

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No 1026 of 2023**Friday, this the 17th day of May, 2024**Hon'ble Mr. Justice Anil Kumar, Member (J)****Hon'ble Maj Gen Sanjay Singh, Member (A)**

Service No. 13969817-N Ex Naik Lal Mani Yadav
 S/o Late Ajai Kumar Yadav
 R/o Village – Faridunpur, Post Office – Faridunpur,
 District – Azamgarh (UP) - 223227

..... Applicant

Ld. Counsel for the Applicant: **Shri V.P. Pandey** and
Shri RK Singh, Advocates

Versus

1. Union of India, through Secretary, Ministry of Defence, 101, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of Ministry of Defence, South Block, New Delhi – 110001.
3. Officer-in-Charge Records, Defence Security Corps, Cannore.
4. Principal Controller Defence Accounts (Pension), Draupadi Ghat, Prayagraj (UP)- 211014.

..... Respondents

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh**,
 Central Govt Standing Counsel

ORDER

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) To issue/pass an order or direction to the respondents to grant of service pension rendered in Defence Security Corps from the date of discharge (30.06.2023) from service.

- (b) Any other relief as considered proper by this Hon'ble Tribunal be awarded in favour of the applicant.
- (c) Cost of the O.A. be awarded to the applicant.”

2. Briefly stated facts are that applicant was initially enrolled in Indian Army on 01.09.1986 and was discharged from service w.e.f. 31.08.2008 (AN) after rendering 22 years of qualifying service for which he is in receipt of service pension vide PPO No. S/034388/2008 (Army). Thereafter, he was re-employed in Defence Security Corps (DSC) on 19.09.2008 and after rendering 14 years, 09 months and 12 days qualifying service, applicant was discharged from service on 30.06.2023 (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 207 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 Defence Security Corps.

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. However, there being a shortfall of 02 months and 18 days in the case of applicant, shortfall was not condoned in view of Govt of India, Ministry of Defence letter dated 14.08.2001. Learned counsel for the applicant also relied upon

Judgment of the Hon'ble Apex Court in ***Union of India and Others vs. Surender Singh Parmar*** in Civil Appeal No. 9389 of 2014, decided on 20.01.2015 and Armed Forces Tribunal (PB) New Delhi in the case of O.A. No. 87 of 2015, ***Isher Dass vs. Union of India & Ors***, decided on 18.03.2016 and this Tribunal judgment in OA No. 198 of 2016, ***Ex Sep (DSC) Hardayal Singh vs. Union of India & Ors***, decided on 18.12.2017.

4. Learned counsel for the applicant further submitted that Para 44 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 in minimum qualifying service of 15 years 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. 30.06.2023(AN) under the provisions of Army Rule 13 (3) item III (i) after rendering 14 years, 09 months and 12 days qualifying service for which he was paid service gratuity and retirement gratuity. Applicant is deficient of 02 months and 18 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, 09 months and 12 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 02 months and 18 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) read with Rule 44 and 47 of Pension Regulations for the Army, 2008 (Part-1), 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 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 80 days (July-31, August-31 and September-18, total 80 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 and issue PPO accordingly. The respondents are directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. Default will invite interest @ 8% per annum till actual payment.

9. No order as to costs.

10. Misc. Application(s), pending if any, shall stand disposed off.

11. Learned counsel for the respondents orally submitted to grant leave to appeal against the above order, which we have considered and no point of law of general public importance being involved in this case, the plea is rejected.

(Maj Gen Sanjay Singh)
Member (A)

Dated : 17th May, 2024
SB

(Justice Anil Kumar)
Member (J)