

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
Court No.1 (E Court)

Original Application No. 63 of 2019

Thursday this the 22th day of October, 2020

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

No. 14541044-L Ex Nk, Padmakar Dubey, S/o Sri Bankey Lal Dubey, R/o H. No. E-1, Sector- B, Sainik Vihar Colony, Nandnagar, PO- Kunraghat, District – Gorakhpur, U.P.- 273008, India.

..... **Applicant**

By Legal Practitioner – Shri Pankaj Kumar Shukla, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101, South Block, New Delhi- 110011.
2. Chief of The Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi- 110011.
3. Addl Dte Gen Personnel Services, Adjutant General's Branch, Army Headquarter, DHQ PO New Delhi-110011.
4. Defence Security Corps Records, PIN : 901227
C/o 56 APO.
5. Commanding Officer 327 DSC Platoon, Cheoki, Allahabad.

..... **Respondents**

By Legal Practitioner – Shri Sunil Sharma,
 Learned Counsel for the Central Govt.

ORDER

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

1. Heard Shri Pankaj Kumar Shukla, learned counsel for the applicant and Shri Sunil Sharma, learned counsel for the respondents.
2. Applicant has submitted a copy of letter dated 29.12.2017 by means of which his representation for grant of second service pension has been rejected.
3. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 by means of which applicant has prayed that respondents be directed to condone deficiency in minimum qualifying service for grant of second service pension to applicant and to grant second service pension to him from the date of discharge i.e. 31.10.2017.
4. Briefly stated facts are that applicant was enrolled in Indian Army on 12.03.1982 and after completing 18 years and 27 days of service he was discharged from service w.e.f. 28.02.1999. He was re-employed in Defence Security Corps (DSC) on 22.01.2003 and after completing 14 years, 09 month and 07 days of service discharged from service on 31.10.2017 at the age of 57 years. As per rule, 15 years of minimum service is required for second service pension, but as there was

deficiency of 82 days in qualifying service, applicant preferred representation dated 06.12.2017 which was not decided by the respondents till 08.07.2018. Now the applicant vide letter dated 29.12.2017 has been intimated that his representation for grant of second service pension has been rejected. Applicant has preferred the present O.A. for condoning the short fall in service for grant of second service pension for his services rendered in Defence Security Corps.

5. It is submitted by learned counsel for the applicant that as per Pension Regulations for the Army, 2008, Part I, Para 18, Ministry of Defence, Department of Defence, letter dated 14.08.2001 and Additional Director General Personnel Services (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 82 days in case of applicant shortfall was not condoned in view of Govt of India, Ministry of Defence, letter No 14(02)/2011-D (Pen/Pol) dated 23.04.2012 and dated 20.06.2017. 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 Rule 125 of Pension Regulations

Part -I, Rules 2008 and Ministry of Defence, letter dated 14.01.2001 and ADGPS letter dated 26.09.2003, is ultra virus.

6. Learned counsel for the applicant further submits that Para 173 of Defence Service Regulations Part - I, 2008, clearly says 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 date 14.08.2001 and letter dated 26.02.2003 being equally applicable in case of applicant also, deficiency of 82 days in minimum qualifying service is liable to be condoned and applicant is entitled to second service pension.

7. Per contra, learned counsel for the respondents has vehemently opposed and submitted that applicant on attaining the age of 57 years was discharged from DSC service wef 31.10.2017 under the provisions of Army Rule 13 (3) item III (i) after rendering 14 years and 283 days qualifying service for which he was paid Service gratuity and retirement gratuity to the tune of Rs. 5,62,275/- and Rs. 1,96,796/- respectively. Applicant is deficient of 82 days for grant of second service pension. He submitted that in terms of Para 47 of Pension Regulations for the Army 2008 (Part-1), 'unless otherwise provided for, the minimum qualifying service for earning a

service pension is 15 years'. In the instant case, the applicant had rendered only 14 years and 283 days qualifying service in DSC. Hence, he is not entitled for grant of second service pension for the service rendered by him in DSC. His case cannot be considered for condonation of deficiency in qualifying service for grant of second pension in terms of Govt of India, Ministry of Defence letter no. 14(2)/2011/D(Pen/Pol) dated 23 April 2012, as he is already in receipt of one service pension for the former service rendered by him in the Army. The 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 clarified that 'no condonation shall be allowed for grant of second service pension'. Keeping in view this letter and also that there is deficiency of 82 days in qualifying service, as such, applicant is not entitled to second service pension.

8. Having heard the submissions of learned counsel both sides and having gone through Rule 125 of Pension Regulations Part I, Rules 2008 as well as Government of India, Ministry of Defence letter No. 14 (2)/2011/D (Pen) dated 23.04.2012 and letter No 14 (02)/2011 (Pen) 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 many cases 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 Das 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. 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 125 of the Army Rules 2008, we find that applicant's claim regarding condonation in deficiency in qualifying service for the grant of second service pension has wrongly been rejected by the respondents, and, as such, the order dated 29.12.2017 is not liable to sustain.

9. Accordingly, impugned order dated 29.12.2017 is set aside and O.A. is allowed. The shortfall of 82 days in minimum qualifying service of the applicant in getting second service pension is condoned. Applicant is held entitled to get second service pension in DSC as well in addition to pension which he is already getting from the Army.

10. The respondents are directed to grant second service pension to the applicant from the date of discharge. 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 @ 9% per annum till actual payment.

11. No order as to costs.

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

Dated: October, 2020
Ukt/-