

(2020) 02 AFT CK 0058
In the Armed Forces Tribunal
Case No : Original Application No. 1428 Of 2016

Ved Pal	Vs	APPELLANT
Union Of India And Others		RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Armed Forces Tribunal Act, 2007 — Section 14
Army Rules, 1954 — Rule 13(3), 125, 266
Pension Regulations For The Army, 1961 — Regulation 44, 125, 173

Citation : (2020) 02 AFT CK 0058

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

Bench : Division Bench

Advocate : V.S. Kadian, Rooheen Kalra, Y.P. Singh

Final Decision : Allowed

Judgement

1. Counsel for the applicant submits that this case is squarely covered by the judgment dated 01.10.2019 passed by the Larger Bench in Smt. Shama

Kaur Vs. Union of India 85 Ors. [O.A. No. 1238 of 2016 and connected matters], which is not disputed by proxy counsel for the respondents.

As such, vide separate order, OA stands disposed of.

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

following reliefs:

(a) Quash and set aside the impugned letter No. NER/14466910/LC-3 dated 27.09.2016 and direct respondents to condone the deficiency of Defence

Security Corps service to make the applicant eligible for grant of service pension from DSC, and/or

(b) Direct respondents to grant second service pension of DSC including retiral

and consequential benefits with effect from the date of discharge with interest @ 12% per annum over the arrears till final payment is made. and/or

(c) Any other relief which the Hon'ble 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 11.06.1980 in the Regiment of Artillery and discharged from

service on 31.08.2000, after serving for 19 years 04 months and 27 days and he was granted service pension. After discharge from Army, the

applicant was re-enrolled in Defence Security Corps (DSC) of the Army on 04.02.2002 and was discharged from service on 31.08.2016. The

applicant submits that he rendered service in DSC for 14 years and 182 days of service being in low medical category under Army Rule 13(3) item

III(i). He was not permitted to complete the extension period of service for 02 years upto the age of 57 years. Hence, there is a shortfall of 183 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

Notice-cum-representation dated 05.09.2016 to the respondents for the grant of service pension for DSC service by condoning the said shortfall of

pensionable service, but the same was rejected by the respondents vide letter No. NER/14466910/LC-3 dated 27.09.2016 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. Therefore, the

applicant is not entitled to the same. 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 1), 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. 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 11.06.1980 in the Regiment of Artillery and discharged from service on 31.08.2000 is

not disputed. Further, the fact that the applicant was re-enrolled in DSC on 04.02.2002 and discharged on 31.08.2016 after completing 14 years and

182 days of service in DSC is also not disputed. The applicant's legal notice-cum-representation dated 05.09.2016 to the respondents for condonation

of shortfall of 183 days to complete the minimum period of 15 years of service for earning second service pension was rejected by the respondents.

8. The issue involved in this case is no more res integrct 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 Udall 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 ar,

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 183 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 183 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 183 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., 31.08.2016.

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 31.08.2016.

(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.