
(2020) 03 AFT CK 0034

In the Armed Forces Tribunal

Case No : Original Application No. 2040 Of 2018

Radhe Shyam

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 04-03-2020

Acts Referred:

Army Rules, 1954 — Rule 125, 266

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

Citation : (2020) 03 AFT CK 0034

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

Bench : Division Bench

Advocate : V.S.Kadian, Avdhesh Kumar Singh

Judgement

1. Counter affidavit has been filed. Applicant does not wish to file rejoinder. Counsel for the applicant submits that the matter is squarely covered by

the Larger Bench decision in Smt. Shama Kaur vs. Union of India & others (0.A No.1238 of 2016) which is not disputed by counsel for the

respondents. As such, vide separate order, OA stands disposed off.

The applicant. Ex Naik Radhe Shyam. has filed this 0.A praying to direct the respondents to condone the deficiency/shortfall of 10 days of service to

make the applicant eligible for grant of service pension from Defence Security Corps with effect from 01 03 2018,

2, The applicant submits that he was enrolled in the Indian Army on 23.05.1981 and was discharged from service on 30.08,2000 completion of

pensionable service. After discharge from Army service, the applicant was again re-enrolled in Defence Security Corps of the Army on 08.03.2003

and was discharged from service on 28.02.2018. The applicant submits that he rendered service in DSC for 14 years. 11 months and 20 days and

there is a shortfall of 10 days to complete 15 years of service to become eligible for service pension in DSC The applicant submits that he served a

legal notice-cum-representation on 13.03.2018 to the respondents for the grant of service pension for DSC service by condoning the said shortfall of

pensionable service but the respondents have neither considered nor replied even after expiry of more than 08 months. Therefore, the applicant

through this O.A prays for grant of second service pension for the service in DSC.

3. Learned counsel for the applicant relied on Para 125 of the Pension Regulation of the Army 1961 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 Honble Armed Forces Tribunal, Principal Bench, in its

judgment dt 07.11.2013 in O.A No 60/2013 in the matter of Smt. Bhani Devi Vs. UOI and Ors, as well as in its judgment dt 14.08.2014 of O.A No

80/2014.

4. The respondents in their reply statement 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 provisions 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 2008 (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) dt 23.4.2012, the case of the applicant cannot be

considered for condonation of deficiency in qualifying service for grant of second service pension. They further 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.

5. Heard the submissions of the counsel for both the parties and also perused the

documents placed on record.

6. The fact that the applicant was enrolled in the Indian Army on 23.05.1981 and discharged on 31.08.2000 is not disputed. Further, the fact that the

applicant was re-enrolled in DSC on 08.03.2003 and discharged on 28.02.2018 after completing 14 years and 11 months and 20 days of service in

DSC on attaining the age of 57 years, the upper limit of age for service in DSC is also not disputed. The applicant's legal notice-cum-representation

dated 13.03.2018 to the respondents for condonation of shortfall of 10 days to complete the minimum period of 15 years of service for earning second

service pension were rejected by the respondents.

7. 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 Vs. U01 & Ors.*

(0.A No 60 of 2013, dated 07.11.2013) 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 Honble AFT. Chandigarh Bench in the case of *Uday Singh Vs. U01 and Ors.* (M

.A No 2165 of 2015 and 0.A No 333 of 2015, dated 31.05.2016). In any case, controversy has been set at rest by a Larger Bench in the case of *Smt*

Shama Kaur vs. Union of India & others (0.A.No.1238 of 2016).

8. 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 less of 10 days could have been condoned. In view of the

clear rules made under 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".

9. We find that this 0.A is also on similar grounds and is squarely covered by the orders of larger Bench and, therefore the applicant is entitled to

condonation of 10 days of shortfall in service to complete 15 years of qualifying service, in accordance with Regulation 44 read in conjunction with

Regulation 173 of Pension Regulations for the Army, (Part I), 2008 for earning

second service pension for the service rendered in DSC.

10. In the result the shortfall of 10 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, ie., 28.02 2018. Corrigendum PPO shall be issued to that effect and 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.

11. 0 A is ordered accordingly. No costs.