

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

Original Application No. 92 of 2019

Friday this the 13th day of November, 2020

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

No. 13944107-L Ex. Nk. Ajit Kumar Sarmah, S/o Late Sri P. Sarmah, R/o – H/No. 183, Vijaynagar-2, Village –Habirpur (Sherpur), P.O. – Neelmatha, Lucknow.

..... **Applicant**

By Legal Practitioner – **Shri Parijaat Belaura**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101, South Block, New Delhi- 110011.
2. Chief of Army Staff, Army Headquarters, Ministry of Defence, Government of India, South Block, New Delhi- 110011.
3. Officer-in-Charge, Defence Security Corps Records, PIN- 901277, C/o 56 APO.
4. The Principal Controller of Defence Account (Pension), Draupadi Ghat, Allahabad (U.P.).

..... **Respondents**

By Legal Practitioner – **Shri Yogesh Kesarwani**, Advocate
 Counsel for the Central Govt.
 Assisted by **Maj. Sini Thomas**,
 Departmental Representative

ORDER

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

1. Heard Shri Parijaat Belaura, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents assisted by Maj. Sini Thomas, Departmental Representative.
2. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for setting aside the order dated 12.02.2018 passed by the respondents and issuing directions to them to grant benefit of Rule 125 of Pension Regulation of the Army, 1961 and Ministry of Defence letter dated 14.08.2001 and to condone deficiency in minimum qualifying service for grant of second service pension to applicant from the date of discharge i.e. 01.02.2015.
3. Briefly stated facts are that applicant was enrolled in Army Medical Corps (AMC) of Indian Army on 11.10.1977 and after completing 22 years and 21 days of service he was discharged from service w.e.f. 31.10.1999. He was re-employed in Defence Security Corps (DSC) on 24.08.2000, and after completing 14 years 161 days of service discharged from service on 31.01.2015 at the age of superannuation of 55 years in low medical category P2 (permanent) under Rule 13 (3) III (i) of the Army Rules, 1954. As per rules, 15 years of minimum service is required for

second service pension, but as there was deficiency of 204 days in the case of applicant, respondents denied to grant second service pension to him and his representation regarding condonation of deficiency in qualifying service for the grant of second service pension was turned down on 12.02.2018 referring it had no merit. Applicant has challenged the very order of the respondents dated 12.02.2018 by which the respondents have denied second service pension to him.

4. 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 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 07 months (204 days) in case of 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 Rule 125 of Pension Regulations Part -I, Rules 2008 and Ministry of Defence letter dated

14.01.2001 and Additional Director General Personnel Services (ADGPS) letter dated 26.09.2003 is ultra virus.

5. 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 dated 14.08.2001 and letter dated 26.02.2003 being equally applicable in case of applicant also, deficiency of 07 months (actual 204 days) in minimum qualifying service is liable to be condoned and applicant is entitled to second service pension.

6. 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 07 months (actual 204 days) in qualifying service, as such, applicant is

not entitled to second service pension, his representation has been rightly rejected and the same needs no interference.

7. 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 (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 has not only been dealt with by the 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 of deficiency in qualifying service for the grant of second service pension has wrongly been rejected by the respondents, and, as such, the order dated 12.02.2018 is not liable to sustain.

8. Accordingly, impugned order dated 12.02.2018 is set aside and Original Application is allowed. The shortfall of 07 months

(actual 204 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.

9. 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.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 13 November, 2020

AKD/-