

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No 108 of 2022

Wednesday, this the 6th day of September, 2023

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

Hon'ble Lt Gen Anil Puri, Member (A)

Krishna Bhan Singh (No. 14609259L Ex Craftsman/Welder)
S/o V.B. Singh
R/o Village – Narouli, Post Office – Beejapur, Tehsil – Haidergarh,
District – Barabanki (UP)

..... Applicant

Ld. Counsel for the Applicant: **Shri Yashpal Singh**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Additional Director General Personnel Services, Adjutant General's Branch/PS-4, Integrated Headquarters of Ministry of Defence (Army), Plot No. 108 (West), Church Road, Brassey Avenue, New Delhi – 110011.
3. Officer-in-Charge, EME Records, Secunderabad-21.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj.

..... Respondents

Ld. Counsel for the Respondents : **Shri Shyam Singh**,
Central Govt 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) Issue/pass an order directing the respondents to consider case of the applicant for grant of pension and other consequential benefits after condoning the shortfall in qualifying service, and provide the same with effect from the date of discharge, i.e. 20.07.2002, along with arrears and interest.
- (b) Issue/pass any other order or direction as this Hon’ble Tribunal may deem fit in the circumstances of the case.
- (c) Allow this Original Application with cost.

2. Briefly stated facts are that applicant was enrolled in the Indian Army on 19.01.1988 and was discharged from service on 02.07.2002 having rendered 14 years and 164 days of service as service including 122 days of Non Qualifying Service (NQS) being ‘inefficient undesirable soldier and incapable of reforming himself – service no longer required’ under Rules 13 (3) III (v) of Army Rules, 1954. 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 132 of Pension Regulations for the Army, 1961 (Part-1), applicant was denied service pension. Since the applicant was discharged from service being an undesirable soldier, he was also denied condonation of deficiency of service in 15 years pensionable service by the respondents in terms of IHQ of MoD (Army) letter dated 28.12.1988. The applicant preferred earlier Original Application No. 9 of 2012 before this Tribunal for his reinstatement into service which was dismissed on the grounds of delay vide order dated 10.01.2013. After lapse of nine

years, the applicant has again preferred present O.A. for condoning the short fall in 15 years pensionable service and to grant service pension for his services rendered in the Army.

3. Learned counsel for the applicant submitted that applicant was enrolled in the Army on 19.01.1988 and was discharged from service on 20.07.2002 having rendered about 14 years and 6 months of service as a non pensioner. The applicant has been discharged from service on the basis of minor punishments awarded to the applicant just before few months in completion of 15 years pensionable service. As per para 5 of IHQ of MoD (Army) letter dated 28.12.1988, *'discharge from service consequent to red ink entries is not a mandatory or legal requirement. In such cases, commanding officer must consider the nature of offences for which each red ink entry has been awarded and not to be harsh with the individuals especially when they are about to complete the pensionable service. Due consideration should be given to long service, hard stations and difficult living conditions that the individual has been exposed to during service and the discharge should be ordered only when it is absolutely necessary in the interest of service. Such discharge should be approved by the next higher commander. The authority concerned will also ensure that the allegations have been substantiated and that the extreme step of termination of the individual's service is warranted on the merits of the case'*.

4. Learned counsel for the applicant placed reliance on the judgments of the Hon'ble Supreme Court in **Union of India & Anr vs.**

Surender Singh Parmar, Civil appeal No. 9389 of 2014, decided on 20.01.2015 and **Ex Sep Chhatar Pal vs. Union of India**, Civil Appeal No. (Diary No. 17785/2015) of 2019, decided on 22.08.2019, **State of Kerala and Others vs. M Padmanabhan Nair**, AIR 1985 SC 356, Madras High Court judgment in **T. Kethandapani vs. Commodore, Senior Staff Officer Bureau of Sailore Cheeta Camp Mankhurd, Mumbai**, WP No. 9701/2012, decided on 04.03.2015 and AFT (PB) New Delhi judgment in OA Nos. 1238 of 2016 & OA 272 of 2018, **Smt. Shama Kaur vs. Union of India and Others** and **Ex Nk Vijay Kumar vs. Union of India and Others**, decided on 01.10.2019 and pleaded for condonation of shortfall in 15 years pensionable service.

5. Learned counsel for the applicant further submitted that the applicant has served 14 years and six months service with full devotion and sincerity but he was thrown out of service by way of illegal discharge without considering the future of his dependent family members which was very harsh and against the natural justice and violative of the provisions of Articles 14, 16 & 21 of the Constitution of India. The applicant earlier preferred Original Application No. 9 of 2012 before this Tribunal for his reinstatement into service which was dismissed on the grounds of delay vide order dated 10.01.2013. Now, the applicant has filed the present Original Application for condonation of shortfall of approx 6 months and to grant service pension treating his 15 years pensionable service. He pleaded to grant service pension to the applicant after condoning the

shortfall of approx six months in view of aforesaid judgments and IHQ of MoD (Army) letter dated 14.08.2001.

6. Per contra, learned counsel for the respondents has vehemently opposed the submission of learned counsel for the applicant and submitted that applicant has rendered only 14 years and 164 days of qualifying service out of which the applicant has 122 days of Non Qualifying Service (NQS), hence the total service comes to 14 years and 42 days. The applicant has been discharged from service being inefficient undesirable soldier and incapable of reforming himself – service no longer required. The applicant was awarded 7 red ink entries punishments for the offences committed during his entire service and resulted as 'habitual offender'. Since the applicant had not rendered 15 years of qualifying service, he was rightly not granted service pension 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) (Para 44 of Pension Regulations for the Army, 2008 (Part-1), condonation of deficiency of service for eligibility of service pension upto six months can be condoned by the competent authority. He also submitted that as per IHQ of MoD (Army) letter dated 14.08.2001, deficiency in service for eligibility to service pension upto one year can be condoned by IHQ of MoD (Army), however, the condonation of shortfall in service will not be considered as a matter of routine and will only be granted in most deserving cases where the individual has

completed 15 years of service or more but does not have the minimum qualifying service for earning pension due to spell of non qualifying service. Since the applicant was discharged from service on disciplinary grounds, hence, his case cannot be considered for condonation of shortfall in qualifying service to earn service pension.

7. Learned counsel for the respondents further submitted that applicant earlier preferred Original Application No. 9 of 2012 before this Tribunal for his reinstatement into service which was dismissed on the grounds of delay vide order dated 10.01.2013. Now, the applicant has filed the present Original Application for condonation of shortfall of more than 6 months and to grant service pension treating his 15 years pensionable service. Since the applicant is not fulfilling the conditions of Para 132 of Pension Regulations for the Army 1961 (Part-1) and condonation of shortfall cannot be extended to the applicant being a habitual offender having been awarded 7 red ink entry punishments, the Original Application lacks substance and is liable to be dismissed being devoid of merit.

8. Heard learned counsel for the parties and perused the material placed on record.

9. As per Govt. of India, Ministry of Defence letter dated 14.08.2001, the competent authority under clause 1 (a) (v) has been empowered to condone shortfall in qualifying service for grant of pension beyond six months and upto 12 months, which is reproduced as below :-

“(a)(v) Condonation of shortfall in qualifying service for grant of pension in respect of PBOR beyond six months and upto 12 months.”

10. Having gone through Rule 125 and 132 of Pension Regulations for the Army, 1961 (Part-1) and the Hon’ble Apex Court judgment in ***Surender Singh Parmar*** (supra), 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.

11. In the instant case, applicant has served for 14 years and 164 days of qualifying service out of which 122 days is Non Qualifying Service, hence the total service comes to 14 years and 42 days. In view of law laid down by the Hon’ble Apex Court in ***Surender Singh Parmar*** (supra), shortfall of 323 days including the period of Non Qualifying Service is condonable to enable the applicant to get service pension having been completed 15 years service.

12. Accordingly, Original Application is **allowed**. The shortfall of 323 days (including 122 days of NQS) 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.

13. 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 14.02.2022. 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 invite interest @ 8% per annum till actual payment.

14. No order as to costs.

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

(Lt Gen Anil Puri)
Member (A)

Dated: September, 2023
SB

(Justice Anil Kumar)
Member (J)