

(2021) 03 AFT CK 0006

In the Armed Forces Tribunal

Case No : Original Application No. 391 Of 2021, Miscellaneous Application No. 480 Of 2021

Noor Mahmmad Khan

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 05-03-2021

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Army Act, 1950 — Section 3(vi)
Army Rules, 1954 — Rule 187(1)(r)

Citation : (2021) 03 AFT CK 0006

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

Bench : Division Bench

Advocate : U.S. Maurya, Arvind Patel

Final Decision : Allowed

Judgement

M.A. No. 480 of 2021

1. Heard learned counsel for the parties on the point of delay. Delay of 1802 days in filing the OA has been explained by the applicant. Keeping in view the averments made in the MA and finding the same to be bonafide and in the light of the decision in Union of India and others Vs. Tarsem Singh [2008 (8) SCC 648], we allow the instant MA and condone the delay in filing the OA.

2. M.A. stands disposed of accordingly.

O.A. No. 391 of 2021

3. By means of the present OA, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, praying for grant of second service pension for the service rendered by him in Defence Security Corps (DSC), which was denied by the respondents on the ground of not having completed the mandatory qualifying service of 15 years to make him eligible for the said pension.

4. Brief facts of the case are that the applicant was enrolled in the Army on 19.07.1978 and discharged from that service on 31.07.2000 after rendering 22 years and 13 days of qualifying service and granted service pension. Thereafter, he was re - enrolled in the DSC of the Army on 16.07.2002 and was discharged from that service on 30.04.2017 after rendering 14 years and 09 months and 15 days of service in DSC. Hence, there is a shortfall to complete 15 years of service of less than 12 months to become eligible for second service pension in DSC.

5. With regard to prayer for grant of second service pension in DSC, 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.

6. 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.

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

8. Although the learned counsel for the respondents does not dispute the fact about the re-enrollment of the applicant in DSC on 16.07.2002 and discharge from service on 30.04.2017 after completing 14 years 09 months and 15 days of service in DSC. However, he has no objections in issuing appropriate orders, subject to verification of records.

9. The issue involved in this case is no longer res Integra, as the same had already been settled by this Tribunal in the cases of Bhani Devi (supra), Ex Nk Vijay Singh Vs. Union of India and others [O.A. No. 272 of 2018 decided on 14.10.2020] and the Kochi Bench of this Tribunal in Ex Nk Mohanan T. Vs. Union of India and others [O.A. No. 131 of 2017 decided on 12.10.2017/ In Bhani Devi's case (supra), it was held that the provisions for 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, 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 issue of Government of India (Ministry of Defence) 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. In Ex Nk Vijay Singh (supra), while referring to the Full Bench decision of this Tribunal in Smt. Shama Kaur Vs. Union of India & others etc. etc. (O.A. No. 1238 of 2016 etc. etc.) passed on

01.10.2019, which dealt with the question as to whether there should be condonation of deficiency of service for grant of second service 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, this Tribunal quoted Para 44 of judgment dated 01.10.2019 in the case of Shama Kaur (supra), 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)198D(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 Bharti 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."

10. 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 of Bhani Devi (supra) and Ex Nk Vijay Singh (supra) and, therefore, the

shortfall (less than 12 months) to complete 15 years of qualifying service in DSC by the applicant to get second service pension is liable to be condoned.

11. The instant OA is, therefore, allowed with the following directions :

(i) The shortfall of less than 12 months for qualifying service for second service pension for the services rendered by the applicant in DSC is condoned.

(ii) Subject to verification of the 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.

(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.

12. There is no order as to costs.