

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 287 of 2019**Friday, this the 26th day of February, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 129323-T, Ex CHEAR (Chief Electrical Artificer Radar)
Aftab Alam
S/o Shri Mahmood Ali
R/o Ward – Attanagar, Town – Kunda,
Distt – Pratapgarh, PIN-230204

..... Applicant

Ld. Counsel for the Applicant: **Shri V.P. Pandey**, Advocate &
Applicant in Person
Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. The Chief of the Naval Staff, Integrated Headquarter Ministry of Defence (Navy), South Block, New Delhi – 110011.
3. Officer-in-Charge Records, The Commodore Bureau of Sailor Sion Trombay Road Mankhurd, Mumbai.
4. The Principal Controller Defence Accounts (Navy), Mumbai-400038. No. 1 Cooperage Road Mumbai-400039.

..... Respondents

Ld. Counsel for the Respondents : **Shri G.S. Sikarwar**,
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 for the following reliefs:-

“(I) Issue/pass an order or direction of to respondent no. 2 Chief of Naval Staff to grant service pension to the applicant by condoning the short fall of 04 months for pensionable service wef 19.09.2015.

- (II) Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (III) Allow this application with exemplary cost."

2. Briefly stated facts are that applicant was enrolled in Indian Navy on 02.02.2001 and was discharged from service w.e.f. 19.09.2015 on compassionate grounds after rendering 14 years, 07 months and 18 days of service. His discharge was approved vide order dated 31.07.2015. The applicant is short of minimum stipulated qualifying service of 15 years, hence under the provisions of Regulation 82 (a) of Navy Pension Regulation, 1964, he is not eligible for condonation of deficient of service and therefore, he is not entitled for service pension as per Regulation 78 of Navy Pension Regulation, 1964. The applicant is in receipt of disability pension @ 50% for life vide Corrigendum PPO dated 12.12.2018. Applicant has preferred the present O.A. for condoning the short fall in service for grant of service pension for his services rendered in the Navy.

3. It is submitted by learned counsel for the applicant that applicant suffered mild depression Episode in the year 2009 during his service on board INS Sindhu Vijay and INS Sindhu Raksha Kand and he was medically downgraded and it was upgraded in May 2012. The applicant was discharged from Hospital on 16.05.2012 after re-categorisation medical board and on the next day he applied for discharge from service on compassionate ground to look after his ailing parents but his application was delayed deliberately from May 2012 to 17.09.2015 i.e. almost for 2½ years and was discharged from service before 4 months of pensionable service of 15 years. Learned counsel for the applicant further submitted that Article 14 of constitution of India has been violated in disposing off of compassionate application of the applicant. He relied upon the judgment of AFT (RB) Kolkata in O.A. No. 20 of 2017, ***Kaushik Sengupta vs. Union of India & Ors***, decided on 04.07.2018 and pleaded that his case is also covered with the judgment and prayed

for condoning the shortfall of 4 months & 12 days in pensionable service. The relevant Paras 25 to 30 of the judgment read as under :-

“25. There should have been no doubt in the minds of the Respondents that the para 82 (a) for the pension Regulations 1964 of the Indian navy has been struck down by the Hon’ble Supreme Court of India being violative of the Article 14 of the Constitution of India. They are also well aware that the para 114 (a) of the Pension Regulations for the Indian Air Force and para 125 (a) of the Indian Army Pension regulations for the both dealing with the same provisions i.e., Non-Condonation of deficiency of service up to the one year in respect of service personnel proceeding of premature retirement/discharge have also been struck down as violative by the various benches of the AFT.

*26. The Respondents’ contention about the AFT, Kochi Bench Order in OA 37/2015 does not hold in the light of the Judgments in **Surinder Singh Parmar vs. UOI** which was delivered by the Hon’ble Supreme Court of India (supra) on 21.01.2015 and judgment of Hon’ble High Court of Mumbai was taken note of and thus the AFT, Kochi Bench judgment in OA 37/2015 is in per incuriam.*

27. In the light of the above aspects, we are of the opinion that the short fall of 8 months and 23 days of service for granting the service pension and other benefits to the applicant deserves to be condoned and is hereby condoned.

29. Accordingly, this application (O.A.-20/2017) is allowed.

30. The respondents’ are directed to grant the applicant service pension along with all other benefits applicable to an ex-servicemen. All benefits will be paid to the applicant within a period of 4 months from the date of receipt of this order, failing which 8% interest per annum will be calculated and paid to the applicant.”

4. Learned counsel for the applicant further submitted that case of the applicant is also covered with the aforesaid judgment being equally applicable, hence, deficiency of 4 months & 12 days in minimum qualifying service is liable to be condoned and applicant is entitled to service pension.

5. Per contra, learned counsel for the respondents has vehemently opposed and submitted that applicant has rendered total active service of 14 years, 07 months and 18 days and was discharged on compassionate ground. The applicant is short of minimum stipulated qualifying service of 15 years, hence under the provisions of

Regulation 82 (a) of Navy Pension Regulation, 1964, he is not eligible for condonation of deficient of service as he was discharged on compassionate ground from active service and therefore, he is not entitled for service pension as per Regulation 78 of Navy pension Regulation, 1964, which reads as under :-

“REGULATION 78 : Minimum qualifying service for pension – Unless otherwise provided, the minimum service which qualifies for service pension is fifteen years.”

6. Having heard the submissions of learned counsel both sides and having gone through Rule 82 (a) of Navy Pension Regulation, 1964, AFT (RB) Kolkata judgment in ***Kaushik Sengupta*** (supra) 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 not only by different Benches of the Armed Forces Tribunal but also by the Hon’ble Apex Court in the case of ***Shiv Dass 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 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 82 (a) of Navy Pension Regulation, 1964, we find that applicant’s claim regarding condonation in deficiency in qualifying service for the grant of service pension has wrongly been rejected by the respondents.

7. Accordingly, O.A. is allowed. The shortfall of 4 months & 12 days in minimum qualifying service of the applicant in getting service pension is condoned and applicant is held entitled to get service pension from the Indian Navy.

8. The respondents are directed to grant service pension to the applicant from the date of discharge from service. 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 invite interest @ 8% per annum till actual payment.

9. No order as to costs.

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

Dated: February, 2021
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