

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

Original Application No. 704 of 2022

Thursday, this the 16th day of March, 2023

Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)

6606486 Ex Nk Hayat Singh Kalakoti, R/o Village-Aneria, PO-
Chaura, District-Bageshwar, Uttarakhand, PIN-263619.

..... Applicant

By Legal Practitioner – **Shri Vikram Singh Dhapola**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of Army Staff, Integrated Headquarters of MoD (Army), South Block, New Delhi-110011.
3. Chief Records Officer, Defence Security Corps Records, PIN-901277, C/o 56 APO.
4. Principal Controller of Defence Account (Pension), Draupadi Ghat, Prayagraj (UP), PIN-211014.

..... Respondents

By Legal Practitioner – **Shri Rajesh Sharma**, Advocate
Central Govt Counsel.

ORDER (Oral)

1. By means of this Original Application, filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the prayer for the following reliefs :-

(i) Direct respondents to condone the deficiency/short fall of service to make the applicant eligible for grant of service pension from Defence Security Corps, with effect from date of discharge from DSC i.e. 30.06.2000, and/or-

(ii) Direct respondents to grant service pension from Defence Security Corps including retiral and consequential benefits with effect from the date of discharge and to pay the due arrears with interest @ 12% per annum till final payment is made, and/or-

(iii) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost against the respondents.

2. After completing his initial terms of engagement in the Army, applicant joined Defence Service Corps (DSC) service on 17.01.1986 and he was discharged from service w.e.f. 30.06.2000 (AN) having put in 14 years, 05 months and 13 days service. This Original Application has been filled for grant of service pension for services put in by him in Defence Service Corps (DSC) by condoning the short fall period of 06 months and 17 days for grant of second service pension.

3. Brief facts as would be borne out from the pleadings, the applicant was enrolled in the Army on 27.10.1961 and after completing terms of engagement he was discharged from service w.e.f. 31.10.1983 (AN). Admittedly, the

applicant is in receipt of service pension for the services rendered in the Army. After discharge from Army, the applicant was re-enrolled in Defence Service Corps (DSC) on 17.01.1986 and was discharged on 30.06.2000 (AN) on completion of maximum age limit after rendering 14 years, 05 months and 13 days service. He approached competent authorities for grant of service pension for the services rendered in the DSC but the same was denied by the respondents on the ground that a period of 06 months and 17 days is short fall in his qualifying service to earn the service pension of DSC services. Being aggrieved by the denial of service pension for the services rendered in DSC, the applicant has preferred the present Original Application.

4. We have heard Shri Vikram Singh Dhapola, Ld. Counsel for the applicant and Shri Neeraj Upreti, Ld. Counsel for the respondents and perused the record.

5. Learned Counsel for the applicant submitted that the applicant is getting pension for his services rendered in the Army but he has not been granted service pension for the services rendered in the DSC as there is a shortfall of 06 months and 17 days to earn service pension. He submitted that the applicant is entitled for pensionary benefits for the services rendered in DSC.

6. **Per Contra,** Learned Counsel for the respondents submitted that since the applicant has not completed

minimum qualifying service of 15 years in DSC, he is not entitled for service pension for the services rendered by him in DSC. Learned counsel for the respondents has relied on MoD (Army)/AG's Branch letter No. 82370/AG/PS-4(a) dated 07.12.1962 which stipulates that "*Regulation 125 of Pension Regulations for the Army 1961 (Part-I) will not be applicable for enhancement of pension. In other words, this will not apply to individuals who have already earned a pension.*" He further submitted that his stand is that this policy was again reiterated by the Govt vide their letter dated 23.04.2012 which stipulates 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 pension and on the principle that no dual benefit shall be allowed on same accord, it is clarified that no condonation shall be allowed for grant of second service pension.*"

7. We find that the controversy involved in the present case has been settled in a number of cases and is no longer 'RES INTEGRA'. A similar controversy has been covered in the case of **Nand Kishor Vs. UOI and Ors**, O.A. No. 1711 of 2012 decided on 18.07.2012 by AFT Regional Bench, Shimla. Relevant extracts of the judgment are given below :-

"The Government of India, Ministry of Defence, in its letter dated 14.07.2011 (Annexure A-4), in Para 3, has clearly clarified that powers have been delegated for condonation in

the deficiency of service upto one year, do not distinguish between first and second service pensions. It only states that powers to condone deficiency upto one year have been delegated to Service Headquarters. It is further mentioned that this ambiguity or lack of any contradictory Government ruling has led the Courts to interpret that powers vested with Adjutant General are for condonation of shortfall of qualifying service, irrespective of whether it was in first or second service. Then, in Para 4 it is mentioned that the matter has been considered in depth and it was felt that in view of the aforesaid directions and interpretations of Hon'ble Courts, the notion that the AG has been empowered to condone shortfall in second service cannot be contested due to lack of any authority/ruling which contradicts the same. In our view, that being the position, the petitioner could not be denied service pension for the second spell of service.

Learned counsel for the respondents submitted that after this letter, some clarifications have been issued by the Government of India, excluding applicability of power of condonation to the second spell of service. We may simply observe that clarification(s) having the effect of taking away the right, sought to be conferred vide Annexure A-4, cannot be said to be having any adverse effect on the individuals concerned, and, therefore, need not come in the way of the individuals like the petitioner."

8. We find that a similar position has been decided by the Apex Court in ***Union of India an Another Vs. Surender Singh Parmar*** in Civil Appeal No. 9389 of 2014 decided on 20.01.2015, (2015) 3 SCC 404. Relevant extract for convenience sake is reproduced below :-

"8. In view of the aforesaid provisions the respondent is entitled to claim total period of service as 14 years for the purpose of calculation of pension. By Government of India, Ministry of Defense order dated 14th August, 2001 administrative power has been delegated to the competent authority under clause (a)(v) the competent authority has been empowered to condone shortfall in qualifying service for grant of pension beyond six months and upto 12 months. The said provision reads as follows :-

In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months and upto 12 months. If the aforesaid power has not been exercised by the competent authority in proper case then it was within the jurisdiction of the High Court or Tribunal to pass appropriate order directing the authority to condone the shortfall and to

grant pension to the eligible person, which has been done in the present case and we find no ground to interfere with the substantive finding of the Tribunal.”

9. We find that the present case is squarely covered by the above two judgments.

10. Accordingly, we condone the shortfall of service of 06 months and 17 days. The petition is **allowed** and the applicant is held entitled to service pension for the second spell of service in DSC. Since the applicant was discharged way back in 2000 and the present Original Application has been filed on 05.09.2022, we hold that while calculating the entitlement as above, actual arrears shall be restricted to a period of three years prior to the filing of the present application i.e. w.e.f. September 2019.

11. The respondents are directed to make the payment to the applicant within a period of four months from the date of receipt of a certified copy of this order, failing which the amount shall carry interest @ 8% per annum from the date it fell due.

12. No order as to costs.

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

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: 16.03.2023

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(Justice Anil Kumar)
Member (J)