical qualification recognized by the Indian Medical Council (vide para 3 above).**
- (ii)**
- (iii) Full period of previous reckonable service less two years if such service was rendered while in possession of a licentiate medical qualification”.

24. From the above it is quite clear that an SSC officer must not have attained the age of 30 years as on 31st December of the year of the receipt of his application for departmental permanent commission. Therefore, the cut off date for determination of age is 31 December of the year of application. However, as per provision at 4(b) (i), it is clearly stipulated that a candidate with previous reckonable commissioned service in AMC will be entitled to extension of the above age limit to the extent of such service rendered in the past.

25. It is the admitted position that the applicant had rendered 4 years 9 months and 11 days of service as permanent commissioned officer in the AMC which has also been taken into consideration by the respondents. Therefore, as per provision of para 4(b) (i), applicant was eligible to get extension of age limit by reckoning his past full commissioned service in AMC. In that case, the applicant ought not to have exceeded the age of 34 years 9 months and 11 days on the cut off date of 31st December 1999; but he was 37 years and one month as on 31 Dec 1999, thus being clearly overage. The applicant after joining SSC had applied for departmental permanent commission in the year 1999 itself. Therefore, as on 31st December of the year 1999, he should not have been above the above age of 34 years 9 months and 11 days (30+4 years 9 months 11 days). In that event and also on the date of his joining as SSC, which is on 13-2-99, the applicant was over aged as he was admittedly aged 37 years 1 month as on 31 Dec 1999.

26. The main dispute between the parties is from which date the age should be counted. According to the applicant the age should be counted from the date when he first joined AMC as a PC officer in June 1992. He was below 30 years on that date. However, according to the respondents, age is to be counted from the date when he joined SSC in

February 1999 and applied for departmental PC. He joined as SSC officer on 13-2-1999. We however find that the rule clearly provides that the candidate should be within the prescribed age limit as on 31 December of the year of receipt of application.

27. The applicant after joining as SSC officer applied for departmental Permanent Commission and as per Annexure A4 dated 8-10-99; it is seen that he along with some other candidates were not called for interview being over aged. Therefore, in view of the clear rule position it is quite evident that the age should be counted as on 31 December of the year of receipt of the application which was 1999. Admittedly, the applicant was over aged even by adding his past reckonable commissioned service in AMC for about 5 years. The contention of the applicant that since his past commissioned service was counted on joining SSC, and therefore, his age should be counted from the date of his initial entry into AMC as a PC officer cannot be accepted in view of the rules position. In our considered opinion the action of the respondents in rejection of the applicant's case for departmental PC being over aged cannot be faulted. The respondents have abided by the rules. The applicant subsequently made such applications in the year 2000, 2001 but since in 1999 itself, he was over aged, he continued to be over-aged in subsequent years also. No other Government orders for extension of age limit has been placed before us. We, therefore, find no illegality or infirmity in the action of the respondents. The first question is, thus, answered.

28. The applicant has however pointed out that on few previous occasions relaxation was granted and many SSC officers like him were granted PC even at much higher age; in one case it was 49 years. As already pointed out earlier, the Id. adv. for the applicant

has placed reliance on two documents annexed to the OA and submitted that identical benefit of relaxation of age should also be extended in the case of the applicant.

29. It is clear from a perusal of these two documents that such decisions by the Government was taken as a special case in peculiar circumstances and were valid for three years only, in view of shortage of man-power. It is for the Government to take appropriate decision at appropriate time in order to maintain the desired level of man-power for smooth functioning of the AMC. The Court or Tribunal cannot direct the authorities to continue with such policy decisions forever or to apply such relaxed conditions in the case of an individual like the applicant. Although the learned counsel for the applicant tried to convince us by referring to the document at page 43 dated 8-9-2008 which was a communication from the Adjutant General's (AG) office that there was still functional deficiency in the AMC and therefore such relaxation, as was granted earlier to similar SSC officers, should also be applied and extended to the applicant, we are not convinced by this argument, since such communications did not have government approval. In our view, it is for the Government to take appropriate decision in this regard and the Court or Tribunal cannot direct or compel the Government to relax a particular condition in favour of any particular individual.

30. Now, we come to the second issue regarding the claim of the applicant for pension and related benefits by reaching the minimum eligible service span (20 years) by combining his prior service rendered as a PC officer and that as a SSC officer and by further granting waiver of the break period or by way of condoning the shortfall period.

31. It is an admitted position that the applicant has served as SSC Officer for 14 years and prior to that he had also served as a PC Officer for about 5 years. There was a break

of little over one year between these two separate service spans. However, in view of the rule position, as insisted by the respondents that SSC was not a 'pensionable service', the applicant could not be granted any pension even though he has served for a period of total 19 years in the Indian Army as a Medical Officer. In this context, reference may be made to para 11 of the Army Instruction No.75-81 dated 4-11-1978 (page 52 of the reply) where it is clearly provided as follows:

PENSIONS:

"11. Service on Short Service Commission will be non-pensionable. Where an officer has been or may be granted a pension in respect of his service rendered before the grant of Short Service Commission, it will be held in abeyance during the period he holds Short Service Commission".

32. Before we consider the prayer for claim of pension we need to analyze the relevant rules and regulations to apply our mind on following issues:-

- a) Existing rules to calculate qualifying service for pension for officers.
- b) What is the policy for 'late entrants' and whether the applicant's case would be considered as a 'late entrant'?

33. The respondents have submitted a government policy letter dated 3rd Feb 1998 as Annexure 'A' to their supplementary affidavit dated 24th Jul 2013, besides relevant Regulations of Pension Regulations for the Army 1962 (Revised). Relevant extracts from the ibid policy letter and Pension Regulations are quoted below with emphasised portions in bold:-

PR 26 : The following periods of service qualify for pension as commissioned officer :

(a)(I) : Service as a permanent regular commissioned officer will count in full.

(II) Service rendered before attaining the age of 17 years from the date of enrolment in terms of Government of India, Ministry of Defence letter No. B/39022/AG/PS4/(a & c)/589/C/D(Pen)/Sers) dated 27.3.2002.

(III) Embodied service or called out commissioned service as an officer of the Territorial Army or the Auxiliary Air Force, if it is preceded without a break, previous service as commissioned officer in the Army, Navy and air Force, irrespective of the type of commission jointly or separately, subject to the refund in the prescribed manner to the Government, of gratuity, if any, other than war gratuity, received in respect of such service provided that :-

- (i) any service which was forfeited by special orders, and
- (ii) any period of unauthorized absence unless pay and allowances are admitted for the period of absence shall not be regarded as qualifying service, nor any period of ante-date except as provided in clauses (h) and (j) below.

Note : If short service commission is followed by permanent commission, the period during which an officer holds short service commission on probation will reckon for the purpose of pensionary benefits.

(b) Service in the rank below that of commissioned rank, if followed by permanent regular commissioned service without a break subject to the refund in the prescribed manner to the Government of the gratuity, if any, other than war gratuity received in respect of such service.

© *****

(d) *****

(e) *****

(f) *****

(g) Service rendered in the autonomous bodies before and after their take over by the Government followed by service as a commissioned officer with or without break. **The period of break, if any, will be automatically condoned under the provisions of the Pension Regulations.**

(h) The period of ante-date of commission granted to an officer in respect of an approved whole time appointment held in a recognized civil hospital prior to commissioning and/or possession of a post graduate diploma/higher qualifications and the period of secondment of an officer for the purpose of attending a course in a recognized institution subject to the following maxima.

(i) *****

(ii) *****

(iii) ***** “

PR. 15 :- Late Entrants “ For purposes of the regulations in this chapter, a ‘late entrant’ is an officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years commissioned service (actual) qualifying for pension but whose total qualifying service is less than twenty years (actual)

Para 6 of MoD letter No. 1(6)/98-D(Pension/Services) dated 3rd Feb 1998 is also relevant which is quoted below :-

*Para 6.1 : **Officers :***

*(a) The minimum period of qualifying service (without weightage) actually rendered and required for earning retiring pension will be 20 years. **In the case of late entrants (i.e., an officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years commissioned service qualifying for pension but whose total service is less than 20 years), the minimum period of qualifying service (without weightage) actually rendered and required for earning retiring pension will continue to be 15 years.***

*(b) **Serving JCOs/ORs including corresponding ranks of the Navy and Air Force granted EC/SSC will be eligible for retiring pension after 12 years of qualifying service (without weightage) actually rendered.***

(c) Retiring Pension in respect of Commissioned Officers of the three Services as mentioned at sub para (a) & (b) above, including MNS and TA officers, will be calculated at 50% of average emoluments as defined as para 4 above. The amount so determined will be the retiring pension for 33k years of reckonable qualifying service as defined in para 5 above. For lesser period of reckonable qualifying service, this amount will be proportionately reduced.

34. So far as qualifying service is concerned, for commissioned officers minimum service for earning ‘retiring pension’ is 20 years as per Pension Regulations. However, for ‘late entrants’, such qualifying service is 15 years for earning ‘retiring pension’, provided he had retired on attaining the prescribed age. It is undisputed that the applicant joined as Short Service Commissioned Officer at the age of 36+ and after serving for 14 years as such, he retired at the age of 50+ as Lt. Col. Even though the applicant had approximately 5 years of permanent commissioned service in the AMC, such service was

not counted. It implies that even if the applicant had more age to serve, his contractual tenure as a SSC officer ended on completion of 14 years of service. He therefore cannot strictly come under the definition of a 'late entrant' when seen in the light of provisions contained in Reg. 15 of Pension Reg. for the Army read in conjunction with policy stipulated in Para 6.1 (a) of the *ibid* government policy letter of 3 Feb 1998.

35. The next issue is whether the past PC service can be combined with service rendered as SSC officer to count as pensionable service. According to the rules/regulations, in case the SSC is followed by PC, the period during which an officer held SSC on probation will reckon for the purpose of pension as per Note to Reg. 26 (a) of the Pension Reg. for the Army. The case of the respondents is that prior PC service in the Indian Army before joining the SSC is not reckonable for pension. The respondents have cited the ratio of the Delhi High Court judgment of Ex Captain RS Dhull (*supra*) to emphasize this issue, but we find that the *ibid* judgment relates to a case where the litigant has sought to combine two different spans of SSC/EC service to claim pensionable service, which is not the issue in the instant case. Therefore, the ratio of the *ibid* judgment is not squarely applicable in this case. We, however, find that in terms of Ministry of Defence order dated 03.02.1998 (Annexure 'A' to Supplementary Affidavit filed by the respondents on 24.7.2013) issued on the basis of 5th Pay Commission, 'retiring pension; is admissible in respect of the following vide para 6.1(b) :

“(b) Serving JCOS/ORs of Army and corresponding ranks of the Navy and Air Force granted EC/SSC will be eligible for retiring pension after 12 years of qualifying service actually rendered.”

36. It is, therefore, clear that when serving JCOs or Other Ranks are granted SSC, they are eligible for retiring pension after 12 years of qualifying service. Therefore, in

principle, as per *ibid* rule, past regular service in the Army is being allowed to be counted with later SSC service for the purpose of pension. However, this benefit is not admissible to officers, who join the SSC directly even though they rendered more than 12 years of service as such. Rather, the rules are silent about the officers in this regard and there is also no express bar to counting of past commissioned service followed by SSC service in the case of officers. Therefore, it is obvious that the Government is more lenient and generous in this regard to the serving JCOs and other ranks, who are granted SSC than those SSC officers who had prior commissioned service to their credit. It does appear discriminatory to a great extent that such a provision that benefits the personnel below officer rank (PBOR) is not extended to officers since both categories are shoulder to shoulder as SSC officers. The authorities have laid greater emphasis to past regular service as a PBOR than as a PC officer, while considering a SSC officer for grant of pension. Such discrimination remains unexplained.

37. It may be noted that in case of PBOR in the Indian Army, service pension is admissible after 15 years of service and as already pointed out, in case of late entrant officers, the qualifying service is also same i.e. 15 years for earning retiring pension.

38. It is also to be noted that earlier the SSC was granted only for 5 years which was extendable by another 5 years terms i.e. total 10 years. Possibly because of such fixed tenure the nomenclature of the service has been made as "Short Service Commission". However, the position has changed because the SSC Officers are now entitled to serve for 14 years in all. The maximum service period has been restricted to 14 years, and not up to 15 years, the obvious reason appears to keep the SSC entry a non-pensionable contractual one. This would be a well thought out policy of the government and we are not inclined

to comment or interfere with such long term policies. There is a provision of late entrant and also a provision to combine past PBOR service in full with that of SSC service to earn pension. That should be encouraging enough for the PBOR to aspire for SSC. Logically, applying the same analogy, counting of past commissioned service, though very rare, together with SSC service for determining eligibility for pension should be more reasonable and justified since the rules are silent on this score. In the instant case, even if the break in service period (between the date he resigned from PC till he joined the SSC) is condoned as a special case he would reach the magic span of 20 years of reckonable pensionable service. We find from Reg. 26 (g) that provisions exist to condone such break in service period for past service in autonomous bodies. This analogy can be extended in the present case also. As per the provisions in Reg. 26 (h), antedate seniority granted to an officer can also be counted towards pensionable service. In the instant case the past span of PC service was granted to him as antedate for the purpose of promotion and pay fixation; it should as per regulation also count towards pensionable service. What stands on the way is that the applicant, after resigning from PC service and taking a break of one year and a few months, then joined as a SSC officer, which was purely a contractual non-pensionable service for 14 years. Therefore he as a SSC officer is not entitled to any pension since his past regular PC service is not to be counted; though the same is allowed, as per rules, if before joining the SSC, he had a past regular service as a PBOR.

39. In this context it will be appropriate to refer to the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of **D.S. Nakara vs. Union of India**,

1983(1) SCC 305. In that celebrated decision the Hon'ble Apex Court has considered the concept of pension and observed in para 29 as follows:

" ... pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in kind is when you give your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and, therefore, can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'être for pension is the inability to provide for oneself due to old age."

40. From the above it is evident that the Hon'ble Apex Court has recognized and held that pension payable to a government employee is earned by rendering long and efficient service during his hey-days and, therefore, it is also incumbent upon the Government as a model employer to look after his well being at the evening of his life. In fact, India as a socialistic country cannot ignore the miserable condition in which one of its officers may be placed at the last leg of his life for want of some support in the form of pension.

41. We are of the considered opinion that it is high time that the Government of India should deliberate upon this position and take appropriate policy decision for grant of service/retiring pension in respect of such SSC officers who complete the eligible span of service by counting their past service in the Army, be it in any rank PBOR or Officer. When service rendered in state government and autonomous bodies can be counted towards pension (Reg. 26 of Pension Reg. for the Army) it would not be unjust for the Govt. to consider that regular PC service and SSC service in any sequence should count towards pensionable service.

42. In the case in our hand, we have already found that the applicant even though rendered long 19 years of service as a commissioned officer (PC plus SSC); he is not eligible for any pension which is very disturbing and unfortunate. Even if the applicant's total service is counted towards pensionable service, he is still short of one year a few months to reach the required 20 years to make him eligible for pension. Condoning of such short-fall is another issue that has to be looked into by the Respondent No. 1 in a considerate manner but within existing rules.

43. Having considered the matter from its all angles, though we are not inclined to interfere with the existing govt. rules, we would like to dispose of this application with direction to the Respondent No.1 to reconsider the case of the applicant by considering if he can enjoy the same privilege as the PBOR, who as SSC officers are entitled to pension after counting their past regular service in the ranks, based on observations at paras 36,38,40 and 41, made by us in this Order. The shortfall of one year and few months can also be considered to be condoned by the Respondent No.1 within rules after granting him to count past PC service with SSC service for pension as is allowed for PBOR who join SSC. We also hope and trust that the respondent authorities i.e. Respondent No.1, Secretary to the Government of India, Ministry of Defence would seriously consider and decide as to whether SSC Officers in general can be granted pension by counting their past eligible service in any type as given in Reg. 26 of the Pension Reg., keeping in mind the observations made by us above. A decision in this regard be taken and communicated to the applicant within four months from the date of communication of this order. No cost.

45. Let a plain copy of this order duly countersigned by the Tribunal Officer be furnished to both parties on observance of usual procedure.

(LT. GEN. K.P.D.SAMANTA)
ADMINISTRATIVE MEMBER

(JUSTICE R.N.RAY)
JUDICIAL MEMBER