

**ARMED FORCES TRIBUNAL
REGIONAL BENCH, GUWAHATI**

OA-19/2023

**Sri Manoranjan Ozah
S/o- Late Akan Ch.Ozah
R/- Vill Chatial
P.O. Kuwaritol
Dist- Nagaon, Assam
Pin-782137
Retired Nayek, DSC**

..... Applicant

By legal practitioners for Applicant

BK Das

HP Guwala

-Versus-

**1. Union of India,
Represented its Defence Secretary to the
Govt. of India, Ministry of Defence,
Raksha Mantralay,
101-A, South Block,
New Delhi-110011.**

**2. The Principal Controller of Defence Accounts (Pensions)
Draupadi Ghat, Near Sadar Bazar,
Prayagraj, Uttar Pradesh-211014**

**3. The Chief Record Officer,
DSC Records, Mil Road, Kannur,
Kerala, Pin 670013**

**4. Director General,
Controller of Defence,
Accounts (Pension), Allahabad,
Uttar Pradesh**

**5. Senior Accountant Officer,
Office of the Chief Controller of Defence Accounts (Pension)
Allahabad, Uttar Pradesh,
Pin-211014**

**6. Controller of Defence Accounts,
Udayan Vihar, Narengi,
Guwahati-781171**

..... Respondents

By legal practitioner for

Respondents

Dipanjali Bora, CGSC

CORAM :

**HON`BLE MR. JUSTICE SHAIENDRA SHUKLA, MEMBER (J)
HON`BLE LT GEN P GOPALAKRISHNA MENON, MEMBER (A)**

ORDER (ORAL)

01.10.2024

(Shailendra Shukla, J)

1. The applicant has filed the present OA under section 14 of the Armed Forces Tribunal Act, 2007 seeking issuance of directions to the respondents to grant 2nd service pension to the

applicant after his retirement as retired DSC personnel by condoning the shortfall of 10 months 2 days in DSC service.

2. The factual matrix of the case, in short, is that the applicant initially joined the Indian Army in the year 1979 as Electrical Mechanical Engineer (EME). He served in different capacities in the Indian Army and finally retired from service w.e.f 31.08.2001 as Nayak from his last unit after serving 22 years 23 days. Post retirement, the applicant got enrolled in Defence Security Corps (DSC) from on 02.02.2005. After rendering service of 14 years 1 month 28 days, the applicant retired from DSC service w.e.f 31.03.2019 while working at last unit of 394 DSC, PL. ATT. 14 FAD Pin code; 909714 C/O 99 APO Narangi, Satgaon. However, the applicant was denied 2nd service pension for DSC personnel which he is entitled to as per Regulation 125 of Pension Regulations for the Army, 1961 (Part – 1).

3. The applicant submits that the Hon'ble Supreme Court in case of Union of India & Anr. vs Surendra Singh Parmar reported in (2015) 3 SCC 404 has allowed condonation up to 1 year (12 months) shortfall in qualifying service of 15 years. The denial of DSC pension to the applicant is illegal, arbitrary and unreasonable

being violating of Article 14 of the Constitution of India as well as Defence Service Pension Regulations for Army (Part – 1) 2008 and as such direction in condoning shortfall of 11 months 2 days has been sought for by the applicant on this ground.

4. The respondents in their reply have submitted that the applicant was discharged under provision of Army Rule 13 (3) item III (I) after rendering about 14 years, 01 months, 27 days in qualifying service in DSC for which he was granted service gratuity and Death cum Retirement Gratuity. Since he has not rendered the mandatory minimum requirement of 15 years of service, he was not granted service pension for DSC Service.

5. Rule 132 of the Pension Regulations for the Army 1961 (Part – 1) and revised rule 47 of the Pension Regulations for the Army 2008 (Part – 1) which is quoted as under “unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years”.

6. The applicant having rendered only 14 years, 01 month, 27 days of service in DSC is thus not entitled for service pension and his case cannot be considered for condonation of deficiency in

qualifying service under provision of Govt. of India, Ministry of Defence letter No. 14(2)/2011/D (Pen/Pol) dtd 23.04.2012 (Annexure R-2) of the OA and Govt. of India, Ministry of Defence letter No. 14(2)/2011/D (Pen/Pol) dtd 20.06.2017 (Annexure R-3) wherein it has been clarified that "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 made eligible for atleast one pension". Since the applicant is already in receipt of service pension from the former service rendered by him in the Armoured Corps, his case cannot be considered for grant of service pension by condoning the deficiency in qualifying service.

7. We have heard learned counsel for both the parties and considered the documents placed on record.

8. The question for determination in this OA is whether the applicant was entitled for condoning the shortfall of service and was thus entitled for 2nd service pension for his service in DSC?

9. The applicant has placed reliance on the Judgment in the case of Ex NK (DSC) Hans Raj Dhobi vs Union of India & Ors. passed in OA 1686/ 2021 dtd 18.08.2021 passed by the Armed

Forces Tribunal, Principal Bench, New Delhi. The applicant in the aforesaid case has rendered 14 years 11 months of service in DSC and there was shortfall of 28 days against mandatory 15 years of qualifying service, which made him ineligible for the 2nd service pension for the service rendered with DSC.

10. In the aforesaid judgment, reliance has been placed on the full Court bench decision of this Tribunal in the case of **Smt. Shama Kaur vs Union of India & Ors. (OA 1238 of 2016 decided on 01.10.2019)** which deals with the same question, in which it was held that DSC personnel are fully entitled to condonation of deficiency in service for their 2nd spell of service at par with the other Army personnel and allowed the pension.

11. Paragraph 44 of the Judgment in the case of **Smt. Shama Kaur vs Union of India & Ors. (supra)** as under.

(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 Army and is also treated as a "Corps" under Rule 187(1) 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 service are applicable to the DSC and all such

personnel taken together are referred as " Armed Forces Personnel" as become clear from the opening paragraphs of letter No. 1(5)87/D (Pension/services) dtd 30.10.1987, Letter No. 1(6)198-D (Pension/Service) dtd 03.02.1998, Letter No. 17(4)/2008(2)/D (pen/Pol) dtd 12.11.2008 and para 3.1 of letter NO. (02)/2016-D (pen/Pol) dtd 04.09.2017 issued by 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 Respondent especially in the decision of the Hon'ble Punjab & Harayana High Court in Union of India vs 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 vs Union of india (W.P (c) No. 9593 of 2003) this bench in Bhani Dev V. Union of India and others (OA No. 60 of 2013 decided on 07.11.2013) and the Kochi Bench in Mohanan T V. Union of India (OA No. 131 of 2017 decided on 12.10.2017) The letter purportedly amending the relevant provision 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 judgment 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 judgment. DSC personnel re enrolled

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.

12. The Armed Forces Tribunal, Principal Bench in the case of Hans Raj Dhobi (*supra*) has also referred to another order in **Bhani Devi vs Union of India & Ors. (OA No. 60 of 2013 decided on 07.11.2013)** as also other judgments on the similar issue in case of **Ex Naik Vijay Singh vs Union of India & Ors. (OA 272 of 2018 decide on 14.10.2020)**, **Mohanan T vs Union of India & Ors. (OA 131 of 2017 decided on 12.10.2017)**. Excerpts of the case of Hans Raj Dhobi (*supra*) is being reproduced below.

: In *Bhani Devi (supra)*, it was held that the provisions for condonation of shortfall in service under regulation 125 of the

Pension regulations for the Army 1961 (Part 1) are equally applicable to armed Forces personnel serving in DSC making the eligible for grant of second service pension. Against the order in Ex Nk Monanan T (supra), granting condonation of shortfall of DSC service, subsequent to issue of Gol (MoD) letter dtd 20.06.2017, the respondents had approached the Hon'ble Supreme Court by filing Civil Appeal (Diary) No. 27100 of 2018, which was dismissed vide order dated 27.08.2018 and thus the matter has attained finality].

13. The letters which have been pointed out in Annexure R-2 and R-3 were considered in the case of **Smt. Shama Kaur (supra)** and as per excerpted paragraph of the aforesaid judgment, it has been held that the letters purportedly amending the relevant provisions were contrary to law.

14. The present case of the applicant being on parity with cases already stated above, the applicant is found to be entitled to condonation of shortfall of service. Consequently, the present OA is allowed with the following directions.

(i) The shortfall of 10 months 2 days of qualifying service of the 2nd service pension stands condoned.

(ii) Subject to verification of records, the respondents are directed to issue a corrigendum PPO to the applicant granting 2nd service pension for the service rendered by the applicant in DSC from the date of discharge and

(iii) The arrears shall be paid within 4 months from the date of receipt of the copy of this order. In default, the applicant will be entitled to interest at the rate of 6% per annum.

15. There will be no order as to costs.

(Lt Gen P.Gopalakrishna Menon)
Member (A)

(Justice Shailendra Shukla)
Member (J)

Mc/gm