

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E. Court)

O.A. No. 198 of 2020 with M.A. No. 66 of 2020

Ex Hav Kesho Prasad Applicant
By Legal Practitioner for the Petitioner
Versus
Union of India & Others Respondents
By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>23.03.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri R. Chandra, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents.</p> <p><u>M.A. No. 66 of 2020</u></p> <p>The Original Application has been filed with delay of 49 years, 03 months and 26 days.</p> <p>Submission of learned counsel for the applicant is that it is a pensionary matter in which bar of limitation is not applicable. His further submission is that delay in filing Original Application is not deliberate, but on account of reasons stated in affidavit filed in support of application.</p> <p>Per contra, learned counsel for the respondents submits that cause shown by the applicant is not sufficient.</p> <p>Considering that in pensionary matters bar of limitation is not applicable and grounds stated in affidavit filed in support of delay condonation application are genuine and sufficient, delay is liable to be condoned.</p> <p>Accordingly, delay in filing of application is condoned. Application stands decided accordingly.</p> <p>O.A. has already been admitted vide order dated 07.09.2020.</p> <p><u>O.A. No. 198 of 2020</u></p> <p>Heard.</p> <p>Arguments concluded.</p> <p>Judgment is reserved.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>rathore</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 198 of 2020

Friday, this the 26th day of March, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No 1415859 Ex Havildar Kesho Prasad S/O Late Ram Deo, resident of Village-Kharsoma, Post-Akhorhi, District-Sultanpur (UP), Pin-228151.

..... Applicant

Ld. Counsel for the: **Shri R. Chandra, Advocate**
Applicant

Versus

1. Union of India, through, the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ, Post Office, New Delhi-110011.
3. The Officer-in-Charge, Defence Security Corps Records, PIN-901277, C/O 56 APO.
4. Officer-in-Charge, Bengal Engineering Group Records, PIN-908779, C/O 56 APO.
5. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP).

..... Respondents

Ld. Counsel for the :**Shri Amit Jaiswal, Advocate**
Respondents Central Govt 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, whereby the applicant has sought following reliefs:-

(i) The Hon'ble Tribunal may be pleased to set aside the order dated 10.12.2019 (Annexure No A-1).

(ii) The Hon'ble Tribunal may be pleased to direct the respondents to restore applicant's service pension of Army service w.e.f. 30.03.1970 (date of pension suspended) with the interest at the rate of 18% per annum.

(iii) Any other appropriate order or direction which this Hon'ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.

2. Brief facts of the case are that the applicant was enrolled in the Army on 20.03.1950 and discharged from service w.e.f. 22.06.1965 (AN). After discharge from Army he was granted pension vide PPO No. S/14798/1965. Later he was re-enrolled in Defence Security Corps (DSC) on 31.03.1970. After re-enrolment in DSC applicant's former service pension was suspended under the provisions of Rule 267 (d) of Pension Regulations for the Army, 1961 (Part-I) as his former service was counted towards DSC service for the purpose of enhanced rate of pay and allowances as per policy in vogue. Subsequent to the issue of Govt of India, Min of Def letter dated 03.03.1983, applicant exercised his option to discontinue army service pension for getting enhanced rate of pay and allowances, pension and gratuity with DSC service. He was discharged from DSC service with effect from 31.03.1987 (AN) and granted enhanced rate of service pension vide PPO No. S/3765/1986. After a gap of about 49 years, applicant represented the matter to Zila Sainik Welfare Office, Sultanpur and on their

behest Records DSC intimated applicant vide letter dated 10.12.2019 that he was not eligible for dual pension. Therefore, applicant has filed this O.A. to restore his army service pension with effect from 31.03.1970 and grant second service pension for service in DSC with effect from 01.04.1987 with 18% interest.

3. Learned counsel for the applicant submitted that after re-enrolment in DSC service applicant was conveyed that his pension is being stopped till he serves and after discharge from DSC he will get both pensions. He exercised his option of enhanced service pension being unaware that he would be at loss at later stage. Further submission of learned counsel for the applicant is that applicant is getting less pension as compared to his colleagues.

4. Per contra, learned counsel for the respondents submitted that applicant has himself exercised the option of stopping Army service pension with the aim of getting enhanced pay and allowances vide option certificate dated 11.04.1983. He further submitted that applicant has willingly opted to count his former Army service towards DSC service and drew enhanced rate of pay and allowances throughout his DSC service. Applicant was knowing well that his colleagues in DSC are getting less pay and allowances as compared to him. He further submitted that in the circumstances when he himself opted for enhanced service pension, he is not entitled to dual service pension. In support of his submission, learned counsel for the respondents has cited judgment dated 24.08.2005 passed by the Division Bench of the Hon'ble High Court of Delhi in WP (C) No 5964/2003 titled **Ex Nk Sanwat Ram vs Union of India & Ors**, judgment dated 17.01.2014 passed by the Hon'ble AFT, Chandigarh in T.A. No. 908 of 2010 titled **Charan Singh vs Union of India & Ors**, judgment dated

27.10.2014 passed by the Hon'ble AFT, Chennai Bench in O.A. No. 150 of 2013 titled ***Ex Nk Chinna Kolandai vs Union of India & Ors.*** He concluded for dismissal of O.A. keeping in view the aforesaid case laws.

5. We have heard learned counsel of both sides and perused the material placed on record.

6. It is not disputed that applicant has served in Army as well as in DSC and has rendered more than 32 years of total service. It is also not disputed that applicant has exercised option for enhanced rate of pay and allowances and pension vide certificate dated 11.04.1983 as per Govt of India, Min of Def policy letter dated 03.03.1983. During DSC service applicant has drawn more pay and allowances than personnel who did not exercise their option for enhanced pay and perks in second tenure in DSC.

The aforesaid policy letter dated 03.03.1983 has two options as under:-

(i) To continue to draw military pension (i.e. former service pension) and to retain death-cum-retirement gratuity and service gratuity received by him on discharge from military service, in which case his former military service shall not be counted as qualifying service.

OR

(ii) To cease to draw his pension or refund the service gratuity, including death-cum-retirement gratuity, if any, and count previous service as qualifying service.

7. We find that in accordance with policy dated 03.03.1983 applicant had exercised option (ii) i.e. to cease to draw his former service pension and to count his former service with DSC service. The applicant had opted for a scheme which at that time was beneficial to him and resultantly he had availed of increased monetary benefits as his pay in DSC service was

stepped up by counting his former service in the Army and he continued to draw enhanced pay and allowances throughout his tenure in DSC for nearly 17 years.

8. We are, therefore, of the view that option (ii) once exercised cannot be revoked subsequently after taking benefits of the option for about 17 years in DSC service.

9. The respondents have granted enhanced service pension after discharge from DSC considering total length of service and the same has been revised as per Pay Commission Awards from time to time.

10. In view of the above, since applicant has himself opted to receive enhanced pay and allowances during second tenure in DSC, which he has received, he is not entitled to second service pension.

11. The applicant has not been able to make out a case and O.A. is liable to be dismissed. It is accordingly **dismissed**.

12. No order as to costs.

13. Pending applications, if any, are disposed off.

(Vide Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : March, 2021
rathore

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Ex Havildar Kesho Prasad
By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>26.03.2021</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>Heard Shri R. Chandra, learned counsel for the applicant and Shri Amit Jaiswal, learned counsel for the respondents.</p> <p>Original Application is dismissed.</p> <p>For order, see our judgment passed on separate sheets.</p> <p>Misc. Applications, pending if any, shall be treated as disposed of accordingly.</p> <p>(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>