

Court No 2
(Ser No 11)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 1028 of 2022

Thursday, this the 06th day of April, 2023

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

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

No. 1449395H Ex Naik Ramfer Singh, S/o late Baliraj Singh, R/o Vill-Sarai Khanday, Post-Dudhwan, District-Raebareilly-229215 (UP).

..... Applicant

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

Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the 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. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad (UP).

..... Respondents

Ld. Counsel for the Respondents : **Shri Arun Kumar Sahu**,
Central Govt Counsel

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- “(a) The Hon’ble Tribunal may be pleased to direct the respondent No 3 to condone the shortfall period of 01 month and 20 days in service to grant service.
- (b) 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.

2. Briefly stated facts are that applicant was initially enrolled in Indian Army on 25.02.1984 and was discharged from service w.e.f. 28.02.2006 (AN) after rendering more than 22 years of qualify service for which he is in receipt of service pension vide PPO No. S/012451/2001 (Army). Thereafter, he was re-employed in Defence Security Corps (DSC) on 21.09.2006 and after completing 14 years, 10 months and 10 days qualifying service he was discharged on attaining the age of superannuation w.e.f. 31.07.2021 (AN) under the provisions of Army Rule 13 (3) III (i). As per rule, 15 years of minimum service is required for second service pension, but as there was deficiency of 01 month and 20 days in qualifying service, applicant was not granted second service pension of DSC. 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 DSC.

3. Learned counsel for the applicant submitted 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 (PBOR) upto 12 months in qualifying service is allowed. However, there being a shortfall of 01 month & 20 days in the case of applicant, shortfall was not condoned by the respondents in view of Govt of India, Ministry of Defence letter dated 14.08.2001. In support of his contention learned counsel for the applicant has relied upon this Tribunal's order dated 17.05.2022 passed in O.A. No 853 of 2021, **Roop Chand vs Union of India & Ors** and order dated 20.01.2015 passed by the Hon'ble Apex Court in Civil Appeal No 9389 of 2014, **Union of India & Ors vs Surender Singh Parmar**.

4. Learned counsel for the applicant further submitted 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 being equally applicable in case of applicant also, deficiency of 01 month and 20 days in minimum qualifying service under the provisions of Para 125 of Pension Regulations for the Army, 1961 (Part-1) 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 w.e.f. 31.07.2021 (AN) under the provisions of Army Rule 13 (3) item III (i) after rendering 14 years, 10 months and 10 days qualifying service for which he was paid service gratuity and retirement gratuity. Applicant is deficient of 01 month and 20 days service 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 has rendered only 14 years, 01 month and 10 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 23.04.2012 and 20.06.2017, 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 01 month and 20 days in qualifying service, as such, applicant is not entitled to second service pension.

6. Having heard the submissions of learned counsel of both sides and having gone through Rule 125 and Regulation 132 of Pension Regulations for the Army, 1961 (Part-1) as well as Govt. of India, Ministry of Defence letter dated 14.08.200 and the Hon'ble Apex Court judgment in **Surinder Singh Parmar** (supra), we find that issue regarding condonation of deficiency in minimum qualifying service regarding second 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 up to 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 Part-1, 2008), we find that applicant's claim regarding condonation of deficiency in qualifying service for the grant of second service pension of DSC deserves to be allowed.

7. Accordingly, O.A. is **allowed**. The shortfall of 01 month and 20 days in minimum qualifying service of the applicant in getting second service pension of DSC 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 date of discharge. The respondents are further directed to pay arrears of second service pension from the date of notionally completion of 15 years of service. 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 @ 8% per annum till actual payment.

9. No order as to costs.

10. Pending Misc. Application(s), if any, shall stand disposed of.

(Maj Gen Sanjay Singh)
Member (A)

Dated: 06.04.2023

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(Justice Anil Kumar)
Member (J)