

(2022) 07 AFT CK 0015

In the Armed Forces Tribunal

Case No : OA 1491 Of 2022 With MA 1970 Of 2022

Nk Nitya Nand Sah (Retd) DSC

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 19-07-2022

Acts Referred:

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

Citation : (2022) 07 AFT CK 0015

Hon'ble Judges : Anjana Mishra, Member (J); P.M. Hariz, Member (A)

Bench : Division Bench

Advocate : Ravi Kumar, Samir S. Sinha

Final Decision : Allowed

Judgement

MA 1970/2022

1. Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1) AISLJ 371), the delay in filing the OA is condoned. MA stands disposed of.

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2. In this OA, the applicant is seeking a direction to the respondents to grant him second service pension for the service rendered in Defence Security Corps (DSC) by condoning the deficiency in qualifying service.

3. It is the conceded position that the applicant was enrolled into DSC service on 25th August, 2006 and discharged on 31st January, 2021 and there is a shortfall of 205 days of service against the mandatory 15 years of qualifying service, which made him ineligible for the second service pension for the service rendered with DSC.

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

5. 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 dated 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 GoI (MoD) letter dated 20.06.2017, the respondents had approached the Hon'ble 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 4th, 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.

6. Taking into account the aforesaid factual and legal aspects, we are of the considered view that the facts of this case are also squarely covered by the decisions in *Bhani Devi* and *Ex Nk Vijay Singh* (supra) and, therefore, the shortfall of less than one year (205 days) to complete 15 years of qualifying service in DSC by the applicant to get second service pension is liable to be condoned.

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

(i) The shortfall of less than one year (205 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.

8. No order as to costs.