

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 1443 of 2023

Thursday, this the 19th day of December, 2024

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

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

Megh Bahadur (No. 13739348-X Ex Nk DSC)

S/o Late Rug Bahadur

R/o Village – Lagda, Ward No. 3, Post Office – Ratne Medan,

Tehsil – Malyang Kote, District – Siagja, West Nepal

..... Applicant

Ld. Counsel for the Applicant: **Shri Yashpal Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Additional Director General Personnel Services, Adjutant General's Branch/PS-4, Integrated Headquarters of Ministry of Defence (Army), Plot No. 108 (West), Church Road, Brassey Avenue, New Delhi – 110001.
3. Officer-in-Charge Records, Defence Security Corps Records, PIN-901277, C/o 56 APO.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Prayagraj (UP)-211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ram Saran Awasthi**,
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) Issuing/passing of an order directing the respondents to pay service pension to the applicant for the services

rendered by him in the Defence Security Corps after condoning the shortfall, from the next date of discharge, i.e. 01.11.2015, along with other consequential service benefits and arrears with interest at the prescribed rate.

- (b) Issuing/passing of any other order or direction as this hon'ble Tribunal may deem fit in the circumstances of the case.
- (c) Allowing this Original Application with cost.

2. Briefly stated facts are that applicant was initially enrolled in Indian Army on 18.10.1976 and was discharged from service w.e.f. 31.10.1998 (AN) after rendering 22 years and 14 days of qualifying service for which he is in receipt of service pension vide PPO No. S/067067/1998 (Army). Thereafter, he was re-employed in Defence Security Corps (DSC) on 22.06.2001 and after rendering 14 years, 04 months and 10 days qualifying service, applicant was discharged from service on 31.10.2015 (AN) under the provisions of Army Rule 13 (3) III (i). As per rule, 15 years of minimum service is required for second service pension, but as there was deficiency of 07 months & 20 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 07 months and 20 days in the case of applicant, shortfall was not condoned by the respondents in view of Govt. of India, Ministry of Defence letter dated 14.08.2001. In this regard, applicant submitted an application dated 15.06.2023 for grant of second service pension but the same has not been decided/replied by the respondents. Learned counsel for the applicant also relied upon Judgment of Armed Forces Tribunal (PB) New Delhi in the case of OA No. 1238/2016, **Smt. Shama Kaur Versus Union of India & Others**, decided on 01.10.2019 and the Hon'ble Apex Court judgment in the case of **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 submitted that Para 44 of Pension Regulations for the Army, 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 07 months and 20 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. 31.10.2015 (AN) under the

provisions of Army Rule 13 (3) item III (i) after rendering 14 years, 04 months and 10 days qualifying service for which he was paid service gratuity and retirement gratuity. Applicant is deficient of 07 months and 20 days for grant of second service pension. He 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, 04 months and 10 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 07 months and 20 days 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 and 132 of Pension Regulations for the Army, 1961 (Part-1) read with Rule 44 and 47 of Pension Regulations for the Army, 2008 (Part-1), 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 and the Hon'ble Delhi High Court judgment in Civil Writ Petition No. 2986/2024, ***Union of India & Ors, vs. Ex Nk Chinna Vedyappan***, decided on 04.09.2024, 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 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 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 second service pension deserves to be allowed.

7. Accordingly, Original Application is **allowed**. The shortfall of 07 months and 20 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 next date of discharge from DSC service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of **Shiv Dass vs. Union of India**, reported in 2007 (3) SLR 445, the arrears of second service pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this Original Application is 12.12.2023. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

9. No order as to costs.

10. Misc. Application(s), pending if any, shall stand disposed off.

(Maj Gen Sanjay Singh)
Member (A)

Dated: December, 2024
SB

(Justice Anil Kumar)
Member (J)