

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI**

13.

**O.A. No. 311 of 2011**

**Anadi Nandan Mukhopadhyay**

**.....Petitioner**

**Versus**

**Union of India & Ors.**

**.....Respondents**

**For petitioner: None**

**For respondents: Mr. V.S. Tomar, Advocate.**

**CORAM:**

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

**HON'BLE LT. GEN. S.S.DHILLON, MEMBER.**

**ORDER**  
**02.02.2012**

Petitioner by this petition has prayed that respondents may be directed to condone the shortfall of 7 months and 26 days in computing the qualifying service for 15 years and grant pension as per the Pension Rules with arrears of pension from the actual date of his discharge from the service with interest.

Petitioner was enrolled in the Indian Air Force on 17.11.1992 in Radio Fitter Trade. He completed the training in 1994 and he was classified at Aircraftsman. He was posted at Air Force Station, Jodhpur for Helicopter Training in December, 1994. He completed the said training in 1995 and was posted at Air Force Station at Jammu in May, 1995. He was promoted to Corporal in November, 1997 and was posted to Air Force Station, Hindan in December, 1999. He was posted to Air Force Station to Guwahati in December, 2003. He was promoted to Sergeant in May, 2006.

Petitioner had serious family problems and looking to condition of deteriorating health of his ailing mother, he requested for discharge on compassionate grounds. He has also mentioned that his sister was also being

subjected to torture by her in-laws and she was also on verge of getting divorce at very early stage of her marriage. Both mother and sister alone were in very distress condition and were about to end their life. To save them and to save the family, petitioner requested the Commanding Officer 118HU, AF C/o 99 APO on 20.11.2006 for grant of immediate discharge from service on compassionate ground. The CO made remarks at the time of interview that “petitioner has completed fourteen years of service. He is very sincere, hardworking and dedicated and has not let this problem affect his work. He has refused an UN assignment and is ready to sacrifice his pension, which will be due in case he leaves service after one year. It is felt that his presence with his mother and sister is genuinely required without any delay, therefore, discharge is recommended.”

The discharge order was passed on 27.02.2007 and the petitioner was discharged from service w.e.f 21.03.2007 after putting 14 years 4 months and 4 days of dedicated service with two years reserve liabilities. He accepted the discharge order and did not agitate the matter. Thereafter it appears that somebody advised him for moving application for condonation of short fall of 7 months and 26 days and grant of pension on completion of 15 years of service.

Respondents have filed their reply and contested the matter. It is submitted that as per para 114 of the Pension Regulations for the Air Force 1961, grant of condonation of short fall in service is not applicable to those who proceed on voluntary discharge. It is pointed out that as per order of Government of India Ministry of Defence dated 14.08.2001 (Annexure R-1), powers for condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months have been

delegated to the AG/COP/AOP/AOA by the Government. Relevant extract of order dated 14.08.2001 is reproduced as under;

*“(b) Approving Authority in the Service HQs in respect of the above subjects will be AG/COP/AOP/AOA as the case may be. Any further re-delegation of these powers will require prior approval of Ministry of Defence.”*

Therefore, it is not like that respondents have no power to condone the shortfall. The action of the respondents rejecting the application of petitioner for grant of pension is fully justified as per Para 114 (a) of the Pension Regulations for the Air Force 1961. But sometimes human's obligations become so dominant that one loses balance in life. In the present case, petitioner took a discharge on compassionate on account of deteriorating health of his mother and adverse treatment to his sister by her in-laws. Therefore, he insisted that he may be released forthwith so that he can take care of his ailing mother and stressed sister. In fact, CO brought to his notice that wait for one year otherwise you will lose your pension but despite that petitioner requested for an immediate discharge from service on compassionate ground. It seems that after some time better sense prevailed and he started approaching the authority for grant of pension after condonation of shortfall of 7 months and 26 days in computing the qualifying service for 15 years.

So far the order passed by the respondents rejecting the application of petitioner for grant of pension is concerned, it is fully justified in view of provisions of law, therefore, no fault can be found with the order. But looking to the fact that authority has power to condone the shortfall of service, petitioner sacrificed his pensionary benefits on account of family

circumstances. Be that as it may, respondents have power to condone the shortfall. We feel that petitioner may make a representation to the authority and authority may consider sympathetically for condonation of shortfall of 7 months and 26 day in computing the qualifying service for 15 years and for grant of pension to the petitioner. Petitioner may make a representation to the authority which will be disposed of expeditiously as far as possible within three months from the date of filing of representation. However, petitioner will not be entitled to any arrears thereof.

Petition is disposed of with aforesaid observations. No order as to costs.

**A.K. MATHUR  
(Chairperson)**

**S.S. DHILLON  
(Member)**

**New Delhi  
February 02, 2012  
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