

RESERVED
Court No. 1

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

ORIGINAL APPLICATION No. 407 of 2017

Friday, this the 06th day of July, 2018

“Hon’ble Mr. Justice S.V.S. Rathore, Member (J)
Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

Desh Raj (No. 14377350F Ex NK), S/o Shri Mashi Charan, R/o Village-Gotiya Gharam, Post- Bari Prasad Pur, Distt-Shahajahanpur- 242303 (UP).

..... Applicant

Ld. Counsel for the Applicant: **Shri R. Chandra**, Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters of Ministry of Defence (Army) DHQ Post Office New Delhi-110011.
3. The Officer In-Charge Defence Security Corps Records PIN-901277 C/o 56 APO.
4. Commanding Officer 107 DSC Platoon Ordnance Clothing Factory, Shahajahanpur (UP)-242001.

.....Respondents

Ld. Counsel for the Respondents: **Shri Yogesh Kesarwani**,
CGSC

ORDER

Per Justice SVS Rathore, Member (J)

1. We have heard learned counsel for the parties and perused the record.

2. By means of this OA under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

“(i) The Hon’ble Tribunal may be pleased to direct the respondents to condone the shortfall period of 43 days in service to grant service pension in light of policy letters and Hon’ble Apex Court.

“(ii) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”

3. In brief, the facts necessary for the purposes of present OA may be summarised as under:-

The applicant was re-enrolled in the DSC on 02.02.2000 after retiring from Army and he is getting pension of Army. On 05.12.2006, the applicant was awarded 28 days’ RI in military custody. On 28.12.2007, he was awarded 28 days’ RI in military custody. On 07.09.2009, the applicant was awarded 15 days’ detention. On 14.09.2010, he was awarded 10 days’ pay fine. On 29.06.2015, he was given extension with effect from 04.02.2017 to 31.07.2017. On 17.05.2016, the applicant had made an appeal before the Centre Commandant, DSC Centre, Kananoor, wherein he submitted that he is being discharged because of red ink entries while he is near to get DSC Pension, hence he requested to allow him to continue in service till 31.07.2019 so that he could get his service pension of DSC also. According to the applicant, reply of the said appeal was

not given to him. On 31.07.2017, the applicant was discharged from service after rendering 14 years 07 months and 21 days service on attaining the superannuation age of 55 years under Rule 13(3)(i)(a) due to award of more than two Red Ink entries in entire DSC service. In the OA, it has been pleaded that there was a shortfall of 43 days of service in DSC excluding the period of 220 days as non-qualifying service because of overstayal of leave and punishments of RI inflicted on him.

4. In the counter affidavit, the respondents have pleaded that the applicant had voluntarily got re-enrolled in the DSC on 04.02.2002 as Sepoy for an initial term of engagement of 10 years. His former service was not counted towards DSC service as per the option exercised by him and he continued to draw his former service pension throughout his DSC service. On completion of his initial term of engagement, the applicant was granted periodical extension of service from 04.02.2012 to 03.02.2017 and further from 04.04.2017 to 31.07.2017 i.e. upto the superannuation age of 55 years. The details of four Red Ink entries awarded to the applicant have also been mentioned in the counter affidavit. The applicant was discharged from DSC service on 31.07.2017. According to the respondents, since there were more than two Red Ink entries in DSC service, the applicant was not entitled for two years enhanced service beyond the age of superannuation i.e 55 years. However, it is admitted in the counter affidavit that though the applicant had

rendered 15 years 178 days service including 215 days non-qualifying service in his credit due to his overstaying/absence without leave as mentioned above. Thus, the case of the respondents is that the total qualifying service of the applicant in DSC was 14 years 329 days only, excluding his non-qualifying service and there being the shortfall of only 36 days in qualifying service. Since he does not have minimum qualifying service for pension, so he is not entitled to DSC pension.

5. Submission of learned counsel for the applicant is that the aforesaid shortfall in DSC service may be condoned. According to him, as per provisions of Government Policy dated 14.08.2001, shortfall in service upto 01 year can be condoned by the respondents. He has also placed reliance on the pronouncement of Hon'ble Apex Court in *Civil Appeal No. 9389 of 2014, Union of India and another versus Surender Singh Parmar*, decided on 20.01.2015. In that case, the individual had taken voluntary discharge before completing his qualifying service and the shortfall of one year was condoned by the Hon'ble Apex Court. Reliance has also been placed on the pronouncement of this Bench in *OA No. 154 of 2016, Shiv Ram versus Union of India and others*, decided on 01.02.2018, wherein, in similar facts and circumstances, the shortfall of 4 months and 09 days in minimum qualifying service of the individual in DSC for earning service pension was condoned.

Learned counsel for the applicant submits that the instant case is squarely covered by the aforesaid two decisions.

6. On behalf of the respondents, no case law or authority taking a different view has been brought to our notice to decline the condonation of shortfall in minimum qualifying service, as prayed for by the applicant, to make him eligible for DSC pension.

7. Accordingly, this OA is **allowed** and the shortfall of 36 days in minimum qualifying service of the applicant to earn DSC pension is hereby condoned. The applicant shall be entitled to service pension for the services rendered in DSC. The respondents are directed to comply with the order within four months from the date of submission of a certified copy of this order. The office is directed to provide a certified copy of this order to the respondents within two days for its onward transmission and compliance.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice SVS Rathore)
Member (J)

July 6th, 2018

LN/-