

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

ORIGINAL APPLICATION No. 280 of 2023

Friday, this the 15th day of March, 2024

**“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Maj Gen Sanjay Singh, Member (A)”**

No. 14910213N Nk Hari Prasad Uniyal S/o Sri Lilanand Uniyal, R/o
Village-Srinagar, Post-Srinagar, District-Pauri Garhwal.

..... Applicant

Ld. Counsel for the : **Shri Anil Anthwal**, Advocate.
Applicant **Shri Vivek Kumar**, Advocate

Versus

1. Union of India, through Secretary Ministry of Defence, New Delhi.
2. Dte of Indian Army Veterans, Adjutant General’s Branch, IHQ of MoD (Army), New Delhi.
3. The PCDA (Pension), Allahabad, U.P.
4. The Senior Records Officer, Garhwal Rifle Lansdowne, District-Pauri Garhwal.
5. The Commandant, Bengal Engineer Group Record, Roorkee, C/o 56 APO.

.....Respondents

Ld. Counsel for the : **Shri Neeraj Upreti**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

1. This Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs :-

- (i) *Humbly the petitioner/applicant seeks prayer to summon the entire records and direct the respondent authorities to sanction the pension for second spell of service in D.S.C. by condoning the shortfall of 1 year 7 months 27 days in qualifying service and issue PPO within reasonable time period with arrears and interest 12% P.A. from the date of discharge of the petitioner from D.S.C. on 31.07.2021.*
- (ii) *Such other suitable order be deemed fit and proper in the facts and circumstances of the case also kindly be pleased to meet in the interest of justice.*

2. Brief facts of the case are that the applicant was enrolled in the Army on 31.05.1983 and discharged from service on 31.05.2007 (AN) having rendered 24 years and 01 day service for which he was granted service pension vide PPO No. S/015986/2007 (ARMY). He was re-enrolled in Defence Security Corps (DSC) on 29.03.2008 and did not opt to count his former service towards DSC service. On completion of initial terms of engagement, he was granted extension of service from 29.03.2018 to 30.12.2020 and thereafter, further extension of service was also granted till attaining the age of superannuation. He was discharged from DSC service w.e.f. 31.07.2021 (AN) on completion of 13 years, 04 months and 03 days qualifying service and paid his entitled dues as applicable to him. Since applicant has not rendered the mandatory qualifying service of 15 years for acquiring pension, service pension for the second spell of service was not granted to him. This application has been filed by the applicant for condoning shortfall of

01 year, 07 months and 27 days service in DSC and grant second service pension.

3. Learned counsel for the applicant submitted that the applicant was discharged from the DSC service on 31.07.2021 (AN) after rendering 13 years, 04 months and 03 days service and there is shortfall of 606 days against requirement of 15 years for grant of second service pension. It is further submitted that this shortfall in service is condonable in view of the judgment rendered by the Hon'ble Apex Court in the case of ***Union of India & Ors vs Surendra Singh Parmar***, Civil Appeal No 9389 of 2014.

4. Learned counsel for the applicant further submitted that clause 5 of Govt of India letter dated 30.10.1987 provides that while calculating the length of qualifying service, fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year for reckoning qualifying service. It was further submitted that vide letter dated 14.08.2001, the Govt of India, MoD has extended time period for condonation of shortfall from six months to one year, therefore, applicant is eligible for condonation of shortfall of 01 year, 07 months and 03 days to make him eligible for grant of second service pension for the second spell of service in DSC. He pleaded for condonation of shortfall in service and grant second service pension to the applicant.

5. On the other hand, learned counsel for the respondents submitted that the applicant being enrolled in the Army on 31.05.1983 was discharged from Army Service w.e.f. 31.05.2007 (AN). He further

submitted that service pension was provided to him vide PPO No. S/015986/2007 (ARMY). He was re-enrolled in the DSC on 29.03.2008 and did not opt to count his former service towards DSC service. It was further submitted that the applicant was discharged from DSC service w.e.f. 31.07.2021 under the provisions of Rule 13 (3) III (iv) of Army Rules, 1954 at his own request before completion of terms of engagement i.e. on completion of 13 years, 04 months and 03 days qualifying service which does not entitle him for grant of service pension.

6. Learned counsel for the respondents further submitted that as per Rule 47 of Pension Regulations for the Army, 2008 (Part-I) applicant is not entitled for grant of second service pension as he has not completed 15 years service in DSC. It was further submitted that the maximum deficiency that can be condoned by the competent authority, under the provisions of Para 44 of Pension Regulations for the Army, 2008 (Part-I) and Govt of India, MoD letter dated 14.08.2001, is one year only for grant of service pension but the applicant's shortfall being more than one year is not condonable. Placing reliance on order dated 29.06.2015 passed by the AFT, Regional Bench, Kochi in O.A. No. 130 of 2014, ***Uthaman Manguan vs UOI & Ors***, learned counsel for the respondents pleaded for dismissal of O.A.

7. Heard Shri Anil Anthwal and Shri Vivek Kumar, learned counsel for the applicant and Shri Neeraj Upreti, learned counsel for the respondents and perused the record.

8. There is no dispute that the applicant, who who enrolled in the Army and discharged on 31.05.2007 (AN), is in receipt of service pension w.e.f. 01.06.2007. Also, there is no dispute that the applicant was re-enrolled in the DSC on 29.03.2008 and discharged on 31.07.2021 (AN) having rendered 13 years, 04 months and 03 days qualifying service. On 05.09.2022, applicant had submitted representation to PCDA (P), Allahabad for grant of second service pension but till date there is no response from their office. For the services rendered by him in the DSC, the applicant was paid service gratuity of Rs. 6,23,903/- and Death-cum-Retirement Gratuity of Rs. 92,430/-.

9. Admittedly, the applicant has served for 13 years, 04 months and 03 days in DSC. Since, the applicant had elected to continue to draw his service pension for his services in the Army, he cannot claim second service pension for the services rendered in the DSC without having the prescribed qualifying service of 15 years as mentioned in Rule 47 of Pension Regulations for the Army, 2008 (Part-I). The aforesaid Rule, for convenience sake, is reproduced as under:-

“Unless otherwise provided for, the minimum qualifying service for earning service pension is 15 years.”

10. From the aforesaid, it is clear that applicant having rendered 13 years, 04 months and 03 days does not have 15 years qualifying service to his credit for grant of second service pension. The maximum period of condonation that is possible in the deficiency of qualifying service even under the Government Orders issued is limited to one

year. That being so, the deficiency of 01 year, 07 months and 27 days being not condonable as per orders on the subject, applicant is not entitled for grant of second service pension.

11. In view of the above, O.A. has no merit and is accordingly, **dismissed** with no order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated : 15.03.2024
rathore

(Justice Anil Kumar)
Member (J)

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

(Ser No. 6)

O.A. No. 280 of 2023

Nk Hari Prasad Uniyal Applicant
 By Legal Practitioner for the Applicant : Shri Anil Anthwal and Shri Vivek Kumar,
 Advocates

Versus

Union of India & Others Respondents
 By Legal Practitioner for Respondents : Shri Neeraj Upreti, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>15.03.2024</u> <u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon'ble Maj. Gen. Sanjay Singh, Member (A)</u></p> <ol style="list-style-type: none"> 1. On the case being taken up for hearing, Shri Anil Anthwal and Shri Vivek Kumar, learned counsel for the applicant and Shri Neeraj Upreti, learned counsel for the respondents are present. 2. Counter affidavit filed on behalf of the respondents is taken on record. 3. Learned counsel for the applicant submits that he is not inclined to file rejoinder affidavit. 4. On the request of learned counsel for the parties, heard arguments. 5. Original Application is dismissed. 6. For orders, see our order passed on separate sheets. 7. Misc application (s), pending if any, shall stand disposed off. <p style="text-align: center;"> (Maj. Gen. Sanjay Singh) (Justice Anil Kumar) Member (A) Member (J) <i>rathore</i> </p>