

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 254 of 2018**

Wednesday, this the 16th day of February, 2022

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

Bidhi Narayan (No. 7062463) Rank Hav
 S/o Late Ram Bharosey
 R/o Village – Ghasipur, Lohramau, District – Sultanpur (UP)
 Applicant

Ld. Counsel for the Applicant: **Shri Ashok Bhardwaj**, Advocate

Versus

1. Union of India, through Ministry of Defence, North Block, New Delhi.
 2. The Chief of Army Staff, Army Headquarters, South Block, DHQ PO, New Delhi.
 3. The Commanding Officer, Secunderabad, Telangana.
- Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
 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:-

- “(i) To issue a direction in nature of mandamus commanding opposite party no. 2 to take appropriate action representations dated 26.09.2016 and 19.12.2016 moved by applicant and granted pension dated 21.06.1977.
- (ii) Any other relief this Hon'ble Tribunal deems just and proper may grant in the interest of justice.”

2. Briefly stated facts are that applicant was enrolled in Indian Army on 13.05.1963. The applicant when he was in Secunderabad station, moved an application for voluntary retirement and before it could proceed on action the applicant had moved another application revoking his earlier application but ignoring the subsequent application the applicant was forcefully and arbitrarily without following the sanction by the competent authority retired on 21.06.1977. The applicant had served for 14 years, 1 month & 08 days in Indian Army. Service pension to the applicant was denied by the respondents stating that applicant is short of minimum stipulated qualifying service of 15 years, hence under the provisions of Regulation 125 of Pension Regulations for the Army, 1961 (Part-1), he is not eligible for condonation of deficiency of service and therefore, he is not entitled for service pension as per Regulation 132 of Pension Regulations for the Army, 1961 (Part-1) . The applicant has preferred the present O.A. for condoning the short fall in service for grant of service pension for his services rendered in the Army.

3. Learned counsel for the applicant submitted that applicant was initially appointed on 13.05.1963 in Indian Army and tendered his services till 21.06.1977. The applicant when he was in Secunderabad station, moved an application for voluntary retirement and before it could proceed on action the applicant had moved another application revoking his earlier application but ignoring the subsequent application the applicant was forcefully and arbitrarily without following the sanction by the competent authority retired on 21.06.1977. The applicant had served for 14 years, 1 month & 08

days in Indian Army. The applicant moved a representation dated 26.09.2016 and reminder dated 19.12.2016 but the same are pending before authorities since long and applicant is facing extreme financial hardship.

4. Learned counsel for the applicant further submitted that Rule 16 B (2) has not been followed by the respondents and Article 14 of constitution of India has been violated in disposing of compassionate application of the applicant. He relied upon the judgment of AFT (RB) Kolkata in O.A. No. 20 of 2017, ***Kaushik Sengupta vs. Union of India & Ors***, decided on 04.07.2018 and pleaded that his case is also covered with the judgment and prayed for condoning the shortfall of 10 months & 22 days in pensionable service. The relevant Paras 25 to 30 of the judgment read as under :-

“25. There should have been no doubt in the minds of the Respondents that the para 82 (a) for the pension Regulations 1964 of the Indian navy has been struck down by the Hon’ble Supreme Court of India being violative of the Article 14 of the Constitution of India. They are also well aware that the para 114 (a) of the Pension Regulations for the Indian Air Force and para 125 (a) of the Indian Army Pension regulations for the both dealing with the same provisions i.e., Non-Condonation of deficiency of service up to the one year in respect of service personnel proceeding of premature retirement/discharge have also been struck down as violative by the various benches of the AFT.

*26. The Respondents’ contention about the AFT, Kochi Bench Order in OA 37/2015 does not hold in the light of the Judgments in **Surinder Singh Parmar vs. UOI** which was delivered by the Hon’ble Supreme Court of India (supra) on 21.01.2015 and judgment of Hon’ble High Court of Mumbai was taken note of and thus the AFT, Kochi Bench judgment in OA 37/2015 is in per incuriam.*

27. In the light of the above aspects, we are of the opinion that the short fall of 8 months and 23 days of service for granting the service pension and other benefits to the applicant deserves to be condoned and is hereby condoned.

29. Accordingly, this application (O.A.20/2017) is allowed.

30. The respondents’ are directed to grant the applicant service pension along with all other benefits applicable to an ex-servicemen.

All benefits will be paid to the applicant within a period of 4 months from the date of receipt of this order, failing which 8% interest per annum will be calculated and paid to the applicant.”

5. Per contra, learned counsel for the respondents has vehemently opposed and submitted that applicant has rendered only 14 years, 01 month and 08 days of qualifying service. Since the applicant had not rendered 15 years of qualifying service he was rightly not granted service pension as he is not entitled for the same in terms of Para 132 of Pension Regulations for the Army 1961 (Part-1) wherein 15 years of qualifying service is required for grant of service pension. He further submitted that as per Para 125 of Pension Regulations for the Army, 1961 (Part-1) condonation of deficiency of service for eligibility of service/reservist pension is applicable except in case of an applicant who is discharged from service at his own request on extreme compassionate grounds. The applicant had submitted a representation dated 26.09.2016 after a lapse of more than 39 years which was suitably replied vide EME Records letter dated 10.12.2016.

6. Learned counsel for the respondents further submitted that applicant has filed instant Original Application for grant of service pension which is badly barred by law of limitation as per Section 22 of AFT Act, 2007. He also submitted that in view of the Hon'ble Apex Court judgment in **C. Jacob vs. Director of Geology and Mining and another** reported in (2008) 10 SCC 115, the Allahabad High Court judgment dated 04.08.2004 in Civil Misc. Writ Petition No. 8524 of 2000, **Inderapal Singh vs. UOI and others**, AFT (RB) Kochi order dated 18.10.2016 in O.A. No. 154 of 2015, **Mathia MD vs. UOI and others** and AFT (RB) Lucknow order in M.A. No. 1665/2016 Inre OA

No. Nil of 2016, **Ex Sep Goverdhan Vishwakarma vs. UOI and Others**, decided on 08.03.2017, the present Original Application is liable to be dismissed on the grounds of delay and latches besides maintainability on account of ineligibility as per policy.

7. 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), AFT (RB) Kolkata judgment in **Kaushik Sengupta** (supra) 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 not only by different Benches of the Armed Forces Tribunal but also by the Hon'ble Apex Court in the case of **Shiv Dass vs Union of India and Others** in Civil Appeal No 274 of 2007, decided on 18.01.2007, 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 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.

8. Accordingly, O.A. is allowed. The shortfall of 10 months & 22 days in minimum qualifying service of 15 years of the applicant in

getting service pension is condoned and applicant is held entitled to get service pension from the Indian Army.

9. The respondents are directed to grant service pension to the applicant from the next date of discharge from service. However, due to law of limitations settled by the Hon'ble Supreme Court in the case of ***Shiv Dass v. Union of India and others*** (2007 (3) SLR 445), the arrear of service pension will be restricted to three years preceding the date of filing of the instant O.A. The date of filing of this O.A is 26.04.2017. 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 invite interest @ 8% per annum till actual payment.

10. No order as to costs.

11. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: February, 2022
SB