

**Court No 2**  
(Ser No 28)

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**

**Original Application No 1134 of 2022**

Thursday, this the 2<sup>nd</sup> day of June, 2023

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

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

Ex. JC/Army No. 2684228H Nk Clk (SD) Raj Kumar, DSC Records,  
Address Qtr No. 6/61 Gosai Ka Pura, Kashi Ram Awas Akrohi,  
Mirzapur, Vindhyachal, (UP) -231307.

..... Applicant

Ld. Counsel for the Applicant: **Shri Manoj Goswami**, Advocate  
**Shri Vinay Pandey**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, South Block, New Delhi-110011.
2. The Chief of the Army Staff, through its Adjutant General, Army Headquarters, South Block, New Delhi-110011.
3. Defence Security Corps Records, P.O. – Burncherry, Mill Road, Dist – Kannur (Kerla) PIN – 670013.
4. Commanding Officer, DSC Records, PIN – 901277, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj.

..... Respondents

Ld. Counsel for the Respondents : **Shri Asheesh Agnihotri**, Adv.  
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:-

“(a) To set aside the impugned order dated 20.09.2021 which has been passed by the Defence Security Corps Records PIN – 901277 C/o 56 APO which has been received through Legal Cell section on dated 27.09.2021, which has also dispatched by the concerned section to the native place of the applicant on 27.09.2021.

(b) Issue directions to Respondents to consider the claim of the applicant for grant of service pension for DSC service.

(c) Issue directions to respondents for allowing the condonation of the shortfall of 21 days of the service of the applicant regarding pensionary benefits.

(d) Issuing/passing of any other appropriate order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case;

(e) Allow this application without cost.

2. Counter affidavit filed on behalf of the respondents is taken on record.

3. Briefly stated facts are that applicant was initially enrolled in Indian Army on 03.02.1989 and was discharged from service w.e.f. 30.11.2005 (AN) after rendering more than 16 years of qualifying service for which he is in receipt of service pension vide PPO No. S/040457/2005 (Army). Thereafter, he was re-employed in Defence Security Corps (DSC) on 17.08.2007 and after completing 14 years, 11 months and 10 days qualifying service he was discharged on attaining the age of superannuation w.e.f. 31.08.2022 (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 20 days in qualifying service, applicant was not granted second service pension of DSC. Being aggrieved with non grant of second service pension applicant preferred Legal Notice-Cum representation dated 06.09.2021 for grant of Second Service Pension in DSC but it was rejected vide Records, DSC letter dated 20.09.2021. The present O.A. has been filed for condoning the short fall in service for grant of second service pension.

4. Learned counsel for the applicant submitted 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 (PBOR) upto 12 months in qualifying service is allowed. However, there being a shortfall of 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 support of his contention learned counsel for the applicant has relied upon Judgment of the Principal Bench of the Tribunal delivered in case No. T.A. No. 377 of 2009 **Hoshiar Singh Vs vs Ors** dated 18.01.2010 and this Tribunal's order dated 17.05.2022 passed in O.A. No 853 of 2021, **Roop Chand vs Union of India & Ors** and order dated 20.01.2015 passed by the Hon'ble Apex Court in Civil Appeal No 9389 of 2014, **Union of India & Ors vs Surender Singh Parmar** wherein it has been held that for grant of second service pension, short fall may be condoned upto 12 months.

5. 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 20 days in minimum qualifying service under the provisions of Para 125 of Pension Regulations for the Army, 1961 (Part-1) is liable to be condoned and applicant should be entitled to second service pension.

6. 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. 31.08.2022 (AN) under the provisions of Army Rule 13 (3) item III (i) after rendering 14 years, 11 months and 10 days qualifying service for which he was paid service gratuity and retirement gratuity. It was further submitted that since applicant has not rendered 15 years colour service, he is not entitled to second service pension. The learned counsel submitted that Rule 132 of Pension Regulations for the Army, 1961 (Part-1) and Rule 47 of Pension Regulations for the Army 2008 (Part-1) stipulates that, 'unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years'. In the instant case, the applicant has rendered only 14 years and 10 days qualifying service in DSC, hence he is not entitled for grant of second service pension for the services 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 23.04.2012 and 20.06.2017, 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 20 days in qualifying service, applicant is not entitled to second service pension.

7. Having heard the submissions of learned counsel of both sides and having gone through Rule 125 and Regulation 132 of Pension Regulations for the Army, 1961 (Part-1) as well as Govt. of India, Ministry of Defence letter dated 14.08.2001 and the Hon'ble Apex Court judgment in Civil Appeal No 9389 of 2014 decided on 20.10.2015, ***Union of India & Ors Vs Surinder Singh Parmar***, we find that issue regarding condonation of deficiency in minimum qualifying service regarding second 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 up to one 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 of deficiency in qualifying service for the grant of second service pension of DSC deserves to be allowed.

8. Accordingly, O.A. is **allowed**. The shortfall of 20 days in minimum qualifying service of the applicant in getting second service pension of DSC 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.

9. In view of the above, the respondents are directed to grant second service pension to the applicant from the date of his discharge. The respondents are further directed to pay arrears of second service pension from the date of notionally completion of 15 years of service. They are further directed to implement 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% p.a.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall stand disposed of.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated: 02.06.2023

*rspal/rathore*

**(Justice Anil Kumar)**  
**Member (J)**