

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.3 (Sl. No.23)

O.A. No. 332 of 2022

Ex Sep Yogendra Prasad Singh
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>10.01.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Vide Admiral Atul Kumar Jain, Member (A)</u></p> <p>1. Heard Shri VP Pandey, learned counsel for the applicant and Shri Rajiv Pandey, learned counsel for the respondents.</p> <p>2. Brief facts of the case are that applicant was initially enrolled in Indian Army on 29.07.1982 and was discharged from service w.e.f. 31.07.1999 (AN) after rendering 17 years and 03 days service for which he is in receipt of service pension vide PPO No S/021837/1999. Thereafter, he was re-enrolled in Defence Security Corps (DSC) on 24.12.2003 and after completing 14 years, and 67 days qualifying service he was discharged from DSC on 28.02.2018 (AN) under the provisions of Army Rule 13 (3) III (i). As per rule, 15 years of minimum service is required for second service pension, but as there was deficiency of 298 days in qualifying service, applicant was not granted second service pension of DSC. Applicant has preferred the present O.A. for condoning the short fall in service for grant of second service pension for his services rendered in DSC.</p> <p>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 up to 12 months is allowed for grant of pension in respect of personnel below officers rank. However, there being a shortfall of 298 day in the case of the applicant, shortfall was not condoned by the respondents in view of Govt of India, Ministry of Defence letter dated 14.08.2001. Learned counsel for the applicant also relied upon Judgment of Armed Forces Tribunal (RB) Chandigarh in O.A. No. 1711 of 2012, <i>Nand Kishore vs. Union of India and Others</i> decided on 18.07.2012, the Hon'ble Apex Court judgment in <i>Union of India and another vs. Surender Singh Parmar</i>, Civil Appeal No.</p>

9389 of 2014 decided on 20.01.2015, AFT (RB), Chandigarh in O.A. No. 87 of 2015 decided on 18.03.2016, ***Isher Das vs Union of India & Ors*** and This Tribunal's judgment dated 02.02.2022 passed in O.A. No. 605 of 2021, ***Ex Nk Sadar Alam Khan vs Union of India & Ors***.

4. Learned counsel for the applicant further submitted that Para 173 of Defence Service Regulations 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 298 days in minimum qualifying service under the provisions of Para 125 of Pension Regulations for the Army, 1961 (Part-1) is liable to be condoned and applicant be 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 w.e.f. 28.02.2018 (AN) under the provisions of Army Rule 13 (3) item III (i) after rendering 14 years and 67 days qualifying service for which he was paid service gratuity and retirement gratuity. Applicant is deficient of 298 days service 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), it has been provided that '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 and 298 days 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 service pension in terms of Govt of India, Ministry of Defence letter No. 14(2)/2011/D(Pen/Pol) dated 23 April 2012 and 20.06.2017, 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 shortfall in 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 298 days in qualifying service, as such, applicant is not entitled to second service pension. He pleaded for dismissal of O.A.

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) as well as Govt. of India, Ministry of Defence letter dated 14.08.2001 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 up to 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 Part-1, 2008), we find that applicant's claim regarding condonation in deficiency in qualifying service for the grant of second service pension of DSC deserves to be allowed.

7. Accordingly, O.A. is allowed. The shortfall of 298 days in minimum qualifying service of the applicant in getting second service pension of DSC 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. In view of the above, the respondents are directed to grant second service pension to the applicant from the date of his discharge. The respondents are further 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. Default will invite interest @ 8% p.a.

9. No order as to costs.

10. Pending miscellaneous application(s), if any, shall stand disposed of.

(Vice Admiral Atul Kumar Jain)
Member (A)

(Justice Anil Kumar)
Member (J)

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