

(2020) 09 AFT CK 0016
In the Armed Forces Tribunal
Case No : Original Application No. 627 Of 2020

Ram Kishan

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 29-09-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Army Act, 1950 — Section 3(vi)
Army Rules, 1954 — Rule 125, 187(1)(r), 266
Pension Regulations For The Army, 1961 — Regulation 44, 173, 125

Citation : (2020) 09 AFT CK 0016

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

Bench : Division Bench

Advocate : Pradeep Singh Nandal, V.S. Kadian, V.S. Tomar

Final Decision : Allowed

Judgement

1. Counter affidavit has already been filed. Proxy counsel for the applicant submits that the case is squarely covered by number of judgements which

is not disputed by the counsel for the respondents. As such, vide separate order OA stands disposed off.

By means of the present OA, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, praying for the

following reliefs:

(a) direct respondents to condone the deficiency/short fall of

10 months and 08 days of service to make the applicant eligible for grant of service pension from Defence Security Corps and/or.

(b) Direct respondents to grant service pension from Defence Security Corps including retiral and consequential benefits with effect from the date of

discharge and to pay the due arrears with interest Et 12% per annum till final payment is made and/or

(c) Any other relief which the Honble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost against the respondents.

2. Brief facts of the case are that the applicant was enrolled in Indian Army on 16.02.1983 and got discharged from service on 28.02.2003 for which

he was granted service pension. Thereafter, the applicant was re-enrolled in Defence Security Corps (DSC) of the Army on 09.06.2003 and was

discharged from that service on 31.07.2019. The applicant submits that he rendered 14 years, 01 month and 22 days of service in DSC in low medial

category. Hence, there is a shortfall of 10 months and 08 days to complete 15 years of service to become eligible for service pension in DSC (second

pension). The applicant further submits that against the rejection of his claim for pension in DSC, he served Appeal-cum-Representation dated

16.08.2019, but no reply has been received from the respondents.

3. With regard to prayer for grant of second service pension, 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.

4. 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.

5. Learned counsel for the respondents, 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 provision 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 200 (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/Po1) dated 23.4.2012, the case of the applicant cannot be considered for condonation of deficiency in qualifying service for grant of second service pension. It is further submitted 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.

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

7. Learned counsel for the respondents, in his counter affidavit does not dispute the fact about the applicant's enrolment in the Indian Army on

16.02.1983 and discharge from service w.e.f. 28.02.2003 and further re-enrollment of the applicant in DSC on 09.06.2003 and discharge on

31.07.2019 after completing 14 years, 01 month and 22 days of service in DSC and it is admitted that the case of the applicant is squarely covered by

catena of judgements and thus the present OA deserves to be allowed.

8. 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 (supra), wherein

it was held that the provisions of condonation of shortfall in service under Regulation 125 of Pension Regulations for the Army, 1961, (Part 1) 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 AFT, Chandigarh Bench in the case of Uday Singh Vs. Union of India and Ors. (M.A. No 2165 of 2015 and O.A. No. 333 of 2015)

dated 31.05.2016. In any case, this controversy has been set at rest by the Larger Bench of AF'Tin the case of Smt. Shama Kaur Vs. Union of India

& others etc. etc. (O.A. No. 1238 of 2016 etc. etc.) decided on 01.10.2019, whereby the Tribunal had ruled as follows :

44. Having discussed and deliberated the matter in its entirety, the case law and also the merits of the issue, we shall now proceed to answer the

reference.

Re: (i) Whether there should be condonation of deficiency of service for grant of second pension of DSC service as like Regular Army personnel in

terms of GoI, MoD letter dated 14.08.2001 and Para 44 of Army Pension Regulations or be dealt in terms of GoI MoD letter dated 20-06-2017?

(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/Po I) dated 04.09.2017 issued by the Ministry of Defence after the 4th, 5th, 6th and 7' 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.755of 2010decided 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.

9. In view of the above reasons, the applicant was eligible under Rule 125 for condonation of shortfall in service for pensionable service. So far as the fact is concerned, applicant's shortfall in service was 10 months and 08 days and the same could have been condoned. In view of the clear rules made under the 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 communications dated 23.04.2012 and 20.06.2017, run contrary to Rule 266 and, therefore, cannot be given effect to.

10. We find that this OA is also on similar grounds and is squarely covered by the order passed by the Larger Bench and, therefore, the applicant is entitled to condonation of 10 months and 08 days of shortfall in service to complete 15 years of qualifying service for getting pension, in accordance with Regulation 44 read in conjunction with Regulation 173 of the Pension Regulations for the Army, (Part I), 2008 for earning second service pension for the service rendered in DSC .

11. In the result, the shortfall of 10 months and 08 days in service rendered by 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, i.e., 31.07.2019.

12. OA is accordingly allowed, issue corrigendum PPO for:

(i) Service pension for his service in the DSC with effect from 31.07.2019.

(ii) Arrears shall be paid within four months from the date of receipt of copy of this order, failing which, the respondents shall pay interest@6% per annum.

13. There is no order as to costs.