

**Court No. 2**  
**RESERVED**

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

**ORIGINAL APPLICATION No 257 of 2023**

Wednesday, this the 22<sup>nd</sup> day of November, 2023

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

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

No. 14366299M Nk Kedar Nath Thakur (Retd)  
S/o Shri Rampuri Thakur  
R/o – Manjhpurwa, PO – Sugar Mill, Banki,  
District – Barabanki (UP) PIN-225001.

...Applicant

Ld. Counsel for the applicant: **Shri Ravi Kumar Yadav**, Advocate

Versus

1. The Union of India, Rep by the Secretary, Govt. of India, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters of MoD (Army), Post-DHQ, New Delhi-110011.
3. The Officer-in-charge Raksha Surksha Corps Abhilekh, Defence Security Corps Records Pin-901277, C/o 56 APO.
4. PCDA (P) (Air Force), Draupadi Ghat, Allahabad (UP)-212114.

.... Respondents

Ld. Counsel for the Respondents : **Mrs Anju Singh**, Advocate  
Central Govt. Standing Counsel

**ORDER**

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 directions of appropriate nature to the respondents to condone the deficiency/short fall of 05 months and 03 days (156) of service in qualifying minimum period of 15 years to grant second pension of DSC service.*

*B. to issue/pass an order or directions of appropriate nature to the respondents to grant second service pension and other pensionary benefits of DSC service to applicant with effect from date of retirement (01.04.2021F/N) and to pay the arrears alongwith with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal.*

*C. Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.*

2. Briefly stated facts are that applicant was initially enrolled in the Indian Army on 29.07.1982 and was discharged from service w.e.f. 31.03.2003 (AN) after rendering 20 years and 07 months 25 days of qualify service for which he is in receipt of service pension vide PPO No. S/024253/2003 (Army). Thereafter, he was re-employed in Defence Security Corps (DSC) on 04.09.2006 and after completing 14 years, 06 months and 27 day qualifying service discharged on 31.03.2021 (AN) under the provisions of Rule 13 (3) III (i) of Army Rules, 1954. As per rule, 15 years of minimum service is required for second service pension, but as there was deficiency of 156 days in qualifying service, applicant was not granted second service pension of DSC. Applicant submitted representation dated 06.09.2021 for condoning the short fall in qualifying service period of 156 days but it has not been replied as yet, hence this O.A. has been filed.

3. It is submitted by learned counsel for the applicant that as per Govt. of India, Ministry of Defence letter dated 14.08.2001 condonation of shortfall in qualifying service for grant of pension in respect of personnel below officers rank shortfall of 12 months in qualifying service is allowed but the same has not been condoned by the respondents in

view of Govt. of India, Ministry of Defence letter dated 14.08.2001. Learned counsel for the applicant also relied upon Judgment of ***Hon'ble Apex Court Judgment, Civil Appeal No. 9389 of 2014 decided on 20.01.2015, Union of India & another Vs Surinder Singh Parmar and Hon'ble AFT Principal Bench, New Delhi in the case of Bhani Devi vs. Union of India in (O.A. No. 60 of 2013 dated 07.11.2013) and AFT, Kochi Bench in O.A. No. 87 of 2021 Ex Sgt Vasudevan Vs UOI & Others.***

4. Learned counsel for the applicant further submitted that Para 173 of Pension Regulations for the Army, 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 being equally applicable in case of applicant also, deficiency of 156 days in minimum qualifying service is liable to be condoned and applicant is entitled to second service pension.

5. 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 31.03.2021 (AN) under the provisions of Army Rule 13 (3) item III (i) after rendering 14 years, 06 months and 27 days qualifying service for which he was paid Service gratuity and retirement gratuity. Applicant is deficient of 156 days for grant of second service pension. He submitted that in terms of Rule 132 of Pension Regulations for the Army, 1961 (Part-1) and Rule 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, 06 months and 27 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 156 days in qualifying service, as such, applicant is not entitled to second service pension.

6. Having heard the submissions of learned counsel both sides and having gone through Rule 125 and 132 of Pension Regulations for the Army, 1961 (Part-1) and the Hon'ble Apex Court judgment in ***Union of India & Ors vs. Surinder Singh Parmar*** and Ors in Civil Appeal No. 9389/2014, decided on 20.01.2015, we find that issue regarding condonation of deficiency in minimum qualifying service regarding service pension has been dealt with by different Benches of the Armed

Forces Tribunal 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 Pension Regulations for the Army, 1961 (Part-1) (Rule 44 of Pension Regulations for the Army, Part-1, 2008), we find that applicant's claim regarding condonation in deficiency in qualifying service for the grant of service pension deserves to be allowed.

7. Accordingly, O.A. is **allowed**. The shortfall of 156 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.

8. The respondents are directed to grant second service pension to the applicant from the next date of discharge from DSC service. The respondents 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.

9. No order as to costs.

10. Miscellaneous application(s), pending if any, shall stand disposed off.

**(Maj Gen Sanjay Singh)**

**Member (A)**

Dated :22.11.2023

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**(Justice Anil Kumar)**

**Member (J)**

RESERVEDCourt No 2

Form No. 4

**{See rule 11(1)}**  
**ORDER SHEET**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

O.A. No. 257 of 2023

Naik Kedar Nath Singh

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India &amp; Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="391 1628 529 1655"><u>22.11.2023</u></p> <p data-bbox="391 1663 1003 1696"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="391 1704 1003 1736"><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p data-bbox="488 1803 764 1830">Judgment pronounced.</p> <p data-bbox="488 1857 873 1884">O. A. No. <b>257</b> of <b>2023</b> is allowed.</p> <p data-bbox="488 1911 1284 1938">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="407 2053 764 2118">(Maj Gen Sanjay Singh) Member (A)</p> <p data-bbox="391 2120 451 2147"><i>rspal</i></p> <p data-bbox="1089 2053 1390 2118">(Justice Anil Kumar) Member (J)</p>