

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 324 of 2022**Friday, this the 23rd day of September, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)No. 698252B Ex Cpl, Manoj Sharma
S/o Late Sri Basu Deo Sharma
R/o 26/14, Balka Basti, Raja Ki Mandi, Agra – 282002 (UP)
..... ApplicantLd. Counsel for the Applicant: **Shri Pankaj Kumar Shukla**, Advocate

Versus

1. The Union of India, through the Secretary, Ministry of Defence (Air Force), New Delhi – 110011.
2. The Chief of Air Staff, Air Headquarters, Vayu Bhawan, New Delhi-110011.
3. Director, Dte of Air Veteran, Subroto Park, New Delhi – 110010.
4. Office of Joint CDA (Air Force), New Delhi, C/o Air Force Central Accounts Office, Subroto Park, New Delhi – 110010.

..... Respondents

Ld. Counsel for the Respondents : **Ms. Preeti Mala**,
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:-

- “A. To issue/pass an order or directions to the respondents to condone the deficiency of 55 days in qualifying service for grant of service pension to the applicant from the date of discharge i.e. 26.06.2001 along with 12% interest on arrear.

- B. To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.
- C. To allow this original application with costs."

2. Briefly stated facts are that applicant was enrolled in the Indian Air Force on 20.08.1986 and after completion of 14 years, 10 months and 06 days of service, he was discharged from service w.e.f. 26.06.2001 (AN), just before 55 days of completion of pensionable service pursuant to his family safety. The applicant preferred a representation dated 09.09.2015 before the Hon'ble President of India for grant of service pension but the same was not considered. Thereafter, applicant filed a Writ Petition No. 1553 of 2022 before the Hon'ble High Court of Allahabad which was dismissed vide order dated 14.03.2022. He further submitted that as per Regulation 114 of Pension Regulations for the Air Force, 1961 (Part-1), condonation in deficiency in qualifying service for grant of service pension may be condoned to enable the applicant to get service pension. Service pension to the applicant was denied by the respondents stating that applicant is short of minimum stipulated qualifying service of 15 years, hence, he is not eligible for condonation of deficiency of service and therefore, he is not entitled for service pension. Being aggrieved, the applicant has preferred the present O.A. for condoning the short fall in service for grant of service pension.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Indian Air Force on 20.08.1986 and after completion of 14 years, 10 months and 06 days of service, he was discharged from

service w.e.f. 26.06.2001 (AN). The applicant was discharged from service just before 55 days of completion of pensionable service pursuant to his family safety. The applicant preferred a representation dated 09.09.2015 before the Hon'ble President of India for grant of service pension but the same was not considered. Thereafter, applicant filed a Writ Petition No. 1553 of 2022 before the Hon'ble High Court of Allahabad which was dismissed vide order dated 14.03.2022. He further submitted that as per amendment in Regulation 44 of Pension Regulations for the Army, 2008 (Part-1), condonation in deficiency in qualifying service for grant of service pension may be condoned to enable the applicant to get service pension.

4. Learned counsel for the applicant relied upon the judgment of the Hon'ble Apex Court in Civil appeal No. 9389 of 2014, **Union of India & Another vs. Surinder Singh Parmar**, decided on 21.01.2015 and AFT (RB) Kolkata in O.A. No. 20 of 2017, **Kaushik Sengupta vs. Union of India & Ors**, decided on 04.07.2018 and pleaded that his case is also covered with the aforesaid judgments and prayed for condoning the shortfall of 55 days in pensionable service. The relevant Paras 25 to 30 of the judgment **Kaushik Sengupta** (supra) read as under :-

"25. There should have been no doubt in the minds of the Respondents that the para 82 (a) for the pension Regulations 1964 of the Indian navy has been struck down by the Hon'ble Supreme Court of India being violative of the Article 14 of the Constitution of India. They are also well aware that the para 114 (a) of the Pension Regulations for the Indian Air Force and para 125 (a) of the Indian Army Pension regulations for the both dealing with the same provisions i.e., Non-Condonation of deficiency of service up to the one year in respect of service personnel proceeding of premature

retirement/discharge have also been struck down as violative by the various benches of the AFT.

*26. The Respondents' contention about the AFT, Kochi Bench Order in OA 37/2015 does not hold in the light of the Judgments in **Surinder Singh Parmar vs. UOI** which was delivered by the Hon'ble Supreme Court of India (supra) on 21.01.2015 and judgment of Hon'ble High Court of Mumbai was taken note of and thus the AFT, Kochi Bench judgment in OA 37/2015 is in per incuriam.*

27. In the light of the above aspects, we are of the opinion that the short fall of 8 months and 23 days of service for granting the service pension and other benefits to the applicant deserves to be condoned and is hereby condoned.

29. Accordingly, this application (O.A.20/2017) is allowed.

30. The respondents' are directed to grant the applicant service pension along with all other benefits applicable to an ex-servicemen. All benefits will be paid to the applicant within a period of 4 months from the date of receipt of this order, failing which 8% interest per annum will be calculated and paid to the applicant."

5. Per contra, learned counsel for the respondents has vehemently opposed and submitted that applicant has rendered only 14 years and 311 days of qualifying regular service. Since the applicant had not rendered 15 years of qualifying service he was rightly not granted service pension as he is not entitled for the same in terms of Para 121 of Pension Regulations for the Air Force, 1961 (Part-1) wherein 15 years of qualifying service is required for grant of service pension. He further submitted that as per Para 114 of Pension Regulations for the Air Force, 1961 (Part-1) condonation of deficiency of service for eligibility of service/reservist pension is applicable except in case of an applicant who is discharged from service at his own request on extreme compassionate grounds, however, the provisions of Regulation 114 are not applicable in the instant case as the applicant was discharged from service at his own request before fulfilling the conditions of enrolment.

6. Learned counsel for the respondents further submitted that applicant's interpretation and demand for grant of service pension by condonation of deficiency in qualifying service on the basis of various Court orders is incorrect and illogical as Court verdicts are specific in nature and relief granted cannot be considered as precedence for other cases, hence, applicant's plea for grant of service pension is rejected. He pleaded for dismissal of Original Application being devoid of merit.

7. Having heard the submissions of learned counsel both sides and having gone through Rules 114, 121 and 136 of Pension Regulations for the Air Force, 1961 (Part-1), AFT (RB) Kolkata judgment in ***Kaushik Sengupta*** (supra) and the Hon'ble Apex Court judgment in ***Surinder Singh Parmar*** (supra), 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 and it has been held therein that deficiency in qualifying service upto 1 year is condonable. 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 Rule 114 of Pension Regulations for the Air Force, 1961 (Part-1), we find that applicant's claim regarding condonation in deficiency in qualifying service for the grant of service pension deserves to be allowed.

8. Accordingly, O.A. is allowed. The shortfall of 55 days in minimum qualifying service of 15 years of the applicant in getting

service pension is condoned and applicant is held entitled to get service pension from the Indian Army.

9. The respondents are directed to grant service pension to the applicant from the next date of discharge on completion of 15 years of service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrears of service pension 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 22.04.2022. 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 invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

Dated: September, 2022

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