

(2020) 02 AFT CK 0059

In the Armed Forces Tribunal

Case No : Original Application No. 1465 Of 2016, Miscellaneous Application No. 463 Of 2020

Ashok Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Army Rules, 1954 — Rule 13(3), 125, 266

Pension Regulations For The Army, 1961 — Regulation 44, 125, 173

Citation : (2020) 02 AFT CK 0059

Hon'ble Judges : Sunita Gupta, J;B.B.P. Sinha, Member (A)

Bench : Division Bench

Advocate : Naveen Kumar, A.K. Trivedi, Sonali Tiwari

Final Decision : Allowed

Judgement

M.A. No. 463 of 2020:

1. Vide this application, the applicant seeks revival of the OA, which was stayed sine die due to pendency of the issue before the Larger Bench. it is

stated that the matter has been decided by the Larger Bench vide order dated 01.10.2019 and as such, OA may be revived and the same may be

listed for hearing.

Respondents have no objection to this. As such, application is allowed.

M.A. No. 463 of 2020 stands disposed of accordingly.

O.A. No. 1465 of 2016:

Counsel for the applicant submits that the matter is squarely covered by the judgment dated 01.10.2019 passed by the Larger Bench in Smt. Shama

Kaur Vs. Union of India & Ors. [O.A. No. 1238 of 2016 and connected matters].

whicⁱⁱ is not disputed by the respondents.

As such, vide separate order, OA stands disposed of.

By means of the present O.A., the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 praying for the

following reliefs:

(a) Direct the respondents to accord the sanction for condonation of shortfall in qualifying service of 02 months and 18 days in terms of Pension

Regulations for the Army and in terms of GoI, Min of Def Order dated 14.08.2001 to make eligible the applicant for grant of service pension and

consequently the applicant may be entitled for grant of service pension and gratuity from the date of his discharge i.e. wef 01/06/2015 along-with

arrears of back period pension.

(b) Pass an order for rounding off of disability element of pension from 30% To 50% in view of the judgment of Honble Supreme Court of India and

the applicant may be paid his arrears.

(c) Any other relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 23.03.1976 and discharged from service on 31.03.2000, after

serving for 24 years and 09 days and he was granted service pension. After discharge from Army, the applicant was re-enrolled in Defence Security

Corps of the Army on 14.08.2000 and was discharged from service on 31.05.2015. The applicant submits that he rendered service in DSC for 14

years, 09 months and 18 days and there is a shortfall of 02 months and 12 days to complete 15 years of service to become eligible for service pension

in DSC (second pension). The applicant also submits that he is already in receipt of disability element of pension @ 30% and in view of the

pronouncement of Honble Supreme Court, he is entitled to rounding off of the disability pension @ 50%. The applicant further submits that he made a

representation on 08.03.2016 to Respondent No. 2, who is competent authority, for the grant of service pension for DSC service by condoning the said

shortfall of pensionable service, but the same was not responded to. However, in the counter affidavit, it is stated that the said representation was

replied to by DSC Records vide letter No. Pen/SP-3/JC-843199/SR dated 30th April, 2016 rejecting the claim of the applicant elaborating his

ineligibility for grant of second service pension to the effect that intention for grant of condonation of deficiency of service for grant of service pension

is that the individual must not be left high and dry and should be made eligible for at least one pension which the applicant is already in receipt of and

that the broadbanding/rounding-off of disability element is admissible to only those personnel who were invalided out from service before completion of

terms of engagement. Therefore, the applicant is not entitled to the same. Therefore, the applicant through this OA prays for grant of second service

pension for the service in DSC.

3. We would first take up relief (b) prayed for by the applicant, i.e. for a direction to the respondents to grant rounding off of disability pension.

4. As far as the rounding off of the disability pension is concerned, in view of the Govt. of India, Ministry of Defence letter No. 1(2) / 97/ D (Pen-C)

dated 31.01.2001 and the judicial pronouncement of the Hon'ble Supreme Court in the case of Union of India Vs. Rain Autar (Civil Appeal No.

418/2012) decided on 10.12.2014, which have been followed in numerous judgments and orders of the Tribunal, it is clear that the applicant is entitled

to the broadbanding/rounding off of the disability pension.

5. Adverting to prayer (a), it may be noticed that the applicant has been denied pension for this spell of service in DSC on the ground that he has not

completed the minimum required qualifying service of 15 years.

6. Learned counsel for the applicant relied on Rule 125 of Pension Regulation of the Army as per which, shortfall in qualifying service for the grant of

pensionary benefits in respect of personnel below officer rank (PBOR) shortfall upto 12 months can be condoned by the competent authority to earn

service pension. He further submitted that the same issue was also decided by the Hon'ble Armed Forces Tribunal, Principal Bench, in its judgment

dated 07.11.2013 in O.A. No. 60 of 2013 in the matter of Bhani Devi vs. Union of India & Ors. as well as in its judgment dated 14.08.2014 of O.A.

No. 80 of 2014.

7. The respondents in their reply statement while not disputing the facts stated by the applicant with regard to his enrolment into the Army, grant of

service pension in the Army and re-enrollment in DSC service, submitted that the provisions of condonation of deficiency in qualifying service is totally

against Para 132 of Pension Regulations for the Army 1961 (Part I), revised Para

47 of Pension Regulations for the Army 2008 (Part 10 and various policy letters issued by the Govt. of India, Ministry of Defence). They further contended that as per Para 132 of Pension Regulations for the Army 1961 (Part I), revised Para 47 of Pension Regulations for the Army 200 (Part I) that the minimum qualifying service for earning a service pension is 15 years and that as per Govt. of India, Ministry of Defence letter No 14(2)/2011/D(Pen/Po1) dated 23.4.2012, the case of the applicant cannot be considered for condonation of deficiency in qualifying service for grant of second service pension. They further submit that Govt. of India has clarified the same vide the ibid letter that no condonation shall be allowed for the grant of second service pension and, therefore, the applicant is not entitled to the condonation of shortfall of qualifying service for the grant of second service pension.

8. Heard the submissions of the counsel for both the parties and also perused the documents placed on record.

9. The fact that the applicant was enrolled in the Indian Army on 23.03.1976 and discharged on 31.03.2000 is not disputed. Further, the fact that the applicant was re-enrolled in DSC on 14.08.2000 and discharged on 31.05.2015 after completing 14 years and 09 months and 18 days (14 years and 291 days) of service in DSC on attaining the age of 57 years, the upper limit of age for service in DSC is also not disputed. The applicant's representation dated 08.03.2016 to the respondents for condonation of shortfall of 02 months and 12 days to complete the minimum period of 15 years of service for earning second service pension was rejected by the respondents.

10. The issue involved in this case is no more res integra as the matter was already settled by this Tribunal, in the case of Bhani Devi (supra), wherein it was held that the provisions of condonation of shortfall in service under Regulation 125 of Pension Regulations for the Army, 1961, (Part I) are equally applicable to armed forces personnel serving in DSC, for qualifying them for grant of second service pension. The judgment was also followed by the orders of AFT, Chandigarh Bench in the case of Uday Singh Vs. Union of India and Ors. (M.A No 2165 of 2015 and O.A No 333 of 2015, dated 31.05.2016). In any case, controversy has been set at rest by the Larger Bench in the case of Smt. Shama Kaur Vs. Union of India & others (O.A. No.1238 of 2016 etc. etc.) decided on 01.10.2019.

11. In view of the above reasons, we are of the considered opinion that applicant was eligible under Rule 125 for condonation of shortfall in service in

pensionable service. So far as the fact is concerned, applicant's shortfall in service was only of 02 months 18 days and could have been condoned. In

view of the clear rules made under Pension Regulations for the Army, 1961 and particularly, Rule 266, which provides that the general rule shall not

be applicable when they are inconsistent with the rules framed under Chapter 4, the Government's communication dated 23.04.2012, just runs contrary

to Rule 266 and therefore, cannot be given effect to.

12. We find that this OA is also on similar grounds and is squarely covered by the orders of Larger Bench and, therefore, the applicant is entitled to

condonation of 02 months and 18 days of shortfall in service to complete 15 years of qualifying service, in accordance with Regulation 44 read in

conjunction with Regulation 173 of Pension Regulations for the Army, (Part I), 2008 for earning second service pension for the service rendered in

DSC.

13. In the result, the shortfall of 02 months and 18 days in service of the applicant in DSC is condoned to complete 15 years of qualifying service in

DSC to earn second service pension. Accordingly, the applicant is entitled to service pension for his service in the DSC with effect from the date of

his discharge from service, i.e., 31.05.2015.

14. OA is accordingly allowed. Respondents are directed to issue corrigendum PPO for :

(i) Service pension for his service in the DSC with effect from 31.05.2015.

(ii) Broad-banding of disability element of pension from 30% to 50%.

(iii) Arrears shall be paid within four months from the date of receipt of this order, failing which, the respondents shall pay interest @ 6% p.a.

15. There is no order as to costs.