

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

18.

OA 1926/2020 with MA 2239/2020

Ex Sgt Meegada Prasada Rao Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. J P Sharma, Advocate
For Respondents : Mr Anil Gautam, Sr CGSC

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
12.09.2023

MA 2239/2020

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 5043 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of UoI & Ors Vs Tarsem Singh 2009(1)AISLJ 371 and in Ex Sep Chain Singh Vs Union of India & Ors (Civil Appeal No. 30073/2017 and the reasons mentioned, the MA 2239/2020 is allowed and the delay of 5043 days in filing the OA 1926/2020 is thus condoned. The MA is disposed of accordingly.

OA 1926/2020

The applicant vide this OA seeks the following reliefs:

“(a) Quash and set aside the impugned order dated 22.10.2020 as Annexure A-1 Impugned Order.

(b) Direct to respondents to condon of 09 months(263 days) shortfall in pensionary service i.e. 15 years as per Para 121 of the Pension Regulations for the Air Force(Part-I) and grant service pension to the applicant w.e.f. 13.01.2007, as per GoI, MoD letter dated 14.08.2001 as well as verdict passed by Hon’ble Supreme Court vide order dated 20.01.2015 in Civil Appeal No.9389 of 2014 titled as Union of India & Ors Vs Surrender Singh Farmer, Hon’ble Tribunal(RB) Chandigarh order dated 01.07.2017 in OA No.209/2016 titled as Om Prakash Nibhoria Vs UOI & Ors and this Hon’ble Tribunal(PB) New Delhi order dated 14.11.2017 in OA No.1260/2017 titled as Ex Cpl George VG Vs UOI & Ors. alongwith 10% annual interest till the payment be made for which the applicant deserves.

(c) Issue any other appropriate order or direction which this Hon’ble Tribunal may deem fit and proper in facts and circumstances of the case.”

2. The applicant was enrolled in the Indian Air Force on 13.10.1992 and discharged from service w.e.f. 12.01.2007 under the clause “at his own request before fulfilling the conditions of enrolment” vide discharge Order No.RO/2503/1/RW/(Dis) dated 12.01.2007 after rendering a total service of 14 years and 92 days. The applicant was paid Rs.2,05,190/- on account of Service Gratuity(SG) and Rs.1,02,595/- on account of Death-cum-Retirement Gratuity(DCRG) for the qualifying service rendered by the applicant. As per Regulation 121 of the Pension Regulations for the Air Force, 1961(Part-I), the minimum qualifying regular service to earn the service pension is 15 years and thus the service pension was not granted by the respondents.

CONTENTIONS OF THE PARTIES

3. The applicant submits that he was discharged from the service of the Indian Air Force w.e.f. 12.01.2007 under the provisions of the Air Force Rules 1969, Chap III Rule 15(2)(f) at his own request without any blemish remarks. The applicant submits that as per para 125 of the Pension Regulations for the Army, 1961 there is a provision for condonation of shortfall of service upto a period of six months to make a person eligible for the grant of service pension.

4. Para 125 of the Pension Regulations for the Army, 1961 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"*

The Government of India, Ministry of Defence GOI/MoD letter No. 4684/Dir (Pension) 2001 dated 14.08.2001 stipulates:

"1. Sanction is hereby accorded in pursuance of MOD ID No.34/2001/(O&M) dated 3.8.2001 for delegation of administrative powers with the approval of Raksha Mantri to the Service HQrs in respect of the subjects indicated below:

(a)(i) XXXXXXXX

(ii) XXXXXXXX

(iii) XXXXXXXX

(iv) XXXXXXXX

(v) *Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months.*

As per clause (b) of this order, it is stipulated to the effect that:

(b) *Approving Authority in the Services HQrs 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.

5. The applicant further places reliance on the verdict of the Hon'ble High Court of Bombay in WP(OS) No.430 of 2005 titled as *Gurumukh Singh Vs Union of India & Ors. dated 22.11.2006*. The applicant also places reliance on the following:

1. Order dated 26.11.2014 in OA No.527/2013 titled as *Swr Manoj Singh Bhandauriya Vs Union of India & Ors.*

2. The verdict dated 20.01.2015 of the Hon'ble Supreme Court titled as *Union of India & Ors vs Surender Singh Parmar* in Civil Appeal No.9389 of 2014(2016) 3 SCC 404.

3. Order dated 10.07.2017 of the AFT(PB) in OA 209/2016 titled *Ex NK Om Prakash Nibhoria Vs Union of India & Ors.*

4. Order dated 14.11.2017 of the AFT(PB), New Delhi in OA 1260/2017 titled as *Ex Cpl George VG Vs Union of India & Ors.*

The applicant further submits that as per Regulation 9 of the Pension Regulation for the Army 1961(Part-I) it is stipulated to the effect:

'in calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year and reckoned as qualifying service'.

6. The respondents on the other hand through their counter affidavit date 19.03.2021 contend that the applicant had rendered a total of 14 years and 92 days of qualifying service and was discharged at his own request. The applicant was paid all the payable dues. The respondents submit that as per Regulation 121 of the Pension Regulations for the Air Force, 1961(Part-I), the minimum qualifying regular service required to earn service pension is 15 years and the condonation of shortfall in qualifying service for a period of 12 months has been allowed in Regulation 114, read with conjunction with GoI, Mod letter No.4684/Dir(Pen)/2001 dated 14.08.2001 but the provisions of this regulation are not applicable to those who have taken voluntary discharge from service under the clause 'at his own request', however by virtue of his length of service, the applicant was granted Service Gratuity(SG) and Death-cum-Retirement Gratuity(DCRG) for the qualifying service rendered by the applicant. This period was extended upto 12 months by the Govt of India, MoD letter No.4684/DIR(PEN)/2014 dated 14.08.2001 implying thereby that if a person has rendered fraction of a year equal to 03 months and above but less than six months the same shall be treated as a completed one

half year. The applicant submits that he had completed 14 years and 92 days of service in the Indian Air Force and thus is entitled to the condonation of shortfall in qualifying service for the grant of pension under the category of PBOR beyond six months and upto 12 months as per Para (a)(v) of the said letter.

7. However, the respondents fairly do 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.

ANALYSIS

8. In view thereof, in as much as the Regulation 114(a) of the Pension Regulations for the Air Force 1961 Part-1 which prohibits condonation of deficiency in service of an individual seeking condonation of a period of six months for completion of 15 years of service to be eligible to service pension or reservist pension if the individual has been discharged on his own request though it permits the grant of said condonation of the shortfall in service to an individual to make him eligible for pension in view of the said Regulation 114(a) or to an individual with less than 15 years of service, has already been held vide the order dated 10.04.2015 of the AFT(PB) in OA 396/2014 in Hem Raj Singh Vs Union of India & Ors to be violative of Article 14 of the Constitution of India in

relation to Regulation 114(a) of the Pension Regulation for the Air Force 1961, which being substantially similar to Regulation 82(a) of the Navy Pension Regulations for Navy, 1964 with a challenge thereto having not been repelled by the Hon'ble High Court of Bombay in *Gurmukh Singh*(supra), which verdict of the High Court of Bombay(supra) has not been set aside by the Hon'ble Supreme Court in the case of *Union of India & Ors Vs Surender Singh Parmar* (2015) 3SCC 404 vide order dated 16.11.2007 having held therein that in the absence of any challenge before the Supreme Court, their Lordships were not inclined to decide the question with regard to Regulation 82(a) of the Pension Regulation for Navy, 1964 which has already been declared ultra vires of Article 14 of the Constitution of India by the High Court of Bombay in *Gurmukh Singh*(supra), we thus, do not find any reason to deviate from the conclusion dated 10.04.2016 of the Armed Forces Tribunal(PB) in OA 396/2014 in *Ex Ac Hemraj Singh Vs Union of India & Ors*.

9. As has also been observed by us hereinabove, SLP No. (Civil)13893/2007 filed by the Union of India against the judgment dated 22.11.2006 of the High Court of Bombay-*Gurmukh Singh Vs Union of India & Ors* in WP(C) No.430/2005 was dismissed. The provisions of Regulations 82(a) of the Pension Regulations for the Navy,

1964 are in *pari materia* to Regulations 114(a) of the Pension Regulations for the Air Force, 1961 by which the applicant is governed.

10. In the case of *Ex AC Hemraj Singh Vs Union of India & Ors*, vide order dated 10.04.2015, the Armed Forces Tribunal(PB), New Delhi where the applicant thereof a member of the Indian Air Force, who after completion of 14 years, 09 months and 01 day service and after remaining in reserve list for 02 years, was discharged from service on his own request before completion of 15 years of service as he had voluntarily taken retirement, was held entitled for condonation of the shortfall in service it having been held therein that Regulation 114(a) of the Pension Regulations for the Air Force 1961 Part-I which denied the benefits of condonation of shortfall in the pensionary service to persons who were discharged at their own request was ultra vires and violative of Article 14 of the Constitution of India.

11. It was held in *Ex ACs Hem Raj Singh (supra)* that Regulation 82(a) of the Pension Regulations for the Navy, 1964 which has been struck down in *Gurmukh Singh Vs Union of India & Ors* WP(C) No.430/2005 by the Bombay High Court dated 22.11.2006 was exactly similar to Regulation 114(a) of the Pension Regulations for the Air Force 1961 Part -I by which the benefit of condonation of shortfall

in pensionary service to a person who was discharged on his own request was declined.

12. In the case of *Gurmukh Singh*(supra) after a contempt petition was filed in the Hon'ble Supreme Court, the grant of condonation of shortfall in pensionary service was undertaken by the Govt of India. The observations in Paras 3 to 4 of the verdict of the Hon'ble Supreme Court in case of *Union of India & Ors Vs Surender Singh Parmar* (2015)3 Scale 404 Scale 64 which read to the effect:

"3. The respondent initially approached the High Court of Delhi by filing Writ Petition(C) No.12507 of 2004. It was pointed out before the High Court that the Division Bench of the Bombay High Court in Writ Petition No.430 of 2005 titled Gurmukh Singh Vs UOI vide judgment dated 22nd November, 2006 declared the Navy (Pension) Regulation 82(a) as null and void being ultra vires to Article 14 of the Constitution of India. Regulation 82(a) provided that the benefit of condonation of shortfall in pensionable service shall not be applicable to the case in which a sailor got the discharge from service at his own request. It was also brought to the notice of the High Court that similar finding was given by the Delhi High Court in the case of the respondent in Writ Petition (C) No.12507 of 2004 vide order dated 6th November, 2007 and that the appellant-Union of India was directed to consider the case of the respondents for the purpose of condoning the deficiency in service and pass

appropriate orders within three months. The appellant opposed the said prayer on the ground that the respondent has not completed the requisite service of 14 years upon which only one can get the benefit of condonation of shortfall of service upto one year. Therefore, according to the appellant, the respondent was not eligible candidate for condonation of the shortfall in pensionable service of one year. Before the High Court the respondent contested the statement made by the appellant that the respondent served for 13 years 8 months and 13 days and brought to the notice of the High Court that actually he had served 13 years 10 months and 13 days which was not disputed. The respondent claimed benefit of rounding off the period of service in terms of the Government of India Instructions dated 30th October, 1987. The Division Bench of the Delhi High Court after considering the rival submissions and taking note of Instructions dated 30th October, 1987 by order dated 6th November, 2007 set aside the appellants earlier rejection order dated 14th August, 2001 and directed the appellant to re-consider the case of respondent.

4. Subsequently, a contempt petition was filed by the respondents alleging non-compliance of the said order. The contempt petition was dismissed by the Division Bench of the High Court considering the fact that appellants after the decision dated 6th November, 2007, passed the order on 2nd July, 2008 rejecting the claim of the respondent with liberty to challenge the order in accordance with law. In the said contempt proceedings the appellants gave undertaking that decision in *Gurmukh Singh Vs UOI & Ors*

would be made applicable in the case of the respondent. Thereafter, the second order of rejection was challenged by the respondent before the Tribunal wherein the impugned order was passed by the Tribunal."

13. Significantly, in the case *Union of India & Anr Vs Surender Singh Parmar* (supra), the respondent therein had joined the Indian Navy on 12.08.1971 and after rendering 13 years, 10 months and 13 days service sought his retirement on compassionate grounds upon which he was released from the Navy service on 24.06.1985 with minimum qualifying period for pensionable service of 15 years with provision in the Navy(Pension) Regulations, 1964 for condonation of shortfall in service, initially for six months and subsequently the condonation was made permissible for one year which benefit was however, declined to the respondent in view of Regulation 82(a) of the Pension Regulation for the Navy, 1964. The Hon'ble Supreme Court in *Union of India & Anr Vs Surender Singh Parmar*(supra) observed therein to the effect:

"6. In the present case, the appellant has not challenged the validity of judgment passed by the Bombay High Court wherein Regulation 82(a) was declared as ultra vires. The aforesaid finding of the Bombay High Court was also accepted by the Delhi High Court in the case of the respondent. In absence of any challenge before this Court, we are not inclined to decide

the question of validity of Regulation 82(a) which has already been declared ultra vires and violative of Article 14 of the Constitution of India.

It is not in dispute that the respondent has completed 13 years 10 months and 13 days of service under the appellant. In view of declaration of Regulation 82(a) ultra vires, the prayer of the respondent for considering his case for condonation cannot be rejected on the ground that he voluntarily sought permission to leave the service. The aforesaid submission was also accepted by the High Court in the earlier writ petition preferred by the respondent."

7. The note below paragraph 5 of the Government of India, Ministry of Defence Instructions dated 30th October, 1987 at clause 5 provides that in calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year for reckoning qualifying service.

"5. Qualifying service.

(a) xx xx xx

(b) xx xx xx

Notes:

(1) to (4) xx xx xx

(5) In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service."

8. In view of the aforesaid provisions the respondent is entitled to claim total period of service as 14 years for the purpose of calculation of pension. By Government of India, Ministry of Defence order dated 14 August, 2001 administrative power has been delegated to the competent authority under clause (a)(v) the competent authority has been empowered to condone short fall in qualifying service for grant of pension beyond six months and upto 12 months. The said provision reads as follows:

“(a)(v) Condonation of short fall in Qualifying Service for grant of pension respect of PBOR beyond six months and upto 12 months.”

9. In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months and upto 12 months. If the aforesaid power has not been exercised by the competent authority in proper case then it was within the jurisdiction of the High Court or Tribunal to pass appropriate order directing the authority to condone the shortfall and to grant pension to the eligible person, which has been done in the present case and we find no ground to interfere with the substantive finding of the Tribunal. However, as we find that the respondent was allowed to retire from service on 24th June, 1985 when the instruction dated 14th August, 2001 was not in existence, we hold that the respondent is entitled for such benefit from such date on which the said instruction came into effect. The Tribunal failed to notice the aforesaid fact but

rightly declared that the respondent's shortfall in service stand condoned. In the facts of the case, we are of the view that it should have been made clear that the respondent shall be entitled to benefit w.e.f. 14th August, 2001 and not prior to the said date. The order passed by the Tribunal stands modified to the extent above. The appeal stands disposed of with aforesaid observations."

Thus, it is apparent that Regulation 82(a) of the Pension Regulations for Navy, 1964 has been held to be ultra vires of the Constitution of India and the same is no more *res integra* in view of the verdict of the Hon'ble High Court of Bombay in Gurmukh Singh Vs Union of India & Ors (*supra*) and in view of the observations of the Hon'ble Supreme Court in *Union of India & Ors Vs Surender Singh Parmar* (*supra*) wherein it has been specifically observed to the effect:

"6. In the present case, the appellant has not challenged the validity of judgment passed by the Bombay High Court wherein Regulation 82(a) was declared as ultra vires. The aforesaid finding of the Bombay High Court was also accepted by the Delhi High Court in the case of the respondent. In absence of any challenge before this Court, we are not inclined to decide the question of validity of Regulation 82(a) which has already been declared ultra vires and violative of Article 14 of the Constitution of India.

14. Furthermore, the verdict of the Larger Bench of this Tribunal in OA 1238/2016 titled Smt Shama Kaur versus UoI & Ors. (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."

15. Vide order dated 31.05.2023 in OA 363/2019 titled *Ex CPL Nishant Kumar Vs Union of India & Ors*, we have already granted relief in relation to the prayers made by the applicant thereto, a personnel of the Indian Air Force who sought condonation of shortfall of deficiency of service for 05 months and 23 days for grant of service pension alongwith retiral benefits by observing vide Para 17 thereof.

16. Furthermore, it was observed by this Tribunal in OA 428/2019 in *Ex Sgt Sushant Kumar Baral Vs Union of India & Ors*. vide order dated 06.07.2023 vide paras 23,24, 25, 26 as under:

17. As has also been observed by us hereinabove, SLP No. (Civil)13893/2007 filed by the Union of India against the judgment dated 22.11.2006 of the High Court of Bombay-*Gurmukh Singh Vs Union of India & Ors* in WP(C) No.430/2005 was dismissed. The provisions of Regulations 82(a) of the Pension Regulations for the Navy, 1964 are in *pari materia* to Regulations 114(a) of the Pension Regulations for the Air Force, 1961 by which the applicant is governed.

18. There is no reason for us to differ from our observations in OA 363 363/2019 in *Ex CPL Nishant Kumar Vs Union of India & Ors*(supra) and thus in as much as Regulation 114 of the Pension Regulations for the Air Force, 1961 by which the applicant is governed has been held to be violative of Article 14 of the Constitution of India vide order dated 10.04.2019 of the AFT(PB), New Delhi in OA 396/2014 titled *Ex AC Hemraj Singh Vs Union of India & Ors*. wherein the condonation in shortfall in service of less than 12 months was condoned, the prayer in relation to condonation of shortfall in service to an individual to make him eligible for pension in relation to Para 114 (a) of the Pension Regulations for the Air Force, 1961 who is invalided with less than 15 years service, deficiency in service for eligibility to service pension or reservist pension of gratuity, in lieu, may be condoned by a competent authority upto six months in each case.

19. As already observed by us, the provisions of Regulation 82(a) of the Pension Regulations for the Navy, 1964 has been held to be ultra vires the Constitution of India and the same is no more *res integra* in view of the verdict of the Hon'ble High Court of Bombay in *Gurmukh Singh Vs Union of India & Ors.* and the SLP No.(Civil) 13893/2007 filed by the Union of India against the said judgment dated 22.11.2006 was dismissed by the Hon'ble Supreme Court. The provisions of Regulations 82(a) of the Pension Regulations for the Navy, 1964 are in *pari materia* to Regulation 114(a) of the Pension Regulations for the Air Force, 1961 by the which applicant is governed.

20. The facts of the instant case and in the case of *Ex AC Hemraj Singh Vs Union of India & Ors.* in OA 396/2014 and in *Ex Cpl Nishant Kumar Vs Union of India & Ors* in OA 363/2019 decided on 31.05.2023 and in *Ex Sgt Sushant sKumar Baral Vs Union of India & Ors in OA 428/2019 decided on 06.07.2023* and the applicant (herein) Ex Sgt Meegada Prasada Rao who was enrolled in the Indian Air Force on 13.10.1992 and discharged from service on 12.01.2007 after completion of 14 years, and 92 days of service on his own request before fulfilling the conditions of enrolment are in *pari materia*.

CONCLUSION

21. The instant O.A. 1926/2020 is, therefore, allowed with the following directions:

- (i) Impugned order No. Air HQ/99798/734084/SP/DAV dated 22.10.2020 is set aside
- (ii) The shortfall of 09 months(263 days of qualifying service as claimed in the O.A. for grant of service pension 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;
- (iii) Subject to verification of records, the respondents are directed to issue a corrigendum PPO to the applicant granting service pension for the service rendered from the date of his discharge; and
- (iv) 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.

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/CHANANA/

(JUSTICE ANU MALHOTRA)
MEMBER (J)