

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No 317 of 2023**

Tuesday, this the 8th day of August, 2023

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

Hon'ble Maj Gen Sanjay Singh, Member (A)

No. 4169982W- Ex Naik Devender Singh S/O Late Pan Singh, R/o Village Chamoli, Post Office Pilkholi, Tehsil Ranikhet, District Almora, (U.K.) permanent residing at H. No. 594Gha/150, Bhagwant Nagar, Nilmatha Lucknow U.P. 226002.

...Applicant

Ld. Counsel for the applicant: Shri Manoj Kumar Awasthi, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, 101, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. ADGPS, AG Branch, Army Headquarters, DHQ, PO-New Delhi-110011
4. Defence Security Corps Records, PIN-901227, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.... Respondents

Ld. Counsel for the Respondents : Ms Appoli Srivastava, Advocate
Central Govt. Counsel

ORDER

1. By means of the present O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

- (a) *To issue/pass an order or direction to the respondents to condone the short fall service of 153 days grant of*

second service pension to the applicant from the date of discharge from DSC i.e. 31.07.2017.

- (b) To issue/pass an order or direction to the respondent no. 3 to decide the representation dated 21.05.2022 as **Annexure no. 1.***
- (c) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.*
- (d) To allow this original application with costs.*

2. Briefly stated facts are that applicant was initially enrolled in the Indian Army on 30.07.1977 and was discharged from service w.e.f. 31.07.2001 (AN) after rendering 24 years and 01 days of qualify service for which he is in receipt of service pension vide PPO No. S/027379/2001 (Army). Thereafter, he was re-employed in Defence Security Corps (DSC) on 30.01.2003 and after completing 14 years, 06 months and 01 day qualifying service discharged on 31.07.2017 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954. As per rule, 15 years of minimum service is required for second service pension, but as there was deficiency of 153 days in qualifying service, applicant was not granted second service pension of DSC. Applicant submitted representation dated 21.05.2022 for condoning the short fall in qualifying service period of 153 days but it has not been replied as yet, hence this O.A.

3. It is submitted by learned counsel for the applicant that as per Govt. of India, Ministry of Defence letter dated 14.08.2001 condonation of shortfall in qualifying service for grant of pension in respect of personnel below officers rank shortfall of 12 months in qualifying service is allowed. However, there being a shortfall of 153 days in the case of applicant,

shortfall was not condoned in view of Govt of India, Ministry of Defence letter dated 14.08.2001. Learned counsel for the applicant also relied upon Judgment of **Hon'ble Apex Court Judgment, Civil Appeal No. 9389 of 2014, Union of India & another Vs Surender Singh Parmar** and this Tribunal order in O.A. No. 659 of 2017, **Ex Nk Mansa Ram vs Union of India & Ors.**

4. Learned counsel for the applicant further submitted that Para 173 of Pension Regulations for the Army, Part - I, 2008, 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 being equally applicable in case of applicant also, deficiency of 153 days in minimum qualifying service is liable to be condoned and applicant is entitled to second service pension.

5. Per contra, learned counsel for the respondents has vehemently opposed and submitted that applicant on attaining the age of 57 years was discharged from DSC service wef 31.07.2017 (AN) under the provisions of Army Rule 13 (3) item III (i) after rendering 14 years, 06 months and 01 day qualifying service for which he was paid Service gratuity and retirement gratuity. Applicant is deficient of 153 days for grant of second service pension. He submitted that in terms of Rule 132 of Pension Regulations for the Army, 1961 (Part-1) and Rule 47 of Pension Regulations for the Army 2008 (Part-1), 'unless otherwise provided for, the minimum qualifying

service for earning a service pension is 15 years'. In the instant case, the applicant had rendered only 14 years, 06 months and 01 day qualifying service in DSC. Hence, he is not entitled for grant of second service pension for the service rendered by him in DSC. His case cannot be considered for condonation of deficiency in qualifying service for grant of second pension in terms of Govt. of India, Ministry of Defence letter no. 14(2)/2011/D(Pen/Pol) dated 23 April 2012, as he is already in receipt of one service pension for the former service rendered by him in the Army. The 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 clarified that 'no condonation shall be allowed for grant of second service pension'. Keeping in view this letter and also that there is deficiency of 153 days in qualifying service, as such, applicant is not entitled to second service pension.

6. Having heard the submissions of learned counsel both sides and having gone through Rule 125 and 132 of Pension Regulations for the Army, 1961 (Part-1) and the Hon'ble Apex Court judgment in ***Union of India & Ors vs. Surinder Singh Parmar*** and Ors in Civil Appeal No. 9389/2014, decided on 20.01.2015, we find that issue regarding condonation of deficiency in minimum qualifying service regarding 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 1 year is condonable. Taking note of the above and also that there is

deficiency of less than 1 year in qualifying service of the applicant and the said deficiency is condonable under Rule 125 of Pension Regulations for the Army, 1961 (Part-1) (Rule 44 of Pension Regulations for the Army, Part-1, 2008), we find that applicant's claim regarding condonation in deficiency in qualifying service for the grant of service pension deserves to be allowed.

7. Accordingly, O.A. is **allowed**. The shortfall of 153 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.

8. The respondents are directed to grant second service pension to the applicant from the next date of discharge from DSC service. However, due to law of limitation as held by the Hon'ble Supreme Court in the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, applicant is entitled to second service pension three years preceding the date of filing of O.A. which was filed on 13.03.2023. The respondents are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

9. No order as to costs.

10. Miscellaneous application(s), pending if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 08 August, 2023

rsp

(Justice Anil Kumar)
Member (J)