

(2020) 09 AFT CK 0018

In the Armed Forces Tribunal

Case No : Original Application No. 1121 Of 2020

Virendra Kumar Sharma

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 0018

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

Bench : Division Bench

Advocate : U.S.Maurya, Suman Chauhan

Final Decision : Allowed

Judgement

1. By virtue of present OA the applicant claims grant of service pension of Defence Security Corps with effect from 01.12.2019 with all consequential benefits.

Heard. Admit.

Issue Notice to the respondents. Mr. S.D. Windlesh, Advocate accepts notice on behalf of the respondents.

Counsel for the applicant submits that the present application is squarely covered by the judgement passed by the Larger Bench in Smt. Shama Kaur

Vs. UOI 85 Ors. (OA No. 1238/2016 dated 01.10.2019 which is not disputed by the counsel for the respondents. It is submitted that subject to

verification appropriate orders may be passed.

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) Direction to the Respondents to grant service pension of Defence Security Corps with effect from 01.12.2019 (next date of the retirement) with all

consequential benefits with interest @ 12% per annum till its actual payment as applicant has served 14 years 2 months 24 days of qualifying service

in DSC and his case is squarely covered by Smt. Shama Kaur Vs. UOI & Ors. (OA No. 1238/2016 ordered dated 01.10.2019 by Larger Bench of

Hon'ble AFT (PB) New Delhi) (Annexure A-9) on the matter of granting of service pension to DSC person who have served more than 14 years of

qualifying service in DSC and/or,

(b) The applicant be granted any other relief which this Hon'ble Tribunal may deem appropriate, just and proper in the interest of justice and in the

facts and circumstances of the case,

(c) Award cost of the OA to the applicant.

2. Brief facts of the case are that the applicant was enrolled as Sepoy in Armoured Corps of Indian Army on 02.10.1982 and got discharged from

service on 31.10.2004, after rendering 22 years and 01 month's service and thus, he was granted service pension. Thereafter, the applicant was re-

enrolled in Defence Security Corps (DSC) of the Army on 07.09.2005 and was discharged from that service on 30.11.2019. The applicant submits

that he rendered 14 years, 02 months and 24 days of service in DSC. Hence, there is a shortfall of less than one year 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 sent representations dated 21.12.2019 and 14.02.2020 but the same have not been disposed of so far.

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 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.

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

7. Although learned counsel for the respondents does not dispute the fact about the applicant's enrolment in the Indian Army on 02.10.1982 and discharge from service w.e.f. 31. 10.2004 and further re-enrollment of the applicant in DSC on 07.09.2005 and discharge on 30.11.2019 after completing 14 years, 02 months and 24 days of service in DSC, however, he submits that subject to verification, appropriate orders may be passed.

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 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)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/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.

9 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 less than one year 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 shortfall of less than one year 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 less than one year 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., 30.11.2019.

12. 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 30.11.2019.

(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.