

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI
(SI. No. 3)

O.A. No. 08 of 2023 with M.A. No. 06 of 2023

Smt. Zangharing Anal Applicant
By Legal Practitioner for the Applicant : Shri Shri A.R. Tahbildar, Advocate

Versus

Union of India & Others Respondents
By Legal Practitioner for Respondents : Ms. Dipanjali BVora, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><u>05.04.2023</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Air Marshal Balakrishnan Suresh, Member (A)</u></p> <p><u>M.A. No. 06 of 2023</u> Heard Shri Shri A.R. Tahbildar, Ld. Counsel for the applicant and Ms. Dipanjali Bora, Ld. Counsel for the respondents. This application has been filed for condoning the delay of 01 month and 12 days in filing the Original Application for grant of second family pension to the applicant for the services rendered by the applicant's husband in Defence Security Corps. It is submitted by the Ld. Counsel for the applicant that delay in filing the Original Application is not intentional, but for the reasons stated in the affidavit filed in support of delay condonation application. The Ld. Counsel for the respondents has vehemently opposed the prayer. Upon hearing submissions of Ld. Counsel of both sides we find that cause shown is sufficient. Accordingly, delay is condoned. Delay condonation application stands disposed of.</p> <p><u>O.A. No. 08 of 2023</u> Heard Shri Shri A.R. Tahbildar, Ld. Counsel for the applicant and Ms. Dipanjali Bora, Ld. Counsel for the respondents. Subject to verification of medical documents Original Application is allowed. For orders, see our order passed on separate sheets. Misc. Application(s), pending if any, shall be treated to have been disposed of.</p> <p style="text-align: center;">(Air Marshal Balakrishnan Suresh) Member (A)</p> <p style="text-align: center;">(Justice Umesh Chandra Srivastava) Member (J)</p> <p>AKD/MC/-</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, GUWAHATI

Original Application No. 08 of 2023

Wednesday, this the 5th day of April, 2023

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Air Marshal Balakrishnan Suresh, Member (A)

Smt. Zangharing Anal Widow of No. 4346794A Nk. (Late)
Koloveson Anal.

..... Applicant

By Legal Practitioner – **Shri A.R. Tahbildar**, Advocate

Versus

Union of India & Others

..... Respondents

By Legal Practitioner – **Ms. Dipanjali Bora**, Advocate
Central Government Counsel

ORDER

"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

1. Heard Shri A.R. Tahbildar, learned counsel for the applicant and Ms. Dipanjali Bora, learned counsel for the respondents.
2. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for quashing and setting aside the letter dated 10.08.2022 issued by the respondent No. 2 and for

issuing directions to the respondents to condone the short fall in service for grant of second service pension to the applicant's husband and thereafter grant second family pension to the applicant from the date of discharge from DSC.

3. Briefly stated facts are that applicant's husband was enrolled in the Indian Army on 28.06.1973 and after completing 24 years and 02 days of service he was discharged from service on 30.06.1997. Applicant's husband was re-enrolled in Defence Security Corps (DSC) on 14.03.1998, and after completing 14 years, 03 months and 16 days of service, he was discharged from service on 30.06.2012 at the age of superannuation of 57 years under Rule 13 (3) III(i) of the Army Rules, 1954. As per rules, 15 years of minimum service is required for second service pension, but as there was deficiency of 08 months and 14 days in the case of applicant. The applicant's husband has not been granted second service pension and the applicant has not been granted second family pension. The applicant's husband died on 24.11.2018. The applicant's claim for the grant of second family pension was rejected vide letter dated 10.08.2022. It is in this perspective that the applicant has preferred the present Original Application.

4. It is submitted by learned counsel for the applicant that as per Regulation 44 of the Pension Regulations for the Army, 2008, (Part I), Ministry of Defence, Department of Defence letter dated 14.08.2001 and ADGPS letter dated 26.09.2003, condonation of shortfall in qualifying service for grant of pension in respect of personnel below officers rank from six months upto 12 months is allowed. However, there being a shortfall of about 08 months and 14 days in case of applicant's husband shortfall was not condoned in view of Government of India, Ministry of Defence, letter No. 14(02)/2011-D (Pen/Pol) dated 20.06.2017 and Principal Controller of Defence Account (Pension) Circular No. 589. In Para 'c' of the above letter it is stated that 'the intention behind grant of condonation of deficiency in service for grant of service pension is that the individual must not be left high and dry but should be eligible for at least one service pension and in view of this, it is clarified for grant of second service pension. Submission of learned counsel for the applicant is that above Government of India, Ministry of Defence, letter dated 20.06.2017 being against Regulation 44 of the Pension Regulations for the Army, 2008 (Part I) and Ministry of Defence letter dated 14.01.2001 and

Additional Director General Personnel Services (ADGPS) letter dated 26.09.2003 is ultra virus.

5. Learned counsel for the applicant further submits that Regulation 173 of Pension Regulation for the Army, 2008 (Part I), clearly says that grant of pensionary award to personnel of DSC shall be governed by the same Regulations as are applicable to personnel below officers' rank in the army except where they are in consistence with the provisions of Regulations. Thus, he submits that Government of India, Ministry of Defence, letter dated 14.08.2001 and letter dated 26.02.2003 being equally applicable in case of applicant's husband also, deficiency of 08 months and 14 days in minimum qualifying service is liable to be condoned and applicant's husband is entitled to second service pension till his life time i.e. upto 24.11.2018 and thereafter the applicant is entitled for second family pension.

6. Per contra, learned counsel for the respondents submits that intention behind condonation of service for grant of service pension being based on the policy that individual must not be left

high and dry but should be eligible for at least one service pension and the same being not applicable for the second service pension in respect of DSC, Government of India has issued letter dated 20.06.2017, and keeping in view this letter and also that there is deficiency of about 08 months and 14 days in qualifying service, as such, applicant's husband is not entitled to second service pension and the applicant is not entitled to second family pension.

7. Having heard the submissions of learned counsel both sides and having gone through Regulation 44 of the Pension Regulations for the Army, 2008 (Part I) as well as Government of India, Ministry of Defence letter No. 14 (02)/2011-D(Pen/Pol) dated 20.06.2017, we find that issue regarding condonation of deficiency in minimum qualifying service regarding second service pension of DSC surfacing in so many cases has not only been dealt with by the different Benches of the Armed Forces Tribunal but also by the Hon'ble Apex Court in the case of ***Union of India Vs. Surender Singh Parmar*** in Civil Appeal No. 9389 of 2014, decided on 20.01.2015, and it has been held therein that

deficiency in qualifying service upto one year is condonable. Taking note of the above and also that there is deficiency of less than one year in qualifying service of the applicant and the said deficiency is condonable under Regulation 44 of the Pension Regulations for the Army, 2008 (Part I), we find that applicant's husband's claim regarding condonation of deficiency in qualifying service for the grant of second service pension has wrongly not been granted to the applicant's husband and the second family pension has not been granted to the applicant.

8. Accordingly, Original Application No. 08 of 2023 is **allowed**. Impugned order, rejecting the applicant's claim for the grant of second family pension, is set aside. The shortfall of 08 months and 14 days in minimum qualifying service of the applicant's husband in getting second service pension is condoned. Applicant's husband is held entitled to get second service pension in DSC as well in addition to pension which he was already getting from the Army till his life time i.e. upto 24.11.2018. Thereafter, applicant is entitled for second family pension in respect of services rendered by her husband in the DSC service

in addition to family pension which she is already getting from Army with effect from 25.11.2018.

9. The respondents are directed to grant second service pension to the applicant's husband from the date of discharge till his life time i.e. upto 24.11.2018 and thereafter grant second family pension to the applicant with effect from 25.11.2018 for life. The respondents are directed to pay arrears of second service pension to the applicant's husband from the date of notional completion of 15 years of service and second family pension to the applicant with effect from 25.11.2018 for life. They are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall carry interest @ 8% per annum till actual payment.

10. No order as to costs.

(Air Marshal Balakrishnan Suresh)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 05 April, 2023

AKD/MCI-