

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

31.

OA 3335/2023 WITH MA 4502/2023

(DSC) Ex Nk Shaik Mahaboob Basha	Applicant
VERSUS		
Union of India and Ors.	Respondents

For Applicant	:	Mr. V.S. Kadian, Advocate
For Respondents	:	Mr. Kumar Gaurav, Advocate

CORAM

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

ORDER
27.10.2023

MA 4502/2023

This is an application filed under Section 22 of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 805 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of Union of India and Ors. Vs. Tarsem Singh [2009 (1) AISLJ 371] and in Ex Sep Chain Singh Vs. Union of India and Ors. (Civil Appeal No.30073/2017) and the reasons mentioned, MA 4502/2023 is allowed and the delay of 805 days in filing the OA 3335/2023 is thus condoned. The MA is disposed of accordingly.

2. OA 3335/2023

The applicant vide this OA seeks the following reliefs:

“(a) Direct respondents to condone the deficiency/short fall of 11 months and 21 days service to make the applicant eligible for grant of service pension from Defence Security Corps. And/or.

(b) Direct respondents to grant service pension from Defence Security Corps including retiral and consequential benefits with effect from the date of discharge and to pay the due arrears with interest @ 12% per annum till final payment is made. And/or.

(c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with cost against the respondents”

3. The applicant submits that he was re-enrolled in the Defence Security Corps on 12.07.2007 and was discharged from service on 31.07.2021 on completion of 14 years and 19 days of service and thus seeks directions to the respondents to grant second service pension for the services rendered in the Defence Security Corps (hereinafter referred to as DSC) after condoning shortfall/deficiency of 11 months and 21 days of the qualifying service of pension in the DSC. Apart from this, he seeks directions to pay the arrears of the 2nd service pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits.

4. Notice of the OA was issued to the respondents which is accepted on their behalf.

5. The facts of the case put forth by the applicant are to the effect that he was enrolled in the Indian Army on 21.02.1985 and discharged from service on 01.04.2004 after rendering about 19 years of qualifying service and was re-enrolled on 12.07.2007 in the Defence Security Corps and was discharged from service on 31.07.2021 after completing 14 years and 19 days of service and submits that he was entitled for the 2nd Service Pension after condonation of shortfall/deficiency of service of 11 months and 21 days in completing the period of 15 years in the Defence Security Corps.

6. The applicant further submits that as per para 266 of the Pension Regulations for the Army 1961, it is provided that:

the grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same general rules as are applicable to combatants of the Army, except where they are inconsistent with the provisions of the regulations in this chapter.

and that all the general rules were applicable to him. Inter alia, the applicant submits that in terms of para 125 of the Pension Regulations for the Army, 1961, which provides as follows:

“125. Except in the case of:

- (a) an individual who is discharged at his own request, or*
- (b) an individual who is eligible for special pension or gratuity under Regulation 164, or*
- (c) an individual who is invalided with less than 15 years service, deficiency in service for eligibility to service pension or reservist pension or gratuity in lieu may be condoned by a competent authority upto six months in each case”*

and that he was eligible for condonation of deficiency of service of 11 months and 21 days, as the said regulation empowers the competent authority to condone shortfall of service for a period of 06 months. Inter alia, the applicant has submitted that under the GOI/MoD letter No. 4684/Dir (Pension) 2001 dated 14.08.2001, the shortfall in the qualifying service for the grant of pensionary benefits in respect of Personnel Below Officer Rank can be condoned up to 12 months. The applicant further submits that as per Rule 44 of the Army Pension Regulations, 2008, Part I, Sub Section 2; POBR, Sub-Section I. General, the deficiency in service for eligibility to pension may be condoned upto 12 months.

7. The applicant further places reliance *inter alia* on the following verdicts of the Armed Forces Tribunal:

- i) OA 60/2013 titled as Bhani Devi Vs UoI and Ors., AFT(PB)

ii) OA 1238/2016 ~ titled **Smt. Shama Kaur Vs UoI and Ors.** of the Larger Bench, AFT(PB).Delhi

ii) OA 131/2017 titled as **Mohanan T Vs Union of India and Ors,** AFT(RB) Kochi.

in support of his contention that in cases where though the applicants thereof had not completed 15 years of service and were discharged from service, they were held entitled to the 2nd Service Pension for services rendered in the DSC by condonation of the said shortfall for a period of 12 months to qualify for the purpose of the 2nd service pension.

8. The learned counsel for the respondents fairly does not dispute the settled proposition of law put forth on behalf of the applicant in view of the verdicts relied upon on behalf of the applicant.

9. Significantly in *Uttaranchal Forest Rangers' Assn. (Direct Recruit)* Vs. *State of U.P.*, [(2006) 10 SCC 346] the Hon'ble Supreme Court has laid down that service jurisprudence postulates that all the persons similarly situated should be treated similarly.

10. Furthermore, the verdict of the Larger Bench of this Tribunal in OA 1238/2016 titled ***Smt Shama Kaur*** (supra) categorically has answered the reference mentioned below:

"44.Re: (i) Whether there should be condonation of deficiency of service for grant of second pension of DSC service as like Regular Army personnel in terms of GoI,

MoD letter dated 14.08.2021 and Para 44 of Army Pension Regulations or be dealt in terms of GoI MoD letter dated 20-06-2017?"

as under:

"44. (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 the Army and is also treated as a "Corps" under Rule 187(1)(r) 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 services are applicable to the DSC and all such personnel taken together are referred as "Armed Forces Personnel" as becomes clear from the opening paragraphs of Letter No. 1(5)87/D (Pension/Services) dated 30.10.1987, Letter No. 1(6)98-D(Pension/Services) dated 03.02.1998, Letter No. 17(4) 2008(2)/D(Pen/ Pol) dated 12.11.2008 and Para 3.1 of Letter No. 17 (02)/2016-D(Pen/ Pol) dated 04.09.2017 issued by the 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 Respondents, especially in the decision of the Hon'ble Punjab & Haryana High Court in Union of India v. 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 v. Union of India (W.P (C) No. 9593 of 2003), this Bench in Bhani Devi V. Union of India and others (O.A No. 60 of 2013 decided on 07.11.2013) and the Kochi Bench in Mohanan T v. Union of India (O.A No. 131 of 2017 decided on 12.10.2017). The letters purportedly amending the relevant provisions 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 judgement, 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 judgement, DSC personnel re enrolling 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."

11. It is thus apparent that the applicant in the instant case is entitled for the grant of the 2nd Service Pension after condonation of shortfall/deficiency of 11 months and 21 days of qualifying service for pension, in as much as the facts of this case are also in *pari materia* with the facts of the case in *Bhani Devi* (supra) *Ex NK Vijay Singh* (supra) and in view of the verdict of the Larger Bench of the Principal Bench, Armed Forces Tribunal in *Shama Kaur* (supra) and in *Ex Nk Mohanan T* Vs *Union of India and Ors* (OA 272/2018) of the Kochi Bench of this Tribunal wherein it was held that the provisions for condonation of shortfall in service under Regulation 125 of the Pension Regulations for the Army 1961 (Part I) are equally applicable to the Armed Forces personnel serving in the Defence Security Corps making them eligible for grant of the second service pension.

12. Significantly, against the order in *Ex Nk Mohanan T* (supra), granting condonation of shortfall of DSC service, subsequent to the

issue of the GoI (MoD) letter dated 20.06.2017, though the respondents had approached the Hon'ble Supreme Court by filing Civil Appeal (Diary) No.27100 of 2018, the same was dismissed vide order dated 27.08.2018 and thus the matter has attained finality.

13. The instant OA 3335/2023 is, therefore, allowed with the following directions:

- (i) The shortfall of 11 months and 21 days of qualifying service as claimed in the O.A. for grant of second service pension of the DSC is condoned. However, if the respondents, on verification of the records, find a different figure for number of days requiring to be condoned then it is directed that they should accord the required condonation as long as it is less than one year.
- (ii) Subject to verification of records, the respondents are directed to issue a corrigendum PPO to the applicant granting second service pension for the service rendered by him in the DSC, from the date of his discharge; and
- (iii) The arrears shall be paid within four months from the date of receipt of a copy of this order. In default, the

applicant will be entitled to interest @ 6% per annum
till payment.

14. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN C.P. MOHANTY)
MEMBER (A)

/CHANANA/