

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 588 of 2023**Monday, this the 8th day of January, 2024**Hon'ble Mr. Justice Anil Kumar, Member (J)****Hon'ble Lt Gen Anil Puri, Member (A)**

No. 13613655-H Ex Naik Devi Prasad, of DSC, C/o 56 APO, Son of Late Shri Narain Datt, resident of House No. 53, Lane No. 12A Indraprastha, Nathanpur, District-Dehradun (Uttarakhand), Pincode-228001,

..... Applicant

Ld. Counsel for the Applicant: **Shri KKS Bisht**, 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. Officer-in-Charge, Defence Security Corps Records, Cannanore, Pin-901277, C/o 56 APO.
4. Principal Controller 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) issue/pass and order or direction to the respondents to condone the shortfall to enable Second Service Pension to the

applicant from the date of discharge i.e. 31 October 2016 along with arrears and interest at present prescribed rate.

(b) issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(c) allow his application with costs.”

2. Briefly stated facts are that applicant was initially enrolled in Indian Army on 07.06.1980 and was discharged from service w.e.f. 30.09.2000 (AN) after rendering 19 years and 10 months and 24 days service day of qualify service for which he is in receipt of service pension vide PPO No. S/054041/1999. Thereafter, he was re-employed in Defence Security Corps (DSC) on 05.09.2002 and he was discharged from service after rendering 14 years, 01 month and 26 days qualifying service on 31.10.2016 (AN) under the provisions of Army Rule 13 (3) III (i) on superannuation age of 57 years. As per rule, 15 years of minimum service is required for second service pension, but as there was deficiency of 10 months and 04 days in qualifying service, applicant was not granted second service pension of DSC. Thereafter, applicant submitted representation cum legal notice dated 31.12.2022 for grant of second service pension which was replied by the respondents vide letter dated 21.01.2023 denying the benefit of second service pension. Hence, 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 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 10 months and 04 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 AFT Principal Bench in **OA No. 60 of 2012, Bhani Devi Versus vs. Union of India & Others**, decided on 06.04.2023, 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 submitted 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 10 months and 04 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 55 years was discharged from DSC service wef 31.10.2016 (AN) under the provisions of Army Rule 13 (3) item III (i) after rendering 14 years, 01 month and 26 days qualifying service for which he was paid Service gratuity and retirement gratuity. Applicant is deficient of 10 months and 04 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, 01 month and 26 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 10 months and 04 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 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 service pension deserves to be allowed.

7. Accordingly, Original Application is **allowed**. The shortfall of 10 months and 04 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 submission of legal notice to the respondents. The date of submission of legal notice is 31.12.2022. 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.

11. Learned counsel for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

(Lt Gen Anil Puri)
Member (A)

Dated: 8th January, 2024
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(Justice Anil Kumar)
Member (J)