

COURT NO 1
RESERVED

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No 659 of 2017

Monday, this the 3rd day of September, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

No. 14466811-P Ex Nk Mansa Ram S/O Harikishan, R/O Vill-Tulsipur, Post-Kumawar, District-Etawah, U.P.-206253.

...Applicant

Counsel for the applicant: **Shri P.K. Shukla**, Advocate

Versus

1. Union of India, through the 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-110011.
4. Defence Security Corps Records PIN-901227, C/O 56 APO.
5. Commanding Officer, 82 Armoured Regiment, Pin-912682, C/O 56 APO.

.... Respondents

Ld. Counsel for the Respondents : **Shri Yogesh Kesarwani**,
Central Government Counsel.

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

1. The present O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

(a) To issue/pass an order or direction to set aside the rejection order dated 03.11.2017 passed by respondents regarding the short fall service about four months for grant of service pension and policy no. 14 (02)/2011-D (Pen/Pol) dated 20.06.2017 of Government of India, Ministry of Defence, Department of Ex Servicemen Welfare, New Delhi.

(b) To issue/pass an order or directions to the respondents to condone the short fall service and grant service pension to the applicant from the date of discharge from DSC i.e. 31.07.2017.

(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 the applicant was enrolled in the Air Defence Artillery (AAD) as Gunner (DMP) on 07.06.1980 and after completion of more than 17 years of service he was discharged from service w.e.f. 31.05.1998 (AN). The applicant was re-enrolled in Defence Security Corps (DSC) on 27.11.2002 for an initial terms of engagement of 10 years. On completion of his initial terms of engagement, he was granted extension of service upto 03.07.2017 i.e. upto the age of superannuation of 57 years and accordingly the applicant was discharged from service after completion of 14 years and 247 days on 31.07.2017 (AN) under Rule 13 (3) (III) (i) of Army Rules, 1954. Representation submitted by the applicant on 10.09.2017 for condoning shortfall in

qualifying service for grant of second service pension was rejected vide order dated 03.11.2017.

3. Contention of Ld. Counsel for the applicant is that the applicant is entitled to condonation in terms of Rule 125. Also he is entitled for condonation in short fall in qualifying service to earn second pension related to DSC in terms of Ministry of Defence letter dated 14.08.2001 and ADGPS letter dated 26.09.2003 wherein it has been clearly laid down that condonation of short fall of a period beyond six months to twelve months can be done to an incumbent to earn pension. The applicant's short fall is only of 118 days of service to earn pension for the services rendered in DSC.

4. Ld. Counsel for the respondents has pleaded that that the applicant had rendered only 14 years and 247 days of qualifying service as such, he has not completed the mandatory minimum required qualifying service of 15 years as per para-74 of the Pension Regulations for the Army, 2008 (Part-1) and there is a shortfall of service rendered by him for earning pension for the DSC service. Further ground taken by the respondents is that the applicant is not eligible for grant of second service pension as he is already in receipt of Service Pension and the intention for grant of condonation of deficiency of service for grant of service pension is that the individual must not be left high and dry and should be made eligible for at least one pension which the applicant is already in receipt of. It is argued that as per the provisions contained in Para 132 and 271(a) of the Pension Regulations for

the Army 1961 (Part-I), minimum 15 years qualifying service is mandatory to earn 2nd service pension and as per GOI, Ministry of Defence/Department of Ex-Servicemen Welfare letter No.1(20/2011/D(Pen/Pol) dated 23.04.2012 the condonation of deficiency in qualifying service is not applicable for the grant of second service pension.

5. We have heard Ld. Counsel for the applicant and Ld. Counsel for the respondents and perused the material placed on record.

6. We find that the basic issue revolves around the question as to whether the deficiency of second service in DSC, of an Army Jawan can be condoned or not. We also find that the controversy involved in this case is no longer RES INTEGRA and has been set at rest favouring condonation in the following cases:-

- (i) O.A. No.60 of 2013, **Bhani Devi vs. Union of India & Ors.**, decided by the AFT, Principal Bench, New Delhi on 07.11.2013.
- (ii) O.A. 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. Hon'ble the Principal Bench in **Bhani Devi's** case (supra), after taking into consideration the aforesaid letter dated

23.04.2012 in the light of the relevant provisions of the Pension Regulations for the Army, has observed as under:-

“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, runs just contrary to Rule 266 and therefore, cannot be given effect to.”

8. 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 observed has 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."

9. Thus in view of the well settled law on condonation of short fall of service in DSC, we condone the shortfall of 118 days service of the applicant.

10. Accordingly, the O.A. is **allowed**. The shortfall of 118 days in minimum qualifying service of the applicant to earn DSC pension is hereby condoned and the applicant is held entitled to get 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 impugned rejection order dated 03.11.2017 is hereby quashed and set aside and the respondents are directed to grant service pension to the petitioner from the date of his discharge i.e. w.e.f. 01.08.2017.

11. The respondents 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 shall invite interest @ 9% till actual date of payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

Dated : September 2018
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