
(2020) 02 AFT CK 0020

In the Armed Forces Tribunal

Case No : Original Application No. 1088 Of 2016

Balramji Mishra

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 11-02-2020

Acts Referred:

Army Rules, 1954 — Rule 125, 266

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

Citation : (2020) 02 AFT CK 0020

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Rashmi Singh, Mohan Kumar, Prabodh Kumar

Judgement

1. Learned counsel for the applicant submits that the matter is squarely covered by the decision of the Larger Bench, which fact is not disputed by the learned counsel for the respondents.

By separate orders, OA stands disposed of.

The applicant, Ex Naik Balramji Mishra, has filed this O.A praying to direct the respondents to condone the shortfall of qualifying service in DSC and to grant second service pension and other attendant benefits, with effect from 01.01.2016.

2. The applicant submits that he was enrolled in the Indian Army on 25.02.1979 and discharged from service on 30.11.1998, after serving for 19 years

and he was granted service pension. After discharge from Army, the applicant was re-enrolled in Defence Security Corps of the Army on 16.03.2001

and was discharged from service on 31.12.2015. The applicant submits that he rendered service in DSC for 14 years. 291 days and there is a shortfall

of 74 days to complete 15 years of service to become eligible for service pension

in DSC. The applicant submits that he made a representation on 05.03.2016 to the respondents for the grant of service pension for DSC service by condoning the said shortfall of pensionable service and sent legal notice on 30.03.2016, but the said claim of the applicant was rejected by the respondents vide order No. NER/2975649/LC-3 dt 15.04.2016 stating that the provisions of Para 125 of Pension Regulations 1961 (Part I) are not applicable for grant of second service pension as you have already earned service pension from the Rajput Regiment". Therefore, the applicant through this O.A prays for grant of second service pension for the service in DSC.

3. 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 dt 07.11.2013 in O.A No 60/2013 in the matter of Smt. Bhani Devi Vs. U01 and Ors, as well as in its judgment dt 14.08.2014 of O.A No 80/2014.

4 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 2008 (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/Pol) dt 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.

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

6. The fact that the applicant was enrolled in the Indian Army on 25.02.1979 and discharged on 30.11.1998 is not disputed. Further, the fact that the

applicant was re-enrolled in DSC on 16.03.2001 and discharged on 31.12.2015 after completing 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 05.03.2016 to the respondents

and thereafter legal notice on 30.03.2016 for condonation of shortfall of 74 days to complete the minimum period of 15 years of service for earning

second service pension were rejected by the respondents.

7. 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 Vs. U01 (O.A No*

60 of 2013, dated 07.11.2013) 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 Hon'ble AFT, Chandigarh Bench in the case of *Uday Singh Vs. U01 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 a Larger Bench in the case of *Smt*

Shama Kaur vs. Union of India & others (O.A.No.1238 of 2016).

8. 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 less of 74 days 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".

9. We find that this O.A is also on similar grounds and is squarely covered by the orders of larger Bench and, therefore, the applicant is entitled to

condonation of 74 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.

10. In the result, the shortfall of 74 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., 31.12.2015. Corrigendum PPO shall be issued to that effect and 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.

11. O.A is ordered accordingly. No costs.