

(2020) 03 AFT CK 0090

In the Armed Forces Tribunal

Case No : Original Application No. 1380 Of 2019, Miscellaneous Application No. 2119, 3109 Of 2019

Charan Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 12-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Army Rules, 1954 — Rule 125, 266

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

Citation : (2020) 03 AFT CK 0090

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

Bench : Division Bench

Advocate : V.S. Kadian, Y.P. Singh

Final Decision : Allowed

Judgement

MA 3109/2019

1. Vide this MA, respondents seek condonation of delay of 17 days in filing counter affidavit. As per the averments made in the application, delay in filing counter affidavit is condoned and same is taken on record.

MA stands disposed of.

OA 1380/2019 with MA 2119/2019

Counter affidavit has been filed. Applicant does not wish to file rejoinder.

Counsel for the applicant submits that the case is squarely covered by number of judgements which is not disputed by counsel for the respondents. As such, vide separate order, OA stands disposed of.

M.A. No. 2119 of 2019:

Vide this application, the applicant seeks condonation of delay of 5534 days in filing the OA by relying upon Deokinandan Prasad Vs. State of Bihar -

[AIR 1971 SC 1409] and Union of India & Ors. Vs. Tarsem Singh -[2009 (1) AISLJ 371,] wherein it was held that since the pension is not a bounty

payable on the sweet-will and pleasure of the Government, on the other hand, the right to pension is a valuable right vesting in a government servant,

relief may be granted as it does not affect the rights of the other parties. In view of the aforesaid, delay of 5534 days in filing the OA is condoned.

Accordingly, M.A. No. 2119 of 2019 stands disposed of.

O.A. No. 1380 of 2019:

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

following reliefs:

(a) Direct respondents to condone the deficiency/short fall of 01 month and 20 days of service and to make the applicant eligible for grant of service

pension from Defence Security Corps. And/or

(b) Direct respondents to grant service pension from Defence Security Corps including retiral and consequential benefits with effect from the date of

discharge and to pay the due arrears with interest @ 12% per annum till final payment is made.

(c) Any other relief which the Honble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost against the

respondents.

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 03.03.1965 and discharged from service on 11.03.1986, after

serving for 21 years and 09 days for which he was granted service pension. After discharge from Army, the applicant was re-enrolled in Defence

Security Corps (DSC) of the Army on 21.07,1989 and was discharged from service on 31.05.2004. The applicant submits that he rendered service in

DSC for 14 years, 10 months and 10 days (14 years and 316 days) of service. Hence, there is a shortfall of 01 month and 20 days to complete 15

years of service to become eligible for service pension in DSC (second pension). The applicant further submits that he served Appeal-cum-

Representation dated 21.06.2019 to the respondents for the grant of service pension for DSC service after condoning the said shortfall of pensionable

service, but the same was rejected by the respondents vide impugned order dated 11.07.2019 stating the reasons for not granting the second service pension by condoning the deficiency in qualifying service. Therefore, the applicant through this OA prays for grant of second service pension for the service in DSC.

3. With regard to prayer for grant of second service pension, it may be noticed that the applicant has been denied pension for the spell of service in

DSC on the ground that he has not completed the minimum required qualifying service of 15 years.

4. 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 Armed Forces Tribunal, Principal Bench, New Delhi 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.

5. The respondents in their counter affidavit, 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 provision 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/Pol) 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. It is submitted that legal notice-cum-representation

dated 21.06.2019 has already been suitably replied vide letter No. NER/3357555/LC-3 dated 11.07.2019 enclosing copy of the GoI MoD letter No.

14(02)/2011-D (Pen/Pol) dated 20.06.2017 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. The respondents went on to 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.

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

7. The fact that the applicant was enrolled in the Indian Army on 03.03.1965 and discharged from service on 11.03.1986 is not disputed. Further, the fact that the applicant was re-enrolled in DSC on 21.07.1989 and discharged on 31.05.2004 after completing 14 years and 316 days of service in DSC is also not disputed. The case of the applicant for condonation of shortfall of 01 month and 20 days to complete the minimum period of 15 years of service for earning second service pension has been rejected by the respondents based on the Govt. of India, MoD Policy.

8. 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, this controversy has been set at rest by the Larger Bench in the case of *Smt. Shama Kaur Vs. Union of India & others etc. etc.* (O.A. No. 1238 of 2016 etc. etc.) decided on 01.10.2019.

9. 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 01 month and 20 days and the same could have been condoned. In view of the clear rules made under the 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.

10. We find that this OA is also on similar grounds and is squarely covered by the order passed by the Larger Bench and, therefore, the applicant is

entitled to condonation of 01 month 20 days of shortfall in service to complete 15 years of qualifying service, in accordance with Regulation 44 read in

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

DSC.

11. In the result, the shortfall of 01 month and 20 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., 31.05.2004.

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

(i) Service pension for his service in the DSC with effect from 31.05.2004.

(ii) 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.

13. There is no order as to costs.