

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 97 of 2019**

Wednesday, this the 7th day of April, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 5339099-L Ex Hav Dhag Bahadur Gurung
 S/o Nar Bahadur Gurung
 R/o Singarkot, PO – Bhumre,
 Dist – Bhirkot, State – Nepal.

..... Applicant

Ld. Counsel for the Applicant: **Shri V.P. Pandey**, Advocate &
Shri K.K.S. Bisht, 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 Headquarters Ministry of Defence, South Block, New Delhi – 110011.
3. Officer-in-Charge, Records, Defence Security Corps, Cannore.
4. Principal Controller of Defence Accounts (P) Draupadi Ghat, Allahabad (UP) – 211014.

..... Respondents

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

- “(I) To issue order/direction to respondent for grant of service pension for the services rendered in Defence Security Corps from the date of discharge (31.08.2004) from service.

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

2. Briefly stated facts are that applicant was enrolled in Indian Army on 25.08.1965 and after completing 24 years of service he was discharged from service w.e.f. 31.08.1989 (AN). He was re-enrolled in Defence Security Corps (DSC) on 05.07.1990 and after completing 14 years and 58 days of service discharged from DSC service on 31.08.2004 (AN) at the age of 57 years. As per rule, 15 years of minimum service is required for second service pension, but as there was deficiency of 307 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 condonation of shortfall in qualifying service for grant of pension in respect of personnel below officers rank shortfall of 12 months in qualifying service is allowed. However, there being a shortfall of 307 days in the case of applicant, shortfall was not 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 and *Union of India and another vs. Surender Singh Parmar* in Civil Appeal No. 9389 of 2014 decided on 20.01.2015.

4. Learned counsel for the applicant further submits 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 307 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 w.e.f. 31.08.2004 under the provisions of Army Rule 13 (3) item III (i) after rendering 14 years and 58 days qualifying service for which he was paid Service gratuity and retirement gratuity. Applicant is deficient of 307 days for grant of second service pension. 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 14 years and 58 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'. Keeping in view this letter and also that there is deficiency of 307days in qualifying service, as such, applicant is not entitled to second service pension.

6. Having heard the submissions of learned counsel both sides and having gone through Rule 125 of Pension Regulations Part I, Rules 2008 as well as Govt. of India, Ministry of Defence letter dated 14.08.2001, Government of India, Ministry of Defence letter No. 14 (2)/2011/D (Pen) dated 23.04.2012 and letter No 14 (02)/2011 (Pen) dated 20.06.2017, we find that issue regarding condonation of deficiency in minimum qualifying service regarding second service pension of DSC being cropped up in many cases has been dealt with not only by different Benches of the Armed Forces Tribunal but also by the Hon'ble Apex Court in the case of **Shiv Dass vs Union of India and Others** in Civil Appeal No 274 of 2007, decided on 18.01.2007, and it has been held therein that deficiency in qualifying service upto 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 the Army Rules 2008, we find that applicant's claim regarding

condonation in deficiency in qualifying service for the grant of second service pension has wrongly been rejected by the respondents.

7. Accordingly, O.A. is allowed. The shortfall of 307 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 grant second service pension to the applicant from the date of discharge from DSC service. They are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall invite interest @ 8% per annum till actual payment.

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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