

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 156 of 2023

Wednesday, this the 29th day of November, 2023

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

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

Service No. 5335516-P Ex Naik Tek Bahadur Gurung son of Late Purna Bahadur Gurung, resident of Village – Khilung Deurali, Ward No. 6, District Syangia, Zone Gandaki (NEPAL).

..... Applicant

Ld. Counsel for the Applicant: **Shri VP Pandey**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, 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. The Officer-in-Charge, Records, Defence Security Corps Records, Cannanore, PIN-901277, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad (UP) - 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,
Central Govt Standing 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 order or direction to the respondents for grant of service pension for the services rendered in Defence Security

Corps from the next date of discharge from service i.e. from 01.03.1996.

(II) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.”

2. Briefly stated facts are that applicant was initially enrolled in Indian Army on 20.02.1960 and was discharged from service w.e.f. 28.02.1975 (AN) after rendering 15 years and 10 days of qualifying service for which he is in receipt of service pension vide PPO No. S/5968/1975. Thereafter, he was re-employed in Defence Security Corps (DSC) on 14.07.1981 and after completing 14 years, 07 months and 18 days qualifying service he was discharged on 29.02.1996 (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 135 days (04 months and 13 days) in qualifying service, applicant was not granted second service pension of DSC service. 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 based on earlier judgments rendered by various benches.

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 of 12 months in qualifying service for grant of pension in respect of personnel below officers rank is allowed. However, there being a shortfall of 135 days (04 months and 13 days)

in the case of applicant, shortfall ought to be 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 Armed Forces Tribunal (RB) Chandigarh in O.A. No. 1711 of 2012 **Nand Kishore vs. Union of India and Others** decided on 18.07.2012, AFT (RB) Lucknow in OA No. 1028 of 2022, **Ex Nk Ramfer Singh vs. Union of India & Others**, decided on 06.04.2023, **Union of India and another vs. Surender Singh Parmar** in Civil Appeal No. 9389 of 2014 decided on 20.01.2015 and AFT Chandigarh in O.A. No. 87 of 2015 **Isher Dass Vs Union of India & Others** on 18.03.2016 and AFT, Lucknow has passed order dated 18.12.2017 in O.A. No. 198 of 2016 in the case of **Ex Sep (DSC) Hardayal Singh Vs Union of India & others.**

4. Learned counsel for the applicant further submitted that Para 173 of Defence Service Regulations Part - I, 2008, clearly stipulates 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 these 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 135 days (04 months and 13 days) in minimum qualifying service is liable to be condoned and applicant be granted second service pension.

5. Per contra, learned counsel for the respondents has vehemently opposed the prayer made by the applicant and submitted that applicant on attaining the age of 55 years was discharged from DSC service w.e.f. 29.02.1996 (AN) under the provisions of Army Rule 13 (3) item III (i) after rendering 14 years, 07 months and 18 days qualifying service for which he was paid service gratuity. He further 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, 07 months and 18 days qualifying service in DSC. Hence, he is not entitled for grant of second service pension for the services 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 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 135 days (04 months and 13 days in qualifying service, as such applicant is not entitled to second service pension.

6. Having heard the submissions of learned counsel of both sides and having gone through Rule 125 and 132 of Pension Regulations for the Army, 1961 (Part-1) and Rule 47 of Pension Regulations for the Army, 2008 (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 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 service pension deserves to be allowed.

7. Accordingly, Original Application is **allowed**. The shortfall of 135 days (04 months and 13 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 condone the shortfall in service for second service pension and grant second service pension to the applicant from the next date of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of service pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 23.01.2023. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of certified copy of this order. Default will invite interest @ 8% per annum till actual payment.
9. No order as to costs.
10. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: November 2023
rspal

(Justice Anil Kumar)
Member (J)

RESERVED
Court No 2

Form No. 4
{See rule 11(1)}

ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

O.A. No. 156 of 2023

Ex Naik Tek Bahadur Gurung

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>29.11.2023</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p>Judgment pronounced. O. A. No. 156 of 2023 is allowed. For orders, see our judgment and order passed on separate sheets.</p> <p>(Maj Gen Sanjay Singh) Member (A)</p> <p>(Justice Anil Kumar) Member (J)</p> <p><i>rspal</i></p>

