

(2020) 08 AFT CK 0024

In the Armed Forces Tribunal

Case No : Original Application No. 1088 Of 2020

Rohtash

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 27-08-2020

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) 08 AFT CK 0024

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

Bench : Division Bench

Advocate : Manoj Kumar Gupta, Jyotsna Kaushik

Final Decision : Allowed

Judgement

1. By virtue of this OA, the applicant seeks condonation of 319 days or more on notional service so as to take pension from DSC in the light of

judgment passed by larger Bench of this Tribunal in OA 1238/2016-Smt. Shama Kaur versus Union of India and others decided on 01.10.2019

Â Heard. Admit.

2. Issue notice to the respondents in OA.

3. Notice is accepted by Ms Jyotsna Kaushik, Advocate on behalf of the respondents

4. Counsel for the applicant submits that the case is squarely covered by the judgment passed in Shama Kaur's case (supra). which fact is not

disputed by counsel for the respondents and it is submitted that subject to verification, appropriate orders may be passed. As such, vide separate order.

OA stands disposed off.

1. Issue Notice to the respondents, which is accepted by Ms. Jyotsna Kaushik, learned counsel for the respondents.

2. 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) Issue directions to the respondents to grant condonation of 319 days or more of notional service to the Applicant so as to earn Service Pension

from the Defence Security Corps in the light of judgments of the Honble Armed Forces Tribunal in Re: Smt. Shama Kaur Versus Union of India and

others and other similar judgments.

(b) Pass such other and further orders/directions to the respondents in attendant genuine circumstances of the case. to meet the ends of justice was

re-enrolled in Defence Security Corps of the Army on 17.03.2006 and was discharged from service on 30.04.2020. The applicant submits that he

rendered service in DSC for 14 years. 47 days and there is a shortfall of 319 days to complete 15 years of service to become eligible for service

pension in DSC. The applicant submits that for the grant of service pension for DSC service by condoning the said shortfall of pensionable service

gave legal notice on 16.05.2020, but the DSC Record unable to give reply Therefore. the applicant through this O.A prays for grant of second service

pension for the service in DSC.

4. 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

5. 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 8. Ors. as well as in its judgment dated 14.08.2014

of O.A. No. 80 of 2014.

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

9. 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 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 AFT, Chandigarh Bench in the case of Udam 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 AFT in 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: (1) 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)1 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.

10. 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, applicants shortfall in service was only of 02 months and 02 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.

11. 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 02 months and 02 days of shortfall in service to complete 15 years of qualifying service, 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

12. In the result, subject to verification, the shortfall of 319 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., 30.04.2020.

13. OA is accordingly allowed. Respondents are directed to issue corrigendum PPO for

(i) Service pension for his service in the DSC with effect from 30.04.2020.

(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.

14. There is no order as to costs.