

Court No.1 (E Court)
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 89 of 2021

Thursday, this the 29th day of July, 2021

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

Ex. Nk. Hari Prasad Gurung (No. 05448288), S/o Harka Bhadur Gurung, Permanent R/o Village – Khachi, War No. 1, Post Office – Bensishabar, Tehsil – Gandaki, District Lamjung, Nepal, Pin Code – 33600. Presently residing at 586 Vrindavan Colony, Lucknow.

..... **Applicant**

By Legal Practitioner – **Ms. Hemlata**, Advocate and
Shri Shamshad Alam, Advocate

Versus

1. The Secretary, Government of India (MoD), South Block, DHQ P.O. New Delhi-110001.
2. The Chief of Army Staff, Integrated HQ of MoD (Army), South Block, New Delhi-110001.
3. Officer Commanding, DSC Records, Kannur.
4. Principal Controller of Defence Accounts PCDA (P), Draupadi Ghat, Allahabad-211014.

..... **Respondents**

By Legal Practitioner – **Shri Yogesh Kesarwani**, Advocate
Central Government Counsel

ORDER

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

1. Heard Ms. Hemlata and Shri Shamshad Alam, learned counsel for the applicant and Shri Yogesh Kesarwani, learned 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 from the date of discharge from DSC i.e. 31.07.2019.

3. Briefly stated facts are that applicant was enrolled in 5 Gorkha Rifles of Indian Army on 15.02.1980 and after completing 22 years, 10 months and 15 days of service he was discharged from service on 31.12.2002. He was re-employed in Defence Security Corps (DSC) on 31.12.2004, and after completing 14 years and 213 days of service discharged from service on 31.07.2019 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 152 days in the case of applicant. The applicant has not been granted second service pension. 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 Pension Regulations for the Army, 2008, Part I, Para 18, 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 152 days in case of applicant 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 Rule 125 of Pension Regulations Part -I, Rules 2008 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 Para 173 of Pension Regulation for the Army, 2008 (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 152 days in minimum qualifying service is liable to be condoned and applicant 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 152 days in qualifying service, as such, applicant is not entitled to second service pension.

7. Having heard the submissions of learned counsel both sides and having gone through Rule 125 of Pension Regulations for the Army, 2008 (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 ***Shiv Das 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 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 and the said deficiency is condonable under Rule 125 of the Pension

Regulations for the Army, 2008 (Part I), we find that applicant's claim regarding condonation of deficiency in qualifying service for the grant of second service pension has wrongly not been granted to the applicant.

8. Accordingly, Original Application No. 89 of 2021 is **allowed**. The shortfall of 152 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.

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

10. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)

Member (A)

Dated: 29 July, 2021

AKD/-

(Justice Umesh Chandra Srivastava)

Member (J)