

**Court No. 3**  
(Ser No 7)

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

**ORIGINAL APPLICATION No 664 of 2022**

Thursday, this the 02<sup>nd</sup> day of February, 2023

**Hon'ble Mr. Justice Anil Kumar, Member (J)**

**Hon'ble Maj Gen Sanjay Singh, Member (A)**

No. 5243946Y Ex Hav Ram Prasad, S/o Sri Late Moti Lal, R/o Village-Darghiya (Near Dargah), Post-Kumra Ghat, Tehsil-Sadar, District-Gorakhpur, UP-273008.

...Applicant

Counsel for the applicant: 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 Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. ADGPS, AG Branch, Army Headquarters, DHQ, PO-New Delhi-110011
4. Defence Security Corps Records, PIN-901227, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad.

.... Respondents

Counsel for the Respondents : Shri RKS Chauhan, Advocate  
Central Govt Counsel.

**ORDER (Oral)**

1. By means of the present O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the following reliefs:

- (a) *To issue/pass an order or direction to the respondents to condone the deficiency of 198 days in qualifying service for grant of second service pension and grant service pension to the applicant from the date of discharge from DSC i.e. 30.06.2018 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. Brief facts of the case are that the applicant was enrolled in the Army on 23.10.1979 and on completion of 24 years and 08 days service, he was discharged in the rank of Havildar on 01.11.2003 (FN). Admittedly, he is getting pension for this spell of service. The applicant was re-enrolled in Defence Security Corps (DSC) on 14.01.2004 and was discharged therefrom on 30.06.2018 after rendering qualifying service of 14 years, 05

months and 18 days on attaining the age of superannuation under Rule 13 (3) III (i) of the Army Rules, 1954. After discharge from DSC, aggrieved by non grant of second service pension, applicant submitted representation dated 01.01.2022 for condoning the short fall in qualifying service period of 06 months and 13 days but it has not been replied as yet, hence this O.A.

3. It may be noticed that the applicant has been denied pension for second spell of service in DSC on the ground that he has not completed the minimum required qualifying service of 15 years. As per pleadings on record, the applicant has 14 years, 05 months and 18 days of service to his credit. In other words, there is a shortfall of about 06 months and 13 days for earning second service pension for the DSC service, representation submitted for condonation of shortfall has not been decided.

4. Learned counsel for the applicant submitted that the applicant was enrolled in the Indian Army on 23.10.1979 and discharged from service on 01.11.2003 (FN), after serving for 24 years and 08 days and he was granted service pension. After discharge from Army, the applicant was re-enrolled in DSC on 14.01.2004 and was discharged from service on 30.06.2018 (AN) on attaining the age of superannuation. Learned counsel for the applicant further submitted that the applicant has rendered 14 years, 05 months and 18 days service in DSC and there is a shortfall of 06

months and 13 days to complete 15 years of service to become eligible for service pension in DSC. He further submitted that a representation submitted in this regard on 01.01.2022 has not been given any heed.

5. Learned counsel for the applicant has relied upon Rule 125 of Pension Regulation of the Army as per which, shortfall in qualifying service for the grant of pensionary benefits in respect of personnel below officer rank (PBOR), shortfall upto 12 months can be condoned by the competent authority to earn service pension. He further submitted that the same issue has already been decided by this Tribunal in O.A No 63 of 2019, ***Nk Padmakar Dubey vs Union of India & Ors***, O.A. No. 1926 of 2019, ***Ex Cham (W) Ranajit Mohapatra vs Union of India & Ors***, O.A. No. 659 of 2017, ***Ex Nk Mansa Ram vs Union of India & Ors***, O.A. No. 400 of 2020, ***Hav/Clk Hom Singh Yadav vs Union of India & Ors*** and O.A. No. 63 of 2019, ***Nk Padmakar Dubey vs Union of India & Ors***.

6. The respondents in their reply statement while not disputing the facts stated by the applicant with regard to his enrolment into the Army, grant of service pension in the Army and re-enrollment in DSC service, submitted that the provisions of condonation of deficiency in qualifying service is totally against Para 132 of Pension Regulations for the Army 1961 (Part I), revised Para 47 of Pension Regulations for the Army 2008 (Part I) and

various policy letters issued by the Govt of India, Ministry of Defence. It was further contended that as per Para 132 of Pension Regulations for the Army 1961 (Part I), revised Para 47 of Pension Regulations for the Army 200 (Part I), the minimum qualifying service for earning a service pension is 15 years and that as per Govt of India, Ministry of Defence letter No 14(2)/2011/D(Pen/Pol) dated 23.4.2012, the case of the applicant cannot be considered for condonation of deficiency in qualifying service for grant of second service pension. They further submitted that Govt of India has clarified the same vide the ibid letter that no condonation shall be allowed for grant of second service pension and, therefore, the applicant is not entitled to the condonation of shortfall of qualifying service for the grant of second service pension.

7. Heard the submissions of the counsel for both the parties and also perused the documents placed on record.

8. The fact that the applicant was enrolled in the Indian Army on 23.10.1979 and discharged on 01.11.2003 (FN) is not disputed. Further, the fact that the applicant was re-enrolled in DSC on 14.01.2004 and discharged on 30.06.2018 (AN) after completing 14 years, 05 months and 18 days service in DSC on attaining the age of 57 years, the upper limit of age for service in DSC is also not disputed. The applicant's representation

dated 01.01.2022 for condonation of shortfall of 06 months and 13 days to complete the minimum period of 15 years of service for earning second service pension has not been decided till date.

9. The issue involved in this case is no more *res integra* as the matter has already been settled by AFT, PB, New Delhi, in the case of ***Bhani Devi Vs. UOI*** (O.A No 60 of 2013, dated 07.11.2013) wherein it was held that the provisions of condonation of shortfall in service under Regulation 125 of Pension Regulations for the Army, 1961, (Part I) are equally applicable to Armed Forces personnel serving in DSC, for qualifying them for grant of second service pension. The judgment was also followed by the orders AFT, Chandigarh Bench in the case of ***Uday Singh Vs. UOI and Ors.*** (M.A No 2165 of 2015 and O.A No 333 of 2015, dated 31.05.2016). Thereafter, a series of orders have been passed by this Tribunal in which short fall to earn second service pension from DSC was condoned.

10. In view of the above reasons, we are of the considered opinion that applicant is eligible under Rule 125 for condonation of shortfall in service in pensionable service. So far as the fact is concerned, applicant's shortfall in service is only 06 months and 13 days which is condonable. In view of the clear rules made under Pension Regulations for the Army, 1961 and particularly, Rule 266, which provides that the general rule shall not be

applicable when they are inconsistent with the rules framed under Chapter 4, the Government's communication dated 23.04.2012, just runs contrary to Rule 266 and therefore, cannot be given effect to.

11. We find that this O.A is also on similar grounds and is squarely covered by the orders of this Bench and, therefore, the applicant is entitled to condonation of 06 months and 13 days of shortfall in service to complete 15 years of qualifying service, in accordance with Regulation 44 read in conjunction with Regulation 173 of Pension Regulations for the Army, (Part I), 2008 for earning second service pension for the service rendered in DSC.

12. In the result, the shortfall of 06 months and 13 days in service of the applicant in DSC is condoned to complete 15 years of qualifying service in DSC to earn second service pension. Accordingly, the applicant is entitled to service pension for his services in the DSC with effect from the date of his discharge from service, i.e. 01.07.2018. Corrigendum PPO shall be issued to that effect and arrears shall be paid within four months from the date of receipt of a certified copy of this order, failing which the respondents shall pay interest @ 8% p.a.

13. O.A is **allowed**, accordingly.

14. No order as to costs.

15. Miscellaneous application(s) pending if any, stand disposed of.

**(Maj Gen Sanjay Singh)**  
**Member (A)**

Dated : 02.02.2023

*rathore*

**(Justice Anil Kumar)**  
**Member (J)**