

e-court**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No 774 of 2021**Tuesday, this the 26th day of April, 2022**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"**

P No 216531T PO Log (Mat) Rahul Dev S/o Shri Lalesh Kumar Shiromani, R/o 59/9, Dinesh Nagar, Behind Idgah, Etah, U.P.-207001.

..... Applicant

Ld. Counsel for the: **Shri Manoj Kumar Awasthi**, Advocate
Applicant

Versus

1. Union of India through the Secretary, Ministry of Defence (Navy), New Delhi-110011.
2. Chief of the Naval Staff, Defence (For PDOP/PDPS), Integrated Headquarters, Ministry of Defence (Navy), 'C' Wing, Sena Bhawan, New Delhi-110011.
3. The Commodore (for SSO (Promotion), Bureau of Sailors, Sion-Trombay Road, Mankhurd, Mumbai-400088.
4. Officer-in-Charge, Headquarters Eastern Naval Command, Naval Base, Visakhapatnam-530014.
5. C.D.A. (Navy), Naval Pension Office, C/o INS Tanaji, Sion Trombay Road, Mankhurd, Mumbai-400088.

..... Respondents

Ld. Counsel for the Respondents : **Shri Amit Jaiswal**,
Central Govt Counsel.**ORDER (Oral)**

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/pass an order or direction to set aside/quash the letter dated 08.02.2021 passed by respondent No 2.
- (ii) To issue/pass an order or direction to the respondents to condone the deficiency of 11 months and 15 days in qualifying service for grant of service pension thereby grant service pension to the applicant from the date of discharge i.e. 15.02.2021 from Indian Navy along with 12% interest on arrear in light of Hon’ble Apex Court.
- (iii) 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.
- (iv) 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.

2. Brief facts which are relevant for the disposal of present Original Application are that the applicant was enrolled in the Indian Navy on 01.02.2007. During the course of his service he applied for UPSC and was selected as Store Officer in DRDO. After his selection in higher post, he applied for discharge from service on compassionate grounds. Accordingly, he was discharged from service w.e.f. 15.02.2021 having put in 14 years and 14 days service. Since he did not serve for 15 years, no service pension was granted to him. Applicant has filed this O.A. for grant of service pension in terms of the Hon’ble Apex Court judgment rendered in civil appeal No 9389 of 2014, **Union of India & Anr vs Surender Singh Parmar**.

3. Learned counsel for the applicant submitted that the applicant on the date of discharge had put in 14 years

and 14 days service which is short of approx eleven months to enable him to receive service pension. He further submitted that the applicant's discharge was duly approved by the competent authority and he was discharged from service in accordance with Regulation 280 of Naval Regulations (Part-III). Learned counsel for the applicant further submitted that a case was taken up for condonation of shortfall in service to earn service pension which was denied by the respondents on the ground that since the applicant proceeded on discharge on compassionate grounds, he is not eligible for condonation of shortfall in service (Annexure No 1). Aggrieved, the applicant has filed this O.A. for condonation of shortfall in service to enable him to earn service pension. In support of his contention learned counsel for the applicant has relied upon the Hon'ble Apex Court judgment dated 20.01.2015 passed in Civil Appeal No 9389 of 2014, **Union of India & Another vs Surender Singh Parmar**. He pleaded for grant of service pension to the applicant.

4. On the other hand learned counsel for the respondents submitted that the applicant is not entitled for service pension as per Regulation 78 of Naval Pension Regulation, 1964 as minimum service to earn service pension should be 15 years whereas the applicant has

put in 14 years and 14 days service. His further contention is that applicant is not entitled for condonation of shortfall in service as he proceeded on discharge on own request before completion of terms of engagement. Advancing his arguments learned counsel for the respondents submitted that condonation only applies to gap caused in the regular service due to various reasons and does not apply to those who do not complete their terms of engagement and decide to leave on compassionate grounds. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the material placed on record.

6. The undisputed facts of the parties are that the applicant was enrolled in Indian Navy on 01.02.2007. During the course of his service he applied for UPSC by taking prior approval of the competent authority. He was selected for a post in DRDO and accordingly, he applied for discharge from service on compassionate grounds, which was sanctioned vide letter dated 11.02.2021 w.e.f. 15.02.2021. Later, he joined the service in DRDO as Store Officer. Since he has served in Indian Navy for a term of 14 years and 14 days he was not granted service pension in terms of Regulation 78 of Naval Pension Regulations, 1964. The applicant applied for condonation

of shortfall in service to earn service pension but it was rejected vide order dated 08.02.2021 (Annexure No 1 of O.A.).

7. During the course of hearing learned counsel for the applicant has produced copy of judgment dated 30.11.2021 passed by the Hon'ble AFT (PB), New Delhi in O.A. No. 1926 of 2019, **Ex CHAM (W) Ranajit Mohapatra vs Union of India & Ors.** We have perused the order dated 30.11.2021 and we find that the case in hand is identical to the case of **Ex CHAM (W) Ranajit Mohapatra** (supra) and relief deserves to be granted.

8. It may be noticed that the applicant has been denied service pension on the ground that he has not completed the minimum required qualifying service of 15 years. As per pleadings on record, the applicant has 14 years and 14 days of qualifying service to his credit. In other words, there is a shortfall of less than one year service for earning service pension for the services rendered in Indian Navy, condonation whereof has been denied by the respondents on the ground that he proceeded on compassionate discharge from service. Submission of the applicant in this regard is that para 5 of letter dated 15.02.2020 (Annexure-15) envisages that applicant is eligible for grant of service pension by condoning shortfall

in service. For convenience sake, the aforesaid para is reproduced as under:-

"5. Further, sailor will be completing 14 years and 14 days service as on 15 Feb 21 and as per pension rules 12 months of condonation may be granted. It is requested that case may be taken up with IHQ MoD (N) to discharge the sailor from service w.e.f. 15 Feb 21 with grant of pension."

9. We also find that in terms of Navy Pension Regulations, 1964 there is a provision which allows condonation of shortfall in service for one year to earn service pension, therefore, since the applicant has rendered 14 years and 14 days service at the time of discharge, he is entitled to condonation of shortfall in service. The denial of condonation by the respondents on the ground that he proceeded on compassionate discharge, and, therefore, he is not entitled for condonation of shortfall in service, is unjustified.

10. We also find that the controversy involved in this case is no longer RES INTEGRA and has been set at rest in favour of the applicant vide ***Union of India & Another vs Surender Singh Parmar*** (supra).

11. By Government of India, Ministry of Defence order dated 14th August, 2001 administrative power has been delegated to the competent authority under clause (a)(v) whereby the competent authority has been empowered to condone shortfall in qualifying service for grant of

pension beyond six months and upto 12 months. The said provision reads as follows:-

"(a)(v)Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months."

12. Accordingly, the O.A. is **allowed**. The shortfall of 351 days in minimum qualifying service of the applicant to earn service pension is hereby condoned and the applicant is held entitled to get service pension. The impugned rejection order is hereby quashed and set aside and the respondents are directed to grant service pension to the applicant from the due date.

13. The respondents are further directed to work out the arrears admissible to the applicant by virtue of the present order and pay the same to him 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 @ 8% per annum from the date of this order, till actual payment thereof.

14. No order as to costs.

15. Miscellaneous application(s), pending if any, shall stand disposed off.

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

Dated: 26.04.2022
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