

(2020) 03 AFT CK 0001
In the Armed Forces Tribunal
Case No : Original Application No. 89 Of 2017

Bhupal Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 02-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 03 AFT CK 0001

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

Bench : Division Bench

Advocate : V.S. Kadian, Arvind Patel

Final Decision : Allowed

Judgement

O.A No. 2414 of 2019:

1. 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 condone the applicant's shortfall/deficiency of qualifying service in DSC and to grant second service pension;

(b) Direct the respondents to pay the due arrears of second service pension with interest @ 12% per annum from the date of retirement with all the

consequential benefits, and

(c) Grant disability pension @ 30%, rounded off/broad-banded to 500/for disability ""Primary Hypertension"" with effect from date of discharge from service.

2. The applicant was enrolled in the Indian Army on 15.12.1977 and on completion of about 24 years, he was discharged from service on 31.12.2001.

Admittedly, he is getting pension for this first spell of service in the Army. The applicant was re-enrolled in the Defence Security Corps (DSC) on

16.05.2002 and was discharged therefrom on 31.08.2016 after rendering 14 years 108 days of service. This Original Application has been filed for

grant of (A) service pension for the service put in by him in the DSC by condoning the short fall period of 257 days of pensionable service to enable

grant of second pension, and (B) disability pension @ 50%, after broad-banding, for disability 'Primary Hypertension,' which he contracted during his

second service.

3. Brief facts, as is borne out from the pleadings, are that the applicant was enrolled in the Army on 15.12.1997 and after rendering about 22 years of

service, he was discharged from Army service on 31.12.2001. Admittedly, the applicant is in receipt of service pension for the first service rendered in

the Army. After discharge from Army, the applicant was re-enrolled in Defence Service Corps (DSC) on 16.05.2002 and was discharged on

31.08.2016 upon reaching age of superannuation, wherein he had rendered 14 years and 108 days of service. He approached the competent

authorities for condonation of shortfall and grant of service pension for the second service rendered in the DSC by filing a representation-cum-legal

notice, but it was refused on the ground that condonation of shortfall of qualifying service is not applicable for grant of second pension. With regard to

claim for grant OA 89/2017 Ex Nk Bhupal Singh vs. Uol & Ors of disability, element of pension, it was also rejected on the ground that the disability

'primary hypertension' is neither attributable nor aggravated by military service.

4. We have heard the learned counsel for the parties and perused the record.

5. Learned Counsel for the applicant submitted that the applicant is getting pension for his first service rendered in the Army but not for the second

service rendered in DSC due to shortfall of 257 days in the minimum qualifying service. He submitted that the applicant is entitled for pensionary

benefits for 15 years' service rendered in DSC by condoning the shortfall 257 days (less than one year) in service, as per Regulation 125 of the

Pension Regulations for the Army 1961 (Part I).

6. On the other hand, learned counsel for the respondents submitted that since the applicant had not completed the minimum qualifying service of 15

years in DSC, he is not entitled for pension for the second service rendered by

him in the DSC. Learned counsel for the respondents relied on MoD

(Army)/AG's Branch Letter No. 82370/AG/PS-4(a) dated 07.12.1962 which states as under: Regulation 125 of Pension Regulations for the Army

1961 (Part-

I) will not be allowed for enhancement of pension. In other words, this will not apply to individuals who have already earned a pension.

He further submitted that his stand is that this policy was again reiterated by the Government vide their letter dated 23.04.2012, which stipulated 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 pension and on the principle that no dual benefit shall be allowed on same accord, it is clarified that no condonation

shall be allowed for grant of second service pension. "The same position has been reiterated in GoI (MoD) letter dated 20.06.2017.

7. We find that the controversy involved in the present case has been settled in a number of orders passed by this Tribunal and is no longer res

Integra. A similar controversy has been covered in the case of Nand Kishor v. Union of India and others (OA No. 1711 of 2012 decided on

18.07.2012 by the Shimla Bench of this Tribunal). The relevant extract of the said order is as under:

The Government of India, Ministry of Defence, in its letter dated 14.07.2011 (Annexure A-4), in Para 3, has clearly clarified that powers

have been delegated for condonation in the deficiency of service upto one year, do not distinguish between first and second service

pensions. It only states that powers to condone deficiency upto one year have been delegated to Service Headquarters. It is further

mentioned that this ambiguity or lack of any contradictory Government ruling has led the Courts to interpret that powers vested with

Adjutant General are for condonation of shortfall of qualifying service, irrespective of whether it was in first or second service. Then, in

Para 4 it is mentioned that the matter has been considered in depth and it was felt that in view of the aforesaid directions and

interpretations of Hon'ble Courts, the notion that the AG has been empowered to condone shortfall in second service cannot be contested

due to lack of any authority/ruling which contradicts the same. In our view, that

being the position, the petitioner could not be denied

service pension for the second spell of service.

Learned counsel for the respondents submitted that after this letter, some clarifications have been issued by the Government of India,

excluding applicability of power of condonation to the second spell of service. We may simply observe that clarification(s) having the effect

of taking away the right, sought to be conferred vide Annexure A-4, cannot be said to be having any adverse effect on the individuals

concerned, and, therefore, need not come in the way of the individuals like the petitioner.

8. A similar letter was issued yet again in the year 2017 by the first respondent denying condonation of shortfall, which was again held contrary to law

by the Kochi Bench of this Tribunal in *Ex Nk Mohanan. T v. Union of India and others* (O.A No. 131 of 2017 decided on 12.10.2017). Challenging this

order, the respondents took up the matter in appeal before the Honible Supreme Court, which ended in dismissal. And even more important, recently in

Ex Sep Chhattar Pal v. Union of India and others (C.A Diary No. 17785 of 2015), the Hon'ble Supreme Court came to the conclusion that the

appellant, who was short of 15 days of service, was entitled to condonation of shortfall for one year but he could not be granted condonation beyond

one year on the lines of *Union of India and others v. Surender Singh Parmar* (2015) 3 SCC 404, due to his adverse disciplinary record.

9. Further, a larger Bench of this Tribunal (Principal Bench) in *Smt. Shama Kaur v. Union of India and others* (O.A No. 1238 of 2016) in its order

dated 01.10.2019, while answering the question whether there should be condonation of deficiency of service for grant of second pension of DSC

service on the same lines as regular Army personnel in terms of Government of India, Ministry of Defence letter dated 14.08.2001 and Para 44 of the

Army Pension Regulations or be dealt with in terms of GoI MoD letter dated 20.06.2017, it was succinctly held that ""there can be no scope of any

doubt that DSC personnel are fully entitled to condonation of deficiency of service for their second spell of service at par with other Army personnel,

Thus, the shortfall of 257 days of qualifying service is liable to be condoned.

10. Further, with regard to the claim for disability element of pension for the disability ' Primary Hypertension', we find that the question of

attributability/aggravation for this disability is squarely covered by the judgment of the Hon'ble Supreme Court dated 13.02.2015 in the matter of Union

of India & Ors. vs. Rajbir Singh (Civil Appeal No.2904 of 2011). Further, as the degree of disability was assessed by the RSMB held at Base

Hospital, Delhi Cantt in January, 2016 as 30% for life, the applicant is also entitled to 50% of disability element of pension after broad banding/rounding

off in keeping with the Ram Avatar judgment.

11. Accordingly, the O.A is allowed, condoning the shortfall of 257 days in attaining 15 years of minimum qualifying service for grant of second

pension for service in DSC. We thus hold that the applicant is also entitled to service pension for the second spell of service in DSC after such

condonation. The applicant is also entitled to disability element of pension @ 30%, broad-banded/rounding off to 50% with effect from the date of

discharge from the DSC. The respondents are directed to issue PPO and make the payment of arrears to the applicant within a period of four months

from the date of receipt of a copy of this order, failing which the amount shall carry interest @ 6% per annum from the date it fell due.

No order as to costs.

Pronounced in open court on 2nd of March 2020.