

E- Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 195 of 2022**Monday, this the 31st day of October, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Bodhi Kumari (Widow of No 7234649 Ex Sepoy Ilahi)
R/o Village- Dumhi, PO- Dharpur Khurd, Distt- Kushinagar
(UP) PIN- 274302.

..... ApplicantBy Legal Practitioner – **Shri Ravi Kumar Yadav, Advocate**

Versus

1. The Union of India, Rep by the Secretary, Govt of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post - DHQ, New Delhi-110011.
3. The Officer-in-charge, Raksha Suraksha Corps Abhilekh, Defence Security Corps Records, Cannanore, Pin – 901277, C/o 56 APO.
4. PCDA (P), Draupadhi Ghat, Allahabad (UP)-212114.

..... RespondentsBy Legal Practitioner – **Smt Deepti P Bajpai,**
Central Govt Counsel

ORDER

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

1. Heard Shri Ravi Kumar Yadav, learned counsel for the applicant and Smt Deepti P Bajpai, learned counsel for the respondents and perused the documents available on record.
2. Counter affidavit filed by the respondents is taken on record.
3. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for issuing directions to the respondents to condone the short fall service of her husband and grant second service family pension to the applicant from the date of discharge of her husband from DSC i.e. 30.06.1998.
4. Briefly stated facts are that husband of the applicant was enrolled in Indian Army on 05.06.1963 and after rendering 16 years and 26 days of service he was discharged from army service on 30.06.1979. He was re-employed in Defence Security Corps (DSC) on 26.08.1983 and discharged from service on 30.06.1998 after rendering 14 years, 10 months and 04 days of service at the age of superannuation. As per rules, 15 years of minimum service is required for second service pension, but there was deficiency of about 56 days in the case of husband of the applicant, he was not granted second service pension. It is in this perspective that the applicant has preferred the present

Original Application for grant of second service family pension to her after death of her husband.

5. It is submitted by learned counsel for the applicant that husband of the applicant died on 04.12.2016. After death of her husband, applicant was granted family pension for the services rendered by her husband in the army. Applicant also approached respondents for grant of second service family pension to her for the services rendered by her husband in DSC after condoning shortfall period of 56 days which was rejected by the respondents vide order dated 15.02.2022. As per Regulation 44 of the Pension Regulations for the Army, 2008, (Part I), 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 56 days in case of husband of the applicant 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 Regulation 44 of the Pension Regulations for the Army, 2008 (Part I) and Ministry of Defence letter dated 14.01.2001 and Additional Director General Personnel Services (ADGPS) letter dated 26.09.2003 is ultra virus.

6. Learned counsel for the applicant further submits that Regulation 173 of Pension Regulation for the Army, 2008 (Part I), clearly states 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 also, deficiency of about 56 days in minimum qualifying service of her husband is liable to be condoned and applicant is entitled to second service family pension.

7. 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 56 days in qualifying service, as such, husband of the applicant is not entitled to second service pension. Accordingly, applicant is also not entitled for grant of second service family pension.

8. Having heard the submissions of learned counsel both sides and having gone through Regulation 44 of the Pension Regulations for the Army, 2008 (Part I) 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 have been dealt with by the different Benches of the Armed Forces Tribunal 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 husband of the applicant and the said deficiency is condonable under Regulation 44 of the Pension Regulations for the Army, 2008 (Part I), we find that applicant's claim regarding condonation of deficiency in qualifying service for grant of second service family pension has wrongly been denied to the applicant.

9. Accordingly, **Original Application No. 195 of 2022** is **allowed**. The shortfall of about 56 days in minimum qualifying

service of the husband of applicant in getting second service pension is condoned. Applicant is held entitled to get second service family pension for the services rendered by her husband in DSC as well in addition to pension which he is already getting from the Army.

10. Accordingly O.A. is **allowed**. The respondents are directed to grant second service family pension to the applicant from the date of notional completion of 15 years of service of her husband in DSC as per rules on the subject. However, due to law of limitations as settled by the Hon'ble Supreme Court in the case of Shiv Dass the arrears will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 08.03.2022. 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.

11. No order as to costs.

12. Pending applications, if any, are disposed of accordingly.

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

Dated: 31 October, 2022

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