

**Reserved  
Court No. 1**

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

**ORIGINAL APPLICATION No 327 of 2019**

Wednesday, this the 22<sup>nd</sup> day of May, 2019

**Hon'ble Mr. Justice S.V.S. Rathore, Member (J)**

**Hon'ble Air Marshal BBP Sinha, Member (A)**

Narvadeshwar Ojha (No. 14355404X),  
S/o Shri Late Sakel Deo Ojha, Presently residing at  
C/o Sandeep Dubey, Paroraha Dappar Chhappar,  
Post – Laxmiganj, Distt- Kushinagar (UP)- 274306.

...Applicant

Counsel for the applicant: **Shri R Chandra, Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ Post Office, New Delhi – 110011.
3. The Officer In- Charge, Defence Security Corps Records, PIN – 901277, C/O 56 APO.
4. The Chief Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad -14 (UP).

.... Respondents

Counsel for the Respondents

**:Shri Asheesh Agnihotri,  
Central Government Counsel**

**ORDER****“Per Hon’ble Air Marshal BBP Sinha, Member (A)”**

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:

*“(I) The Hon’ble Tribunal may be pleased to direct the respondents to condone the shortfall period of 61 days in service to grant service pension.*

*“(II) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”*

2. Brief facts as would be borne out from the pleadings, the applicant was enrolled in the Army on 08.12.1980 and he was discharged from Army service on 30.07.2000. Admittedly, he is getting pension for this spell of service. The applicant was re-enrolled in Defence Security Corps (‘DSC’ for short) on 31.08.2002 and was discharged therefrom on 30.06.2017 after rendering 14 years 09 months and 29 days service due to superannuation age of 57 years under Rule 13 (3) III (i) of the Army Rules, 1954. This Original Application has been filled for grant of service pension for services put in by him in Defence Service Corps (DSC) by condoning the short fall period of 61 days for grant of pension. He preferred an appeal in June 2017 for grant of service pension of DSC but the same was rejected. Being aggrieved by the denial of service pension for the services

rendered in DSC, the applicant has preferred the present Original Application. Delay in filing the Original Application has been condoned vide order dated 15.05.2019.

3. Learned counsel for the applicant submitted that the applicant is in receipt of service pension for the services rendered in the Army. After discharge from Army, the applicant was re-enrolled in Defence Service Corps (DSC) on 31.08.2002 and was discharged from DSC service on 30.06.2017 (Afternoon) due to superannuation age of 57 years wherein he rendered 14 years 09 months and 29 days of service. He approached competent authorities for grant of service pension for the services rendered in the DSC but the same was denied by the respondents on the ground that a period of 61 days is short fall in his qualifying service to earn the service pension of DSC services. He submitted that the applicant is entitled for pensionary benefits for services rendered in DSC.

4. **Per Contra**, Learned Counsel for the respondents submitted that the applicant had not completed minimum qualifying service of 15 years in DSC, he is not entitled for service pension for the services rendered by him in DSC. Learned counsel for the respondents relied on MoD (Army)/AG's Branch letter No. 82370/AG/PS-4(a) dated 07.12.1962 which stipulates that "*Regulation 125 of Pension Regulations for the Army 1961 (Part-I)*

*will not be allowed for enhancement of pension. In other words, this will not apply to individuals who have already earned a pension.”* He further submitted that his stand is that this policy was again reiterated by the Government vide their letter dated 23.04.2012 which stipulated 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 pension and on the principle that no dual benefit shall be allowed on same accord, it is clarified that no condonation shall be allowed for grant of second service pension.”*

5. We have heard learned counsel for the parties and perused the record.

6. We find that the controversy involved in the present case has been settled in a number of cases and is no longer ‘*RES INTEGRA*’ and has been set at rest in favour of the applicant in the following cases:-

- (i) OA No.60 of 2013, ***Bhani Devi vs. Union of India & Ors.***, decided by the AFT, Principal Bench, New Delhi on 07.11.2013.
- (ii) OA No.931 of 2012, ***Ex Sub Krishan Singh Tanwar vs. Union of India & others***, decided by the Jaipur Bench of AFT on 18.05.2015;
- (iii) OA No.1468 of 2014, ***Duni Chand Vs Union of India & others*** decided by Chandigarh Regional Bench at Chandmandir on 17.09.2015

- (iv) OA. No. 1089 of 2017 **Om Prakash vs. UOI & ors** decided by Chandigarh Regional Bench at Chandmandir on 11.07.3027, and
- (v) OA No 83 of 2011 **Amar Singh vs Union of India & Ors** decided by Chandigarh Regional Bench at Chandmandir on 24.01.2011.
- (vi) OA No. 407 of 2017, **Desh Raj vs. Union of India & ors**, decided by Armed Forces Tribunal, Lucknow Bench on 11.07.2018.

7. In the case of **Bhani Devi vs. Union of India** (supra), the Hon'ble Principal Bench has considered:

- (i) Rule 266 given in Chapter 4 of the provisions for the DSC;
- (ii) Rule 125, relating to condonation of deficiency in service for eligibility of service/ reservist pension; and
- (iii) the letter dated 23.04.2012, issued by the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, D(Pension/Policy).

8. The said letter dated 23.04.2012 being the anchor sheet of the respondents' arguments, is reproduced below:-

*"No.14(2)/2011/D(Pen/Pol)  
Government of India  
Ministry of Defence  
Department of Ex-Servicemen Welfare  
D (Pension/Policy)*

...

*New Delhi, the 23rd April, 2012*

*To  
The Chief of Army Staff  
The Chief of Naval Staff  
The Chief of Air Staff*

**Subject:** *Review of Rule 125 of Pension Regulation for Army Pt. I (1961): Condonation of deficiency in service for grant of 2nd service pension.*

*The matter regarding condonation of shortfall in service towards second service pension in respect of DSC (Defence Security Corps) personnel raised by ADGPS vide their No. B/46453/AG/PS-4(Legal) dated 9<sup>th</sup> March 2012 has been examined in this department. It is conveyed that the intention behind grant of condonation for deficiency of service for grant of service pension is that the individual must not be left high and dry but should be made eligible for at least one pension. On the principle that no dual benefit shall be allowed on same accord. It is clarified that no condonation shall be allowed for grant of 2nd service pension.*

2. *This has the approval of Secretary (ESW).*

*Yours faithfully,  
sd/-  
(Malathi Narayanan)  
Under Secretary (Pen/Pol)"*

9. The Hon'ble Principal Bench in ***Bhani Devi's*** case (supra), after taking into consideration the aforesaid letter in the light of the relevant provisions of the Pension Regulations for the Army, has observed, to quote:-

*"The communication dated 23.04.2012 (R-1), nowhere conveys that the Rule 125 stands modified by the order/ communication dated 23.04.2012 (Annexure R-10). It appears that the matter was brought to the notice of the Ministry with respect to the interpretation of Rule 125. The communication dated 23.04.2012 is only an opinion given by the Government and therefore observed that "intention behind grant of condonation" is that individual must not be left high and dry "but should be made available for at least one pension". The benefit of Rule 125 "for at least for one pension" is not in the Rule 125. The communication dated 23.04.2012 nowhere supersedes the original Rule 125 nor reviewed Rule 125, but it is only an opinion of the Govt. that according to Govt. what was the intention behind the grant of condonation for deficiency of service for grant of service pension. When the rule is very clear the intention is irrelevant. The Rule 266 clearly declared that all general rules shall be applicable to the employees governed by the provisions of Chapter 4 and we have already observed that there is no inconsistent rule to the Rule*

125 under Chapter 4 of the Regulations. The communication/ letter dated 5 (OA No.1468 of 2014) 23.04.2012 neither have modified the Rule 125 nor reviewed it but it only conveyed that according to opinion of Govt. what was the intention for making Rule 125. In view of the above reasons, mere opinion of the Govt. and interpretation of Rule 125, is not binding upon the Tribunal, particularly, when the Rule 266 and Rule 125 as are in force today are very clear.

11. In view of the above reasons, we are of considered opinion that petitioner's husband was eligible under Rule 125 for condonation of shortfall in service in pensionable service. So far as the fact is concerned, petitioner's husband's shortfall in service was only less than one year which could have been condoned. In view of the clear rules made under Pension Regulations for the Army 1961, and particularly, Rule 266, which provides that the general rule shall not be applicable when they are inconsistent with the rules framed under Chapter 4, the Govt.'s communication dated 23.04.2012, just runs just contrary to Rule 266 and therefore, cannot be given effect to."

10. In the case of **Amar Singh vs Union of India & Ors** (supra), the co-ordinate Bench of Armed Forces Tribunal, Chandigarh Bench at Chandimandir considered the provision of Regulation 9 of the Pension Regulations for the Army, 1961 and observed as under:-

*"However, how the period of qualifying service is to be computed, in the present circumstances, is a matter, which is governed by Regulation 9 of the Pension Regulations for the Army, 1961, which reads as under:-*

*9. In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service. A bare reading of this provision makes it clear that fraction of a year equal to three months or above, but less than six months, is to be treated as completed half year. Accordingly the period of 308 days exceeds three months beyond six months and therefore, he is required to be treated to have completed a year of service, and if that is so then it is clear that the petitioner has completed 15 years of service"*

11. In the case of ***Desh Raj*** (supra), this Tribunal while deciding the issue of condonation of shortfall of qualifying service rendered in the DSC for the purpose of pension, has observed as under:-

*“Submission of learned counsel for the applicant is that the aforesaid shortfall in DSC service may be condoned. According to him, as per provisions of Government Policy dated 14.08.2001, shortfall in service upto 01 year can be condoned by the respondents. He has also placed reliance on the pronouncement of Hon’ble Apex Court in Civil Appeal No. 9389 of 2014, Union of India and another versus Surender Singh Parmar, decided on 20.01.2015. In that case, the individual had taken voluntary discharge before completing his qualifying service and the shortfall of one year was condoned by the Hon’ble Apex Court. Reliance has also been placed on the pronouncement of this Bench in OA No. 154 of 2016, Shiv Ram versus Union of India and others, decided on 01.02.2018, wherein, in similar facts and circumstances, the shortfall of 4 months and 09 days in minimum qualifying service of the individual in DSC for earning service pension was condoned.”*

We find that the present case is squarely covered by the above judgments.

12. Accordingly the Original Application is allowed and the shortfall of 61 days in minimum qualifying service of the applicant to earn DSC pension is hereby condoned and the applicant is held entitled to get service pension for the second spell of service in DSC as well, in addition to the pension which he is already getting from the Army. The respondents are directed to grant service pension to the petitioner for his service in DSC from the due date i.e. 01.07.2017.

13. The order is required to be implemented within a period of four months from the date of receipt of a certified copy of this order,



failing which, the amount shall carry interest @ 9% per annum from the date of this order, till actual payment thereof.

No order as to costs.

**(Air Marshal BBP Sinha)**  
**Member (A)**

**(Justice S.V.S. Rathore)**  
**Member (J)**

Dated : May, 2019

Ukt/-