

(2020) 12 AFT CK 0005

In the Armed Forces Tribunal

Case No : Original Application No. 1457 Of 2020

Dilip Vithoba Kale

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 09-12-2020

Acts Referred:

Army Act, 1950 — Section 3(vi)
Army Rules, 1954 — Rule 187(1)(r)

Citation : (2020) 12 AFT CK 0005

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

Bench : Division Bench

Advocate : U.S. Maurya, Shyam Narayan

Final Decision : Allowed

Judgement

1. By virtue of this OA. the applicant seeks condonation of 5 months and 22 days or more on notional service so as to take pension from DSC in the

light of judgment passed by larger Bench of this Tribunal in OA 272/2018- Ex Nk Vijay Singh versus Union of India and others decided on 14.10.2020

Heard. Admit.

Issue notice to the respondents in OA.

Notice is accepted by Mr. Shyam Narayan, Advocate on behalf of the respondents.

Counsel for the applicant submits that the case is squarely covered by the judgment passed in Vijay Singh's case (supra). which fact is not disputed by

counsel for the respondents and it is submitted that subject to verification, appropriate orders may be passed. As such, vide separate order, OA stands

disposed off.

By virtue of this OA the applicant is seeking a direction to the respondents to

grant him second service pension for the services rendered in Defence Security Corps (DSC) by condoning the deficiency in qualifying service.

2. It is the conceded position that the applicant had rendered 14 years, 06 months and 09 days of service in DSC and there is a shortfall of 05 months and 22 days against the mandatory 15 years of qualifying service, which made him ineligible for the second service pension for the service rendered with DSC.

3. We have heard the learned counsel for the parties and perused the documents available on record.

4. The question involved in this case is no longer *res integra*, as the same had already been settled by this Tribunal in the case of *Bhani Devi Vs.*

Union of India and others (O.A. No. 60 of 2013 decided on 07.11.2013), *Ex Nk Vijay Singh Vs. Union of India and Ors.* (OA No.272 of 2018 decided

on 14.10.2020) and the Kochi Bench of this Tribunal in *Mohanan T Vs. Union of India and Ors.* (OA No.131 of 2017 decided by Kochi Bench of this

Tribunal on 12.10.2017). In *Bhani Devi* (supra), it was held that the provisions for condonation of shortfall in service under Regulation 125 of the

Pension Regulations for the Army 1961 (Part I) are equally applicable to Armed Forces personnel serving in DSC making them eligible for grant of

second service pension. Against the order in *Ex Nk Mohanan T* (supra), granting condonation of shortfall of DSC service, subsequent to the issue of

Gol (MoD) letter dated 20.06.2017, the respondents had approached the Honble Supreme Court by filing Civil Appeal (Diary) No.27100 of 2018,

which was dismissed vide order dated 27.08.2018 and thus the matter has attained finality. This Tribunal in *Ex Nk Vijay Singh* (supra). While referring

to the Full Bench decision of this Tribunal in *Smt Shama Kaur Vs. Union of India and Ors* (OA No.1238 of 2016 decided on 01.10.2019). which dealt

with the question whether there should be condonation of deficiency of service for grant of second pension of DSC like 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

Government of India (Ministry of Defence) letter dated 20.06.2017. quoted para 44 of that judgment which reads as under:

(a) The aspect has been discussed in full detail in our discussion above on merits. It needs no further emphasis that the DSC is a part of the

Army and is also treated as a "Corps" under Rule 187(1)(r) of the Army Rules, 1954, read with Section 3(vi) of the Army Act, 1950. Further

the same pensionary provisions as applicable to the three defence services are applicable to the DSC and all such personnel taken together

are referred as "Armed Forces Personnel" as becomes clear from the opening paragraphs of Letter No. 1(5)87/D (Pension/Services) dated

30.10.1987, Letter No. 1(6)98-D(Pension/Services) dated 03.02.1998, Letter No. 17(4) 2008(2)/D(Pen/Pol) dated 12.11.2008 and Para

3.1 of Letter No. 17 (02)/2016-D(Pen/Pol) dated 04.09.2017 issued by the Ministry of Defence after the 4 th, 5th, 6th and 7th Central Pay

Commissions respectively.

(b) The matter has already been decided by Constitutional Courts and this Tribunal and implemented by the Respondents, especially in the

decision of the Hon'ble Punjab & Haryana High Court in Union of India v. LNK DSC Mani Ram (LPA No. 755 of 2010 decided on

05.07.2010), the Hon'ble Delhi High Court in Ex Sep Madan Singh v. Union of India (W.P (C) No. 9593 of 2003), this Bench in Bhani Devi

V. Union of India and others (O.A No. 60 of 2013 decided on 07.11.2013) and the Kochi Bench in Mohanan T v. Union of India (O.A No.

131 of 2017 decided on 12.10.2017). The letters purportedly amending the relevant provisions have also been held contrary to law vide the

above. In light of this, coupled with the merits of the matter discussed in the instant judgement, 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. In

fact, as discussed in the main body of this judgement, DSC personnel re enrolling themselves by opting not to count their past military

service have no connection at all with their past service as far as pension is concerned and their service in DSC is fresh service delinked

from their past service.

(c) Further, the Respondents have themselves stated before the Hon'ble Supreme Court in Chattar Pal (supra) that condonation upto one

year is possible, and once Constitutional Courts, including the highest Court of the land, have upheld the proposition, it is beyond the scope

of any bench of this tribunal to hold or comment otherwise. We hence answer

this question in the above terms.

5. Taking into account the aforesaid factual and legal aspects, we are of the considered opinion that the facts of this case is also squarely covered by

the decisions in Bhani Devi and Ex Nk Vijay Singh (supra) and therefore. the shortfall of 05 months and 22 days to complete 15 years of qualifying

service in DSC by the applicant to get second service pension is liable to be condoned.

6. The instant O.A is, therefore, allowed with the following directions:

(i) The shortfall of 05 months and 22 days of qualifying service for second service pension is condoned:

(ii) Subject to verification of records, the respondents are directed to issue a corrigendum PPO to the applicant granting second service pension for the

service rendered by him in DSC. from the date of his discharge: and

(iii) The arrears shall be paid within four months from the date of receipt of a copy of this order. In default, the applicant will be entitled to interest @

6% per annum till payment.

7. No order as to costs.