

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

Court No.1

O.A. No. 695 of 2021

Ex Nk Raj Kumar

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>04.03.2022</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 Vinay Pandey and Shri Manoj Goswami, Ld. Counsel for the applicant and Shri Asheesh Agnihotri, Ld. Counsel for the respondents.</p> <p>Counter affidavit filed by the respondents is taken on record.</p> <p>O.A. is dismissed.</p> <p>For orders, see our judgment passed on separate sheets.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 695 of 2021**Friday, this the 04th day of March, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)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, Mirzapur (UP)-231307.

..... Applicant

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

1. The Union of India, through Secretary Defence, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, through its Adjutant General, Army Headquarters, South Block, New Delhi-110011.
3. Defence Security Corps Records, P.O.-Burncherry, Mill Road, Distt-Kannur (Kerala), Pin-670013.
4. Commanding Officer, DSC Records, PIN-901277, C/o 56 APO.

..... Respondents

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

- “(i) 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 been despatched by the concerned section to the native place of the applicant on 27.09.2021.
- (ii) Issue directions to the respondents to consider the claim of the applicant for grant of service pension for DSC service.

- (iii) Issue directions to respondents for allowing the condonation of the shortfall of 21 days of the services of the applicant regarding pensionary benefits.
- (iv) Issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.
- (v) Allow this application without cost.

2. Brief facts of the case are that the applicant is an Army pensioner who was re-enrolled in the Defence Security Corps (DSC) on 17.08.2007. Since the applicant being placed in low medical category has not been recommended for further extension of tenure, he is likely to be discharged from service w.e.f. 31.08.2022 (AN) and by the time he would complete 15 years 14 days of colour service. Applicant's apprehension is that there will be 21 days of shortfall in his pensionable service at the time of discharge from service, for that he had approached DSC Records vide letter dated 20.09.2021 which was replied vide letter dated 20.09.2021 intimating him that since he will not complete minimum pensionable service, he would not be entitled to earn service pension. This O.A. has been filed for condonation of shortfall in service to earn service pension.

3. Learned counsel for the applicant submits that there is a provision in Rule 125 to condone shortfall in service to earn service pension from DSC. In support of his contention learned counsel for the applicant has relied upon the following case laws:-

(i) *The Hon'ble Apex Court order dated 20.01.2015 in C.A. No 9389 of 2014, **Union of India & Anr vs Surender Singh Parmar.***

(ii) *AFT, Kochi Bench order dated 12.10.2017 in O.A. No 131 of 2017 as affirmed by the Hon'ble Apex Court order dated 27.08.2018 in C.A. No 27100 of 2018, **Ex Nk/DSC Mohan T vs Union of India & Anr.***

(iii) *Hon'ble AFT Principal Bench order dated 07.11.2013 in O.A. No 60 of 2013, **Bhani Devi vs Union of India & Ors.***

(iv) *AFT Chandigarh order dated 18.01.2010 in T.A. No. 377 of 2009, **Hoshiyar Singh vs Union of India & Ors.***

(v) *AFT Chandigarh order dated 05.07.2016 in O.A. No. 643 of 2016, **Virsender Singh vs Union of India & Ors.***

(vi) *Hon'ble Punjab & Haryana High Court order dated 05.07.2010 in LPA No 755 of 2010, **Union of India & Ors vs L/Nk DSC Mani Ram.***

4. On the other hand learned counsel for the respondents submitted that the applicant is a case of Alcohol Dependence Syndrome and he was placed in low medical category P3 (T-24) w.e.f. 25.01.2021. His further submission is that he is also a case of Diabetes Mellitus Type-II for Alcoholic Cirrhosis Liver with Portal Hypertension therefore being in low medical category his extension of service shall not be possible and he would be discharged from service on 31.08.2022. His other submission is that in the present circumstances O.A. filed by the applicant is pre-mature and his case of condonation of deficiency in qualifying service can only be considered after his discharge from DSC service. He further submitted that the number of days to be condoned cannot be calculated in advance as it fully depends on the total qualifying service rendered by the applicant in DSC. He pleaded for dismissal of O.A.

5. Heard learned counsel for the parties and perused the material placed on record.

6. Applicant Raj Kumar being a pensioner from Army was enrolled in Defence Security Corps (DSC) on 17.08.2007. He is a

case of Alcoholic Dependence Syndrome (ADS) and suffering from Diabetes Mellitus Type-II and Alcoholic Cirrhosis Liver with Portal Hypertension since 25.01.2021 and placed in low medical category P2 (T-24). Since he is serving in low medical category, his tenure is not likely to be extended and as per letter dated 20.09.2021 he will be discharged from service w.e.f. 31.08.2022.

7. In our considered view the cause of action for the applicant would only arise once he has retired or discharged by the respondents. Therefore, at this stage we do not see any reason to pass an order before his retirement.

8. In view of the above, O.A. is **dismissed** being premature.

9. No order as to costs.

10. Miscellaneous application(s), if any, stand disposed off.

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

Dated: 04.03.2022

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