

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

O.A.No. 248 of 2010

Ex. Hav. Rajendra Prasad Yadav Petitioner

Versus

Union of India & Ors. Respondents

For petitioner: Sh. A.K.Trivedi, Advocate.

For respondents: Sh. Ankur Chibber, Advocate.

CORAM:

HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.

HON'BLE LT. GEN. M.L. NAIDU, MEMBER.

ORDER
12.01.2011

1. This petition has been filed by Smt. Bimla wife of late Ex. Hav. Rajendra Prasad. The petitioner by this petition has prayed that the order dated 8th February 2010 may be quashed or set aside as the same is unjust and illegal. It is further prayed that the respondents may be directed to consider the case of the petitioner for condonation of shortfall in qualifying service of her husband i.e. 10 months and 89 days in terms of the order dated 14th August 2001 of the Government of India, Ministry of Defence.

2. The brief facts which are necessary for disposal of this petition are that the husband of the petitioner was enrolled in Indian Army on 30th August 1979 and was allotted Service No. 2671847. The husband of the petitioner was promoted to the rank of Havildar in the Indian Army. Because of his domestic problems, he applied for discharge from service on compassionate ground and his request was

acceded to by the respondents and he was discharged from service with effect from 30th September 1993 on completion of 14 years, 01 month and 01 day service. The husband of the petitioner was not aware that persons of his rank are not entitled to pension unless he completes full tenure of service i.e. 15 years. He made a request for condonation of this shortfall and for grant of a regular pension but same was not acceded to (meanwhile her husband expired) and, therefore, the petitioner was driven to file this petition before this Tribunal. A reply has been filed by the respondents contesting the grant of pension and submitting that the minimum period for qualifying service for pension for PBOR is 15 years and since husband of the petitioner was short of 11 months service, there is no provision for condonation of such delay. Learned counsel for the respondents has invited our attention to Regulations 125 and 134 of the Pension Regulations For The Army 1961 and submitted that in cases of voluntary discharge on compassionate ground there is no power to condone the period of qualifying service for a pension.

3. We have heard learned counsel for the parties and perused the record.

4. Learned counsel for the respondents has invited our attention to the Office Order dated 14th August 2001 but this order does not delegate any administrative power to the Headquarter for condonation of such deficiency. It only permits condonation of deficiencies only in two events i.e. in case when there is a short fall in qualifying service for grant of pension in respect of PBOR beyond six months and up to twelve months and second the time bar for ordinary family

pension in respect of officers and POBR beyond 12 months. Except in these two circumstances, no further administrative power has been delegated to the Indian Army, Headquarter. Further in case of Regulations 125 and 134 there is no power conferred on anybody to condone in cases of such voluntary discharge on compassionate ground. It is unfortunate that the husband of the petitioner has completed 14 years and 1 month and he is being deprived of his pension which he could have earned after completion of qualifying service of 15 years. But when statutory provision clearly stipulates that condonation cannot be granted in a case when a person has proceeded voluntarily for discharge from service then in that case it is not possible for this Tribunal to direct any condonation in case of the husband of the petitioner. However the petitioner may make a representation to the authorities being a hard case for sympathetic consideration.

5. We do not find any ground to interfere in this petition and the same is dismissed.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
January 12, 2011.