

Court No 2

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 375 of 2024

Tuesday, this the 25th day of March, 2025

Hon'ble Mr. Justice Anil Kumar, Member (J)

Hon'ble Lt. Gen. Anil Puri, Member (A)

No. 8430352X Nk Kamal Singh, S/o Shyam Sahai, R/o Village-
Nagala Verry Patti Deusri, Post-Nagriya Patti Deusri, Tehsil-
Sikandra Rao, District-Hathras, U.P.-204214.

..... Applicant

By Legal Practitioner -**Shri Bhanu Pratap Singh Chauhan**, Advocate

Versus

Union of India & Others.

..... **Respondents**

By Legal Practitioner - **Shri Amit Jaiswal** , Advocate
Central Government Counsel

ORDER (ORAL)

1. Heard Shri Bhanu Pratap Singh Chauhan, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents and perused the record.

2. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for issuing directions to the respondents to condone the short fall in service and grant second service

pension to the applicant from the date of discharge from DSC i.e. 01.07.2023 .

3. Briefly stated facts are that applicant was enrolled in the Indian Army on 25.01.1984 and after completing 24 years and 07 days service he was discharged from service on 31.01.2008 (AN). He was re-enrolled in Defence Security Corps (DSC) 10.12.2008, and after completing 14 years, 06 months and 20 days service he was discharged from service 30.06.2023 (AN) at the age of superannuation of 57 years under Rule 13 (3) III(i) of the Army Rules, 1954. As per rules, 15 years of minimum service is required for second service pension, but as there was deficiency of about 05 months and 08 days service in the case of applicant, he was denied service pension on the pretext that he did not complete minimum pensionable service. The applicant is not in receipt of second service pension for the services rendered in DSC. It is in this perspective that the applicant has preferred the present Original Application.

4. It is submitted on behalf of the applicant that as per Regulation 44 of the Pension Regulations for the Army, 2008, (Part I), Ministry of Defence, Department of Defence letter dated 14.08.2001 and ADG (PS) letter dated 26.09.2003, condonation of shortfall in qualifying service for grant of pension in respect of personnel below officers rank from six months upto 12 months is allowed. However, there being a shortfall of about 05 months and 08 days in case of the applicant, shortfall was not condoned in view of Government of India, Ministry of Defence letter No.

14(02)/2011-D (Pen/Pol) dated 20.06.2017 and Principal Controller of Defence Account (Pension) Circular No. 589. In Para 'C' of the above letter it is stated that 'the intention behind grant of condonation of deficiency in service for grant of service pension is that the individual must not be left high and dry but should be eligible for at least one service pension and in view of this, it is clarified for grant of second service pension. Submission of learned counsel for the applicant is that above Government of India, Ministry of Defence, letter dated 20.06.2017 being against Regulation 44 of the Pension Regulations for the Army, 2008 (Part I) and Ministry of Defence letter dated 14.01.2001 and Additional Director General Personnel Services (ADGPS) letter dated 26.09.2003 is ultra virus.

5. Learned counsel for the applicant further submitted that Regulation 173 of Pension Regulation for the Army, 2008 (Part I), clearly says that grant of pensionary award to personnel of DSC shall be governed by the same Regulations as are applicable to personnel below officers' rank in the Army except where they are inconsistent with the provisions of Regulations. Thus, he submits that Government of India, Ministry of Defence, letter dated 14.08.2001 and letter dated 26.02.2003 being equally applicable in case of the applicant also, deficiency of 05 months and 08 days in minimum qualifying service is liable to be condoned and applicant is entitled to second service pension.

6. Per contra, learned counsel for the respondents submitted that intention behind condonation of service for grant of service pension being based on the policy that individual must not be left high and dry but should be eligible for at least one service pension and the same being not applicable for the second service pension in respect of DSC, Government of India has issued letter dated 20.06.2017, and keeping in view this letter and also that there is deficiency of about 05 months and 08 days in qualifying service, as such, applicant is not entitled to second service pension.

7. Having heard the submissions of learned counsel of both the sides and having gone through Regulation 44 of the Pension Regulations for the Army, 2008 (Part I) as well as Government of India, Ministry of Defence letter No. 14 (02)/2011-D(Pen/Pol) dated 20.06.2017, we find that issue regarding condonation of deficiency in minimum qualifying service regarding second service pension of DSC being cropped up in so many cases has not only been dealt with by the different Benches of the Armed Forces Tribunal but also by the Hon'ble Apex Court in the case of ***Union of India Vs. Surender Singh Parmar*** in Civil Appeal No. 9389 of 2014, decided on 20.01.2015, Armed Forces Tribunal (Principal Bench) New Delhi judgment in O.A. No. 60 of 2013, ***Bhani Devi vs Union of India & Ors***, decided on 07.11.2013, O.A. No 131 of 2017, ***Ex Nk Mohanan T vs Union of India & Ors***, decided on 12.10.2017 and O.A. No.

272 of 2018, **Ex Nk Vijay Singh vs Union of India & Ors**, we find that issue regarding condonation of deficiency in minimum qualifying service for grant of service pension has been dealt with by different benches of the Armed Forces Tribunal and it has been held therein that deficiency in qualifying service upto one year is condonable. Taking note of the above and also that there is deficiency of less than one year in qualifying service of the applicant and the said deficiency is condonable under Regulation 44 of Pension Regulations for the Army, 2008 (Part-I), we find that applicant's claim regarding condonation in deficiency in qualifying service for the grant of second service pension deserves to be allowed.

8. Accordingly, Original Application No. 375 of 2024 is **partly allowed**. The shortfall of 05 months and 08 days in minimum qualifying service of the applicant in getting second service pension is condoned. Applicant is held entitled to get second service pension in DSC as well in addition to pension which he is already getting from the Army.

9. The respondents are directed to grant second service pension to the applicant from the date of discharge. The respondents are directed to pay arrears of second service pension from the date of notionally completion of 15 years of service. They are further directed to implement this order within a period of four months from

the date of receipt of a certified copy of this order. Delay shall carry interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Miscellaneous application(s), pending if any, shall be treated to have been disposed off.

(Lt Gen Anil Puri)
Member (A)

Dated: 25.03.2025

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(Justice Anil Kumar)
Member (J)