

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 526 of 2019**Thursday, this the 29<sup>th</sup> day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**No. 1557348 Ram Chander, Ex Spr, son of Ram Jiyawan, R/O  
Village-Dhopap, Tehsil-Kadipur, District-Sultanpur.

.....Applicant

Ld. Counsel for the: **Shri Sudhir Kumar Singh, Advocate**  
Applicant **Shri Manish Pratap Singh, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief Controller of Defence Accounts (Pension), Allahabad, U.P.
3. Managing Director, Army Group Insurance Fund, Adjutant General's Branch, Integrated HQ of MoD (Army), Rao Tula Ram Marg, Post Bag No 14, Vasant Vihar, New Delhi.
4. Senior Record Officer, Record Office Bombay Engineer Group Kirkee, Pune-411003.

...Respondents

Ld. Counsel for the :**Shri G.S. Sikarwar, Advocate**  
Respondents. **Shri Ashutosh Kumar Srivastava, Advocate**  
Central Govt Counsel.

**ORDER (ORAL)**

1. Applicant No. 1557348 Ex Spr Ram Chander has filed this O.A. under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of service pension. He has sought the following reliefs:-

- (a) Issue/pass an order or direction of appropriate nature whereby commanding the respondents to grant the service pension and other service benefits along with interest @ 18% to the applicant for which he is fully entitled, since date of discharge from service i.e. 26.10.1994.
- (b) Issue such other order which may be deemed just and proper in the circumstances of the case.
- (c) Allow the application with all consequential benefits with exemplary cost.

2. Brief facts of the case are that applicant was enrolled as soldier in the Indian Army on 07.07.1981 and was locally discharged from service w.e.f. 26.10.1994 in terms of Rule 13 (3) III (v) of Army Rules, 1954 and policy letter dated 28.12.1988. While in service, as respondents say, he has incurred 06 red ink entries and 02 black ink entries. Applicant has rendered 14 years, 03 months and 21 days of service but he has not been granted service pension on account of punishments inflicted due to certain red ink entries and shortfall in service to earn service pension. Feeling aggrieved, applicant has preferred this O.A. for grant of service pension as he is short of less than 09 months service to earn service pension.

3. Submission of the applicant's counsel is that applicant was discharged from service locally without giving an opportunity of hearing, without assigning any reason and without conducting any medical board which is arbitrary and bad in the eyes of law. His further submission is that pensionary benefit is right of applicant as per Article 14, 16 and 21 of the Constitution of India. He pleaded for grant of service pension to applicant.

4. Per contra, learned counsel for the respondents submitted that applicant is not entitled to service pension in terms of para 41 (b) of Pension Regulations for the Army, 2008 (Part-I) as he has been discharged from service locally on disciplinary grounds as a non-pensioner. His further submission is that applicant has put in 14 years, 03 months and 21 days of service and as per para 47 of Pension Regulations for the Army, 2008 (Part-I), he is not entitled to service pension as he was discharged from service in terms of policy letter dated 28.12.1988 without completing 15 years of service. It was further submitted that applicant is a habitual offender and in spite of giving him sufficient opportunities to improve himself, he continued to be irresponsible and has not taken any effective step to mend his ways to improve his military discipline and conduct. Respondents learned counsel further submitted that the dismissal order passed by the competent authority is just and sustainable in the eyes of law, since discipline is the backbone of the Army and retention of such individual in service is detrimental to the military discipline of other unit personnel. Keeping in view the aforesaid, learned counsel for the respondents submitted that applicant is not entitled to service pension and pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused the material placed on record.

6. It may be noticed that applicant has been denied pension solely for the reason that he has not completed the minimum required qualifying service of 15 years. As per pleadings on record, the applicant has 14 years 03 months and 21 days of service to his credit. In other words, there is a shortfall of less than 9 months for earning pension. Oral submission of the applicant is that in terms of Rule 125 and the policy of the respondents, he is entitled to condonation of shortfall in service.

7. Contrary to it, the ground for denying service pension, as espoused by the respondents, is that the applicant has rendered only 14 years, 03 months and 21 days qualifying service (including 06 days as non-qualifying service) as such, he has not completed the mandatory minimum required qualifying service of 15 years as per para-47 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 Army service. Further ground taken by the respondents is that the applicant is a habitual offender and for that he was awarded 06 red ink entries and 02 black entries, therefore he is not entitled to service pension.

8. Nothing has been brought on record by either of the parties to show whether in terms of policy letter dated 28.12.1988 any preliminary inquiry was conducted and Show Cause Notice was served upon the applicant prior to discharge from Army on account of 06 red ink entries. Be that as it may, it is a fact that applicant has

served in the Army for 14 years, 03 months and 21 days which is not sufficient to earn service pension and he is entitled to condonation of short fall in service for getting service pension.

9. We find that the controversy involved in this case is no longer RES INTEGRA and has been set at rest in favour of the applicant.

10. In view of the Government of India, Ministry of Defence Order dated 14th August, 2001 administrative power has been delegated to the competent authority under clause (a)(v) vide which 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."

11. Thus, in view of the aforesaid provisions applicant is entitled to condonation of shortfall in service for 12 months. In the instant case, since applicant's service is short by less than 09 months, therefore, shortfall in service of applicant is condoned. He is entitled to service pension equivalent to 15 years of service.

12. Accordingly, the O.A. is **allowed**. The shortfall in minimum qualifying service of the applicant to earn service pension is hereby condoned and the applicant is held entitled to get pension from the Army. The respondents are directed to grant service pension to the applicant w.e.f. the date next to the date of his discharge. No back wages shall, however, be admissible. Benefit of continuity of service for all other purposes shall, however, be granted to the applicant

including pension. Monetary benefits payable to the applicant shall be released expeditiously but not later than four months from the date of the present order. Default will invite interest @ 8% p.a. However, arrears of pension shall be restricted to three years preceding date of filing of present O.A. This O.A. was filed on 15.02.2018.

13. No order as to costs.

14. Pending applications, if any, stand disposed off.

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

Dated: 29.07.2021  
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