

(2020) 01 AFT CK 0022

In the Armed Forces Tribunal

Case No : Original Application No. 2414 Of 2019, Miscellaneous Application No. 3296 Of 2019

Karra Balaraj

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 02-01-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Citation : (2020) 01 AFT CK 0022

Hon'ble Judges : Rajendra Menon, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Ved Prakash, Suman Chauhan

Final Decision : Allowed

Judgement

M.A No. 3296 of 2019:

1. Heard learned counsel for the parties on the point of delay.

In view of the the averments made in the M.A and finding the same to be bona fide, we allow the instant M.A and condone the delay of 714 days in

filing the O.A.

O.A No. 2414 of 2019:

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; and

(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.

2. The applicant was enrolled in the Indian Army on 10.08.1978 and on completion of about 22 years, he was discharged from service on 31.08.2000.

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

13.08.2002 and was discharged therefrom on 30.06.2017 after rendering 14 years, 10 months and 17 days of service. This Original Application has

been filed for grant of service pension for the service put in by him in the DSC by condoning the short fall period of 44 days of pensionable service to

enable grant of second pension.

3. Brief facts, as is borne out from the pleadings, are that the applicant was enrolled in the Army on 10.08.1978 and after rendering about 22 years of

service, he was discharged from Army service on 31.08.2000 (Afternoon). 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 13.08.2002 and was

discharged on 30.06.2017 (Afternoon) reaching age of superannuation, wherein he had rendered 14 years, 10 months and 17 days of service. He

approached competent authorities for grant of service pension for the second service rendered in the DSC by filing a representation-cum-legal notice,

the outcome of which is still not known to the applicant.

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 44 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 of one month and 14 days 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 Gal (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 Honible 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 Hon'ble 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 14 years and 79 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.

10. Accordingly, the O.A is allowed, condoning the shortfall of service of 44 days of minimum qualifying service for grant of second 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 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.

11. No order as to costs.