

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

ORIGINAL APPLICATION No. 21 of 2021

Tuesday this the 26th October, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Anand Kumar Verma 733998 Ex SGT S/o Sri Rajendra Prasad R/o 387-A, Mangla Vihar-1, Near Shyam Nagar, Kanpur, Uttar Pradesh.

..... Applicant

Ld. Counsel for the : **Shri Dharmesh Sinha and**
Applicant **Shri Ravi Kumar Yadav,**
Advocate.

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Chief of the Air Staff, Air Headquarter, Vayu Bhawan, New Delhi.
3. Director (Air Veterans), Directorate of Air Veterans, Subroto Park, New Delhi-110010.
4. Joint Controller of Defence Accounts (Air Force), Subroto Park, Delhi Cantt-110010.

.....Respondents

Ld. Counsel for the **Amit Jaiswal,**
Respondents. **Central Govt. Counsel**

ORDER

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

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

(i) The Hon’ble Tribunal may kindly be pleased to issue an order or direction quashing/ setting aside the order dated 08.09.2020 contained in Annexure No.A-1 to the O.A.

(ii) The Hon’ble Tribunal may kindly be pleased to issue an order or direction quashing/ setting aside the order dated 19.08.2020 contained in Annexure No.A-2 to the O.A.

(iii) The Hon’ble Tribunal may kindly be pleased to issue an order or direction commanding upon the Respondents to issue orders granting service / pro-rata pension to the applicant with all consequential benefits like arrears of pension etc.

(iv) The Hon’ble Tribunal may kindly be pleased to issue any other order or direction deemed to be just and proper under the facts and circumstances of the case.

(v) The Hon’ble Tribunal may kindly be pleased to direct the respondents to pay cost of the OA.

2. Rejoinder Affidavit filed by the applicant is taken on record.

3. Brief facts of the case giving rise to this application are that the applicant was enrolled in the Indian Air Force on

30.06.1992 and was discharged from service on 26.07.2016 under the clause 'at his own request' before fulfilling the conditions of his enrolment. He was granted discharge on the ground of illness of parents. He completed 14 years and 27 days regular service. Applicant preferred representation for condoning the shortfall period and grant service pension which was rejected. Being aggrieved, applicant has filed instant Original Application for grant of service pension/pro-rata pension.

4. Learned counsel for the applicant submitted that applicant was discharged from service after rendering 14 years and 27 days unblemished service. Father of the applicant was a patient of heart disease since 1988 and his mother was old patient of Asthma. Due to unavoidable and consistent problems applicant was neither able to concentrate on his duty nor discharged his duties towards his ailing parents. Applicant tried for posting to Kanpur on compassionate grounds to look after his ailing parents but it was not considered. Applicant processed his application for discharge and his discharge was sanctioned. Applicant represented his case for condoning shortfall period and grant of pension which was rejected. Learned counsel for the applicant submitted that as per Regulation 121 of Air Force

Pension Regulations 1961, read in conjunction with Regulation 114, applicant can be granted service pension after condoning of shortfall of service upto six months except those who have been discharged under own request and this condition was further extended to one year in terms of MoD Govt of India letter No 34(3)2001/D(O&M) dated 03 August 2001. Learned Counsel for the applicant submitted that in similar matter Hon'ble Supreme Court of India in the case of ***Union of India Vs Surendra Singh Parmar*** and Hon'ble AFT (Regional Bench) Kolkata in ***T.A. No 60 of 2012, Ex Sgt Anandi Nandan Mukhopadhyay Vs. Union of India***, decided on 13 April, 2015 has granted pension after condoning the shortfall of one year service. Learned counsel for the applicant submitted that even if the applicant had retired on his own request because of his family disturbances and compelling circumstances, his right to make a prayer for condonation of short fall shall not come to an end. Learned counsel for the applicant prayed that shortfall period of the applicant be condoned and applicant be granted service pension/pro-rata pension.

5. Per contra, learned counsel for the respondents submitted that applicant was discharged from service wef 16.07.2016 (AN) under the clause 'at his own request before

fulfilling the conditions of his enrolment after completion of 14 years and 27 days of regular service. As per Regulation 121 of Regulations for the Air Force 1961, minimum qualifying service to earn service pension is 15 years. As per Regulation 136 (a) the prescribed combined colour and reserve qualifying service for earning Reserved Pension is 15 years. As the applicant had not completed 15 years regular service, he was not granted service pension as per statutory provisions. Applicant was eligible for service gratuity which was paid to him at the time of discharge. Further applicant has not counted his former Air Force Service in Civil service for the purpose of earning Civil Pension. Applicant was denied for grant of pro-rata pension in terms of Govt of India letter Air 1-10/99798/733998/SP/DAV dated 10 Aug 2020. Learned counsel for the respondents vehemently argued that in view of fact that applicant had retired at his own request, he is neither entitled for pension nor condonation of short fall of service. Learned counsel for the respondents submitted that instant Original Applicant has no substance and merit in the principles of natural justice, hence the same is liable to be dismissed in the interest of justice.

6. We have considered the arguments advanced by learned counsel for both sides at length and perused the documents available on record.

7. The question before us for consideration is whether the applicant having 14 years and 27 days of service is eligible for grant of service pension or not?

8. There is no dispute that under Regulation 121, the qualifying service of 15 years is necessary for grant of service pension. The Regulation in 121 is reproduced as under:

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

9. The conditions of deficiency in service for eligibility for grant of pension are provided under regulation 114 which is reproduced as under:

(a) An individual who is discharged at his own request,

(b) An individual who is eligible for special pension or gratuity under Regulations 144, or

(c) An individual who is invalided with less than 15 years service, deficiency in service for eligibility to service pension or reservist pension or gratuity in lieu, may be condoned by a competent authority upto six months in each case.

10. The period of six months has been increased to one year vide order dated 14 Aug 2001 in case a representation is sent

to service Headquarter. The relevant portion of the order dated 14 Aug 2001 is reproduced as under:-

“Sanction is hereby accorded in pursuance of MoD ID No 34(3)/2001/D(O&M) dated 03 August 2001 for delegation of administrative powers with the approval of Raksha Mantri to the service HQs in respect of the subject indicated below:

(a) (i) to (iv) x x x x x

(v) Condonation of shortfall in qualifying service for grant of pension in respect of PBOR beyond six months and upto 12 months.

(v) to (xiv) x x x x

(b) Approving authority in the service HQs in respect of the above subjects will be AG/COP/AOA as the case may be. A further re-delegation of these powers will require prior approval of Ministry of Defence”.

11. From the aforesaid provision it appears that shortfall upto six months may be condoned by subordinate authority and six months to one year may be condoned by Air Headquarter. Regulation 114 is confined only to the extent of shortfall of six months.

12. In case bearing **Civil Appeal No 9389 of 2014 Union of India Vs. Surendra Singh Parmar** the Hon’ble Supreme Court while considering the short fall held as under:-

“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. However as we find that the respondent was allowed to retire from service on 24th June, 1985 when the instruction dated 14th August, 2001 was not in existence, we hold that the respondent is entitled for such benefit from such date on which the said instruction came into effect. The Tribunal failed to notice the aforesaid fact but rightly declared that the respondent's shortfall in service stands condoned. In the facts of the case, we are of the view that it should have been made clear that the respondent shall be entitled to benefit w.e.f. 14th August, 2001 and not prior to the said date. The order passed by the Tribunal stands modified to the extent above. The appeal stands disposed of with aforesaid observations”.

13. It appears that the discharge from service at own request is one thing and making a prayer for condonation of shortfall in service is other thing. In ordinary course a person discharge from service at his own request shall not be entitled for pension unless he or she had completed 15 years of service. The subordinate authority in view of Pension Regulation 114 seems to have no power to condone the shortfall over six months but the order dated 03 August. 2001 confers power on the Headquarter to condone the short fall. Being higher forum the Air Headquarter seems to have been given wide power to condone the short fall on one year for grant of pension. Such power should not be exercised mechanically. It shall be

obligatory for the Air Headquarter to look into the matter after applying mind over the facts and circumstances and the reasons because of which an Air Force Person had made a request for premature discharge.

14. While passing the impugned order dated 08.09.2020 and 19.08.2020 the authority had dealt with the matter mechanically. Whenever an order is passed by the court and decision is taken with regard to the condonation of short fall in service, then such decision should not be based on any policy but it must be taken into account keeping in view the compelling circumstances because of which the Air Force personnel moved the application for premature discharge from service. The rejection of the representation on the basis of a policy is neither just nor proper. It is duty of the competent authority to apply their mind to the factual material on record and it shall be necessary that a speaking and reasoned order assigning grounds on which the representation is rejected or allowed be passed. The rejection on the basis of a policy decision by the Army/Navy or Air Force authority shall be mechanical one and violate Article 14 read with Article 21 of the Constitution of India, hence not permissible. Regulation (supra) and the order (supra) confers discretion to condone shortfall and that

discretion must be exercised with justness and fairness and assigning reasons which is a part and parcel of Article 14. The rights like right of livelihood, quality and dignity of life and other facets of life are protected under Article 21 of the Constitution of India.

15. Regulation 121 starts with the work 'Unless otherwise provided for' for minimum qualifying service would be 15 years. It means there may be circumstances or ground under which qualifying service may be reduced by the employer. That is why the respondent employer (Air Force) has been conferred jurisdiction to condone the shortfall up to one year. Whenever discretion is conferred on authority touching the life and livelihood or quality of life, such discretion must be exercised in just and fair manner. No policy may be framed or order may be passed which may interfere with the right of authority to exercise discretion conferred by Regulation 114. The benefit flowing from Regulation 114 has salutatory mandate and it cannot be diluted by executive instruction.

16. Even otherwise also merely by referring to some policy decision does not meet out the requirement of law (Article 14). The authority should have indicated how and in what manner the policy comes in the way to condone the shortfall.

17. Having heard the submissions of learned counsel both sides and having gone through Govt of India letter dated 03 August 2001 and 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.

18. In view of the decision of Hon'ble Supreme Court in the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, Hon'ble Apex Court has observed:

“we are of the considered view that service pension may be granted to the applicant from three preceding years from the date of filing of the Original Application.

19. 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 Govt of India, policy letter

dated 03 August, 2001, 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.

20. Accordingly, O.A. is **allowed**. Impugned orders passed by the respondents rejecting his claim for grant of service pension are quashed. The shortfall of 11 months & 03 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 Air Force. The applicant is entitled to get service pension from three years preceding the date of filing this Original Application. The date of filing this Original Application is 04.12.2020. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

21. No order as to costs.

22. Pending applications, if any, stand disposed off.

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

Dated: 26 October, 2021

Ukt/-