

(2020) 03 AFT CK 0091
In the Armed Forces Tribunal
Case No : Original Application No. 1013 Of 2019

Satpal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 12-03-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14

Army Rules, 1954 — Rule 125, 266

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

Citation : (2020) 03 AFT CK 0091

Hon'ble Judges : Sunita Gupta, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : V.S. Kadian, N.S. Bisht, Suman Chauhan

Final Decision : Allowed

Judgement

1. Counter affidavit has been filed. Applicant does not wish to file rejoinder.

Counsel for the applicant submits that the case is squarely covered by number of judgements which is not disputed by counsel for the respondents. As

such, vide separate order, OA stands disposed of.

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 04 months and 28 days of service and 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 @ 12% per annum till final

payment is made.

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

2. Brief facts of the case are that the applicant was enrolled in the Indian Army on 19.03.1981 and discharged from service on 30.11.1998, after

serving for 17 years, 08 months and 13 days for which he was granted service pension. After discharge from Army, the applicant was re-enrolled in

Defence Security Corps (DSC) of the Army on 29.02.2004 and was discharged from service on 30.09.2018. The applicant submits that he rendered

service in DSC for 14 years, 07 months and 02 days of service. Hence, there is a shortfall of 04 months and 28 days to complete 15 years of service

to become eligible for service pension in DSC (second pension). The applicant further submits that he sent a Legal Noticecum-Representation dated

03.11.2018 to the respondents for the grant of service pension for DSC service after condoning the said shortfall of pensionable service, but the same

was not replied to. Therefore, the applicant through this OA prays for grant of second service pension for the service in DSC.

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. The respondents in their counter affidavit, 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/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 submitted that legal notice-cum-representation

dated 03.11.2018 has already been suitably replied vide letter dated 17.12.2018 rejecting the claim of the applicant elaborating his ineligibility for grant

of second service pension to the effect that intention for grant of condonation of deficiency of service for grant of service pension is that the individual

must not be left high and dry and should be made eligible for at least one pension which the applicant is already in receipt of. The respondents went on

to 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.

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

7. The fact that the applicant was enrolled in the Indian Army on 19.03.1981 and discharged from service on 30.11.1998 is not disputed. Further, the

fact that the applicant was re-enrolled in DSC on 29.02.2004 and discharged on 30.09.2018 after completing 14 years, 07 months and 02 days of

service in DSC is also not disputed. The case of the applicant for condonation of shortfall of 04 months and 28 days to complete the minimum period

of 15 years of service for earning second service pension has been rejected by the respondents based on the Govt. of India, MOD Policy.

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 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 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 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.

9. 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 of 04 months and 28 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 communication dated

23.04.2012, just runs 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 04 months 28 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.

11. In the result, the shortfall of 04 months and 28 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, i.e., 30.09.2018.

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

(i) Service pension for his service in the DSC with effect from 30.09.2018.

(ii) 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.

13. There is no order as to costs.