

**Court No.1 (E Court)**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Original Application No. 209 of 2018**Tuesday, this the 23<sup>rd</sup> day of March, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

Smt. Nirmala Kumari Jha 2 Nirmala Kumari, W/o Late Ram Suwarath Jha (Army No. 13912389F Ex. Naik), R/o Permanently Village Balbhaderpur, Post Office Laheraisarai, Police Station Bahadurpur, District Darbhanga, Bihar, presently residing at 1348, Kidwai Nagar, Allahapur, Allahabad.

..... **Applicant**By Legal applicant – **Shri Amit Verma**, Advocate and  
**Shri B.B. Tripathi**, Advocate

Versus

1. Union of India, through it's Secretary, Ministry of Defence, South Block, New Delhi.
2. The Chief of Army Staff, Army Headquarters, DHQ HQ, Sena Bhawan, New Delhi.
3. The Officer in Charge Records, Defence Security Corps, Record, PIN-901277, C/o 56 APO.
4. The Principal Controller of Defence Accounts (Pension), Droupadi Ghat, Allahabad, UP.

..... **Respondents**By Legal Practitioner – **Shri R.K.S. Chauhan**, Advocate  
Central Government Counsel

## ORDER

### “Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. Heard Shri Amit Verma and Shri B.B. Tripathi, learned counsel for the applicant and Shri R.K.S. Chauhan, learned counsel for the respondents.
2. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for setting aside the letter dated 27.11.2017 issued by the respondents and issuing directions to them to condone the short fall service of about 55 days and grant second service pension to the husband of applicant from the date of his discharge from DSC till his death i.e. from 01.12.2006 to 07.11.2013 and grant dual (two) family pension to the applicant w.e.f. 08.11.2013.
3. Briefly stated facts are that applicant’s husband (Late Ram Suwarath Jha,) was enrolled in Indian Army on 06.02.1968 and after completing 22 years and 24 days of service he was discharged from service on 28.02.1990 (AN). He was re-employed in Defence Security Corps (DSC) on 24.01.1992, and after completing 14 years and 311 days of service discharged from service on 30.11.2006 at the age of superannuation of 57 years under Rule 13 (3) III(i) of the Army Rules, 1954. The applicant’s husband was expired on 07.11.2013. As per rules, 15 years of minimum service is required for second service pension, but as there was deficiency of about 54 days in the case of applicants husband, respondents denied to grant second service pension to

applicant's husband and her representation regarding condonation of deficiency in qualifying service for the grant of second service pension was turned down on 27.11.2017 referring it had no merit. Applicant has challenged the very order of the respondents dated 27.11.2017 by which the respondents have denied second service pension to her husband as well as dual family pension to her.

4. It is submitted by learned counsel for the applicant that as per Pension Regulations for the Army, 2008, Part I, Para 18, Ministry of Defence, Department of Defence letter dated 14.08.2001 and ADGPS letter dated 26.09.2003, condonation of shortfall in qualifying service for grant of pension in respect of personnel below officers rank from six months upto 12 months is allowed. However, there being a shortfall of about 55 days in case of applicant's husband shortfall was not condoned in view of Government of India, Ministry of Defence, letter No. 14(02)/2011-D (Pen/Pol) dated 20.06.2017 and Principal Controller of Defence Account (Pension) Circular No. 589. In Para 'c' of the above letter it is stated that 'the intention behind grant of condonation of deficiency in service for grant of service pension is that the individual must not be left high and dry but should be eligible for at least one service pension and in view of this, it is clarified for grant of second service pension. Submission of learned counsel for the applicant is that above Government of India, Ministry of Defence, letter dated 20.06.2017 being against Rule 125 of Pension Regulations Part -I, Rules 2008 and Ministry

of Defence letter dated 14.01.2001 and Additional Director General Personnel Services (ADGPS) letter dated 26.09.2003 is ultra virus.

5. Learned counsel for the applicant further submits 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 and letter dated 26.02.2003 being equally applicable in case of applicant's husband also, deficiency of about 55 days in minimum qualifying service is liable to be condoned and applicant's husband is entitled to second service pension and applicant is entitled for dual family pension.

6. Per contra, learned counsel for the respondents submits that 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 keeping in view this letter and also that there is deficiency of about 55 days in qualifying service, as such, applicant's husband is not entitled to second service pension and applicant is not entitled

for dual family pension, her representation has been rightly rejected and the same needs no interference.

7. Having heard the submissions of learned counsel both sides and having gone through Rule 125 of Pension Regulations Part I, Rules 2008 as well as Government of India, Ministry of Defence letter No. 14 (02)/2011-D(Pen/Pol) dated 20.06.2017, we find that issue regarding condonation of deficiency in minimum qualifying service regarding second service pension of DSC being cropped up in so many cases has not only been dealt with by the different Benches of the Armed Forces Tribunal but also by the Hon'ble Apex Court in the case of ***Shiv Das vs Union of India and Others*** in Civil Appeal No.274 of 2007, decided on 18.01.2007, and it has been held therein that deficiency in qualifying service upto one year is condonable. Taking note of the above and also that there is deficiency of less than one year in qualifying service of the applicant's husband and the said deficiency is condonable under Rule 125 of the Army Rules 2008, we find that applicant's claim regarding condonation of deficiency in qualifying service for the grant of second service pension to husband of applicant has wrongly been rejected by the respondents, and, as such, the letter dated 27.11.2017 is not liable to sustain.

8. Accordingly, impugned letter dated 27.11.2017, enclosed as Annexure No. 1 of Original Application, is set aside and Original Application is **allowed**. The shortfall of 55 days in minimum qualifying service of the applicant's husband in getting second service pension is condoned. Applicant's husband is held entitled to get second service pension in DSC from the notionally completion of 15 years of DSC service as well in addition to pension which he is already getting from the Army till his death and, thereafter the applicant is entitled for dual family pension with effect from 08.11.2013.

9. The respondents are directed to grant second service pension to the applicant's husband from the notionally completion of 15 years of DSC service till his death i.e. 07.11.2013 and thereafter, grant second (dual) family pension to the applicant from 08.11.2013. The respondents are directed to pay arrears of second service pension of the applicant's husband from the date of notionally completion of 15 years of service till his death i.e. 07.11.2013 and, thereafter, pay arrears of second (dual) family pension to the applicant from 08.11.2013. They are further directed to implement this order within a period of four months from the date of receipt of certified copy of

this order. Delay shall carry interest @ 8% per annum till actual payment.

10. No order as to costs.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 18 March, 2021

AKD/-