

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

4.

OA 645/2024

Nk/DSC Suhel Ahamad Khan (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. U S Maurya, Advocate
For Respondents : Mr. Rajan Khosla, Advocate with
Maj A R Subramaniam, OIC Legal

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN P M HARIZ, MEMBER (A)

ORDER
14.03.2024

1. Notice of the OA is issued to the respondents and accepted on their behalf. Counter affidavit be filed by the respondents within a period of four weeks. Rejoinder, if any, thereto be filed by the applicant within a period of four weeks, thereafter.
2. List the matter before the Principal Registrar on **01.04.2024** for completion of pleadings and before the Bench thereafter.
3. On behalf of the applicant, learned counsel for the applicant submits that in as much as the applicant merely seeks the condonation of shortfall of service of 7 months and 23 days to complete his 15 years of qualifying service to get the service pension of the DSC Corps with the further prayer to the effect that the applicant's case is clearly covered by the order in the case

of *Smt. Shama Kaur vs. UOI & Ors.* as adjudicated by the Larger Bench of AFT, PB, New Delhi in OA 1238/2016 vide order dated 01.10.2019, with it having also been submitted on behalf of the applicant that in view of the verdict of the Hon'ble Supreme Court *in Uttaranchal Forest Rangers Assn. (Direct Recruit) v. State of U.P.*, (2006) 10 SCC 346, it is essential that the postulate that service jurisprudence requires that all persons similarly situated should be treated similarly ought essentially to be followed and that thus in as much as in a catena of orders of this Tribunal, the condonation of shortfall of the qualifying length of service in cases of DSC Personnel of less than a year has been granted repeatedly, the prayer made by the applicant ought to be allowed outright.

4. On behalf of the respondents, however, it is submitted that vide order dated 14.02.2024 in WP(C) 2126/2024 in the case of *UOI through the Secretary, Ministry of Defence & Ors. vs. Ex Nk (DSC) Bhraham Dutta Sharma*, the Hon'ble High Court of Delhi has stayed the operation of the order impugned therein dated 03.01.2023 in OA 3027/2022 till the next date of hearing therein, with it having been submitted on behalf of the respondent to the effect that even in the said case the grant of the prayer made vide order dated 03.01.2023 in OA 3027/2022 was in relation to the condonation of shortfall of the qualifying length of the DSC service.

5. It is submitted on behalf of the applicant by learned counsel for the applicant however that the submission that had been made on 14.02.2024 by the respondents in WP(C) 2126/2024 placing reliance on the aspect of pendency of Civil Appeal Diary No. 27246/2023 before the Hon'ble Surpeme Court in the case of *UOI vs. Balakrishnan Mullikote* is wholly erroneous in as much as it related to a case where the condonation of shortfall in the length of qualifying service was of more than a year. It has thus been submitted by learned counsel for the applicant placing reliance on the order dated 28.02.2024 of the Hon'ble Division Bench of the High Court Delhi in WP(C) 2969/2024 in the case of *NK/DSC Kameshwar Rai (Retd.)* to submit to the effect that in the said case the Hon'ble High Court of Delhi has not stayed the operation of the grant of the condonation of shortfall of less than a year. It is thus reiterated on behalf of the applicant that the prayer made through the OA is instantly allowed.

6. It is essential to observe that though undoubtedly, vide order dated 28.02.2024 in WP(C) 2969/2024 of the Hon'ble High Court of Delhi, it has been observed vide para 1 thereof to the effect :-

1. The present petition relates to a case where benecits of DSC to the extent of less than one year and the issue of relaxation less than one year have been decided by the Hon'ble Supreme Court in Union of India and Ors. vs. Ex. Naik Mohanan T. Civil appeal Diary No. 27100/2018 by dismissing the SLP. However, the Hon'ble Supreme Court

while dismissing the said SLP has left the question of law open.

and there is nothing to indicate any stay of the operation of the order impugned therein which relates to the condonation of the shortfall of qualifying length of DSC service of less than one year, nevertheless, the submission made in Para 3 of the said order itself to the effect :-

“3. Mr. Gupta states though the execution petition has been filed before the Armed Forces Tribunal, the respondent shall not press the same till the next date of hearing.”

indicates that the respondents thereto had made a submission of not pressing the execution petition in that matter till the next date of hearing with the matter being fixed before the Hon'ble High Court of Delhi for the date 13.05.2024.

7. Reliance has also been placed on behalf of the applicant on the order dated 28.02.2024 in WP(C) 2957/2024 of the Hon'ble High Court of Delhi in the case of *UOI & Ors. vs. NK/DSC Sandhur Singh (Retd.)* to submit to the effect that even in the said case where the prayer related to the grant of the condonation of the shortfall of less than one year for the DSC Personnel, the stay of the operation of the grant of such relaxation by the Tribunal has not been granted. In relation to the said aspect, it is essential to observe that in the said order dated 28.02.2024 in WP(C) 2957/2024 it was stated by the learned counsel present before us today i.e. Mr. U. S. Maurya

and who was also the counsel present before the Hon'ble High Court of Delhi to the effect :-

“3. Mr. Maurya states though the execution petition has been filed before the Armed Forces Tribunal, the respondent shall not press the same till the next date of hearing.”

thus, stating categorically that the execution petition filed before the Armed Forces Tribunal would not be pressed till the next date of hearing.

8. In the circumstances thus where in similar facts WP(C) 2126/2024 there has been a stay of the operation of the order dated 03.01.2023 in OA 3027/2022 have been granted by the Hon'ble High Court of Delhi, judicial decorum mandates that we stay our hands on the grant of the relief paid by the applicant in the instant case and the proceedings of the present matter are thus directed to be re-notified by the Registry after disposal of the issue pending in WP(C) 2126/2024 by the Hon'ble High Court of Delhi.

**(JUSTICE ANU MALHOTRA)
MEMBER (J)**

**(LT GEN P M HARIZ)
MEMBER (A)**