

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 549 of 2019**Monday, this the 5<sup>th</sup> day of April, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 2973339-Y L/Nk Kapil Deo Singh  
S/o Chandrika Singh  
R/o Village – Artipur Saritya, PO – Barwa Rat Patti,  
Tehsil – Rasra, PS – Bhimpur, District – Ballia (UP)

..... Applicant

Ld. Counsel for the Applicant: **Col A.K. Srivastava (Retd)**, Advocate  
**Shri Dharam Raj Singh**, Advocate  
**Dr. Ashish Asthana**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi – 110011.
3. ADGPS, AG Branch, Army Headquarters, DHQ PO New Delhi – 110010.
4. Defence Security Corps Records PIN – 901227, C/o 56 APO.
5. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Allahabad.

..... Respondents

Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu**,  
Central Govt Counsel.**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(a) To issue/pass an order or direction to the respondents to decide the First Appeal dated 26.11.2018 submitted by applicant.

- (b) To issue/pass an order or directions to the respondents to condone the short fall service of 02 years 09 months and 21 days and grant second service pension to the applicant from the date of discharge from DSC i.e. 30.06.2013.
- (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 enrolled in Indian Army on 30.12.1976 and was discharged from service w.e.f. 31.08.1996 (AN) after rendering more than 19 years of service. He is in receipt of service pension vide PPO No. S/024167/1996. Thereafter, he was re-employed in Defence Security Corps (DSC) on 20.04.2001. On completion of initial terms of engagement, applicant was granted extension of service from 20.04.2011 to 18.06.2011 i.e. age of superannuation of 55 years. The applicant was granted two years enhanced service from 19.06.2011 to 18.06.2013 and finally discharged from DSC service on 30.06.2013 (AN) under the provision of Army Rule 13 (3) III (i) after rendering 12 years 72 days qualifying service for which applicant was granted service gratuity. The applicant submitted an appeal dated 26.11.2018 which has already been decided by the competent authority vide order dated 04.01.2019. As per rule, 15 years of minimum service is required for second service pension, but as there was deficiency of 02 years and 149 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 Defence Security Corps.

3. It is submitted by learned counsel for the applicant that as per Govt. of India, Ministry of Defence letter dated 14.08.2001 and ADGPS letter dated 26.09.2003, condonation of 12 months shortfall in qualifying service for grant of pension in respect of personnel below officers rank is allowed. However, there being a shortfall of 54 days in the case of applicant, shortfall was not condoned in view of Govt of India, Ministry of Defence letter dated 14.08.2001 and letter dated 26.09.2003. Learned counsel for the applicant also relied upon Judgment of the Hon'ble Apex Court in ***Union of India and another vs. Surender Singh Parmar*** in Civil Appeal No. 9389 of 2014 decided on 20.01.2015 and this Tribunal judgment in OA No. 659 of 2017 ***Ex Nk Mansa Ram vs. Union of India and another*** decided on 03.09.2018.

4. Learned counsel for the applicant further submitted that Para 44 and 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 54 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 30.06.2013 under the provisions of Army Rule 13 (3) item III (i) after rendering 12 years and 72 days qualifying service for which he was paid Service gratuity and retirement gratuity. Applicant is deficient of 02 years and 149 days for grant of second service pension and not 54 days as averred by the applicant in Original Application. He submitted that in terms of Para 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 12 years and 72 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 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'.

6. Learned counsel for the respondents further submitted that in a similar case, AFT (RB) Kochi in O.A. No. 130 of 2014, **Naib Subedar Uthaman Manguan vs. UOI & Ors**, decided on 29.06.2015 rejected condonation of deficiency in qualifying service in which applicant had 12 years and 215 days in DSC service. Therefore, keeping in view aforesaid Govt. letters and also that there is deficiency of 02 years 149 days in qualifying service, applicant is not entitled to second service pension.

7. Having heard the submissions of learned counsel both sides and having gone through Rule 47 and 125 of Pension Regulations Part I, Rules 2008, Para 173 of Pension Regulations for the Army, 1961 (Part I) as well as Govt. of India, Ministry of Defence letter dated 14.08.2001 and judgments referred above, we find that condonation of deficiency in minimum qualifying service regarding second service pension of DSC service is condonable upto one year only. Hence, applicant's claim regarding condonation in deficiency in qualifying service for the grant of second service pension of DSC for shortfall of 02 years and 149 days has correctly been rejected by the respondents.

8. In view of the above, the O.A. is devoid of merits and deserves to be dismissed. It is accordingly **dismissed**.

9. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)  
Member (A) Member (J)

Dated: April, 2021

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