

E-Court

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW
(CIRCUIT BENCH AT NAINITAL)

Original Application No. 1035 of 2022

Thursday, this the 08th day of December, 2022

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

Smt. Basanti Devi Wife of 13917603-H Late Hav. Diwan Singh, R/o Aithan, P.O. Bharari, Aithar, Bageshwar, Bharari, District – Bageshwar, Uttarakhand, PIN-263679.

..... **Applicant**

By Legal Practitioner – **Shri Vikram Singh Dhapola,**
Advocate

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence (Army), South Block, New Delhi-110011.
3. Chief Records Officer, Defence Security Corps Records, PIN-901277, C/o 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj (U.P.), PIN-211014.

..... **Respondents**

By Legal Practitioner – **Shri Rajesh Sharma,** Advocate
Central Government Counsel

ORDER

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

1. Heard Shri Vikram Singh Dhapola, Ld. Counsel for the applicant and Shri Rajesh Sharma, Ld. Counsel for the respondents.

2. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for issuing directions to the respondents to condone the short fall service and grant second service pension to the applicant’s husband from the date of discharge from DSC service i.e. 31.12.2006.

3. Briefly stated facts are that applicant’s husband was enrolled in the Indian Army and was discharged after completion of pensionable service. He was re-enrolled in Defence Security Corps (DSC) on 10.06.1992, and after completing 14 years, 06 months and 21 days of service discharged from service on 31.12.2006 at the age of superannuation of 57 years 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 about 05 months and 10 days in the case of applicant’s husband. The applicant’s husband

has not been granted second service pension. The applicant's husband died on 22.06.2011. It is in this perspective that the applicant has preferred the present Original Application.

4. It is submitted by learned counsel for the applicant that as per Regulation 125 of Pension Regulations for the Army, 1961 (Part I) 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 about 05 months and 10 days in case of applicant's husband 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 Regulation 125 of Pension Regulations for the Army, 1961 (Part I) 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 Regulation 226 of Pension Regulations for the Army, 1961 (Part I), 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 05 months and 10 days in minimum qualifying service is liable to be condoned and applicant's husband 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 about 05 months and 10 days in qualifying service, as such, applicant's husband is not entitled to second service pension.

7. Having heard the submissions of learned counsel both sides and having gone through Regulation 125 of Pension Regulations for the Army, 1961 (Part I) 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 ***Union of India Vs. Surender Singh Parmar*** in Civil Appeal No. 9389 of 2014, decided on 20.01.2015, and it has been held therein that deficiency in qualifying service upto one year is condonable. Taking note of the above and also that there is deficiency of less than one year in qualifying service of the applicant's husband and the said deficiency is condonable under Regulation 125 of Pension Regulations for the Army, 1961 (Part I), we find that applicant's husband's claim regarding condonation of deficiency in qualifying service for the grant of second service pension has wrongly not been granted to the applicant's husband.

8. Accordingly, subject to verification of records, Original Application No. 1035 of 2022 is **allowed**. The shortfall of 05 months and 10 days in minimum qualifying service of the applicant's husband in getting second service pension is condoned. Applicant's husband is held entitled to get second service pension in DSC as well in addition to pension which he was already getting from the Army.

9. The respondents are directed to grant second service pension to the applicant's husband from notionally completion of 15 years of DSC service. However, in view of Judgment of Hon'ble Apex Court in the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, the respondents are directed to pay arrears of family pension of second service pension w.e.f. three years preceding the date of filing of Original Application. The date of filing of Original Application is 06.12.2022. 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.

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 08 December, 2022
AKD/-