

(2020) 10 AFT CK 0007
In the Armed Forces Tribunal
Case No : Original Application No. 1411 Of 2020

Trilok Singh

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 12-10-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Army Act, 1950 — Section 3(vi)
Army Rules, 1954 — Rule 187(1)(r), 266
Pension Regulations For The Army, 1961 — Regulation 125, 132
Pension Regulations For The Army, 2008 — Regulation 44, 47, 173

Citation : (2020) 10 AFT CK 0007

Hon'ble Judges : Rajendra Menon, J; Philip Campose, Member (A)

Bench : Division Bench

Advocate : Pardeep Singh Nandal, V .S. Kadian, Y. P. Singh

Final Decision : Allowed

Judgement

1. Issue Notice to the respondents. Notice is accepted by Mr. Y.P. Singh, 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) Direct respondents to condone the deficiency/short fall of 02 months and 07 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 @ 12% per annum till final payment is made. And/or

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

3. Brief facts of the case are that the applicant was enrolled in the Indian Army on 28.04.1980 and got discharged from service on 30.04.2004, after

completion of pensionable service and thus, he was granted service pension. Thereafter, the applicant was re-enrolled in Defence Security Corps

(DSC) of the Army on 08.04.2005 and was discharged from that service on 31.01.2020. The applicant submits that he rendered 14 years, 09 months

and 23 days of service in DSC. Hence, there is a shortfall of 02 months and 07 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 preferred an appeal-

cum-representation to the respondents dated 19.05.2020, but the same was not replied to. However, at the time of hearing, learned proxy counsel for

the applicant handed over copy of the letter dated 24.09.2020 of the respondents in reply to the applicant's appeal -cum- representation, vide which the

respondents denied him service pension stating that the provision of condonation of deficiency in service is not applicable as per the Govt. of India,

MoD letter dated 20.06.2017.

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 & 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 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) 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.

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

8. Although learned counsel for the respondents does not dispute the fact about the applicant's enrolment in the Indian Army on 28.04.1980 and discharge from service on 30.04.2004 and further re-enrollment of the applicant in DSC on 08.04.2005 and discharge from that service on 31.01.2020 after completing 14 years, 09 months and 23 days of service in DSC, however, he submits that subject to verification, appropriate orders may be passed.

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 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 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: (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)]98D(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/Poy 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. LN-K 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 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 only of 02 months and 07 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 07 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.

12. In the result, the shortfall of 02 months and 07 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., 31.01.2020.

13. OA is accordingly allowed. Subject to verification, respondents are directed to issue corrigendum PPO for:

(i) Service pension for his service in the DSC with effect from 31.01.2020.

(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 at, 6% per annum.

14. There is no order as to costs.