

**COURT NO. 2, ARMED FORCES TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**OA No. 654 of 2019**

**Ex Gnr Sunil Kumar**

**... Applicant**

**Versus**

**Union of India & Ors.**

**... Respondents**

**For Applicant : Mr. Prashant Vaxish, Advocate**

**For Respondents : Mr. K.K. Tyagi, Advocate**

**CORAM :**

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER(J)**

**HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)**

**ORDER**

1. The applicant vide the present O.A 654/2019 has made the following prayers:-

*“(a) Condone the shortfall deficiency in qualifying the service for pension of the Applicant;*

*(b) Grant all benefits to the Applicant that one soldier can avail at the time of discharge;*

*(c) Grant the 18% interest on the Pension and other funds from the date of discharge i.e., 12.12.1998 till the final disposal of this Application.*

*(d) Direct the Respondents to give Rs. 10,00,000/- as compensation to the Applicant in lieu of the delay on the part of the Respondents;*

*(d) Issue any other Order(s) as this Hon'ble Court may deem fit in the facts of the case.”*

2. The applicant Ex Gnr Sunil Kumar was enrolled in the Army on 05.11.1985 and on completion of requisite military training, was

posted to 90 Field Regiment with effect from 27.01.1987 and was posted to 131 Air Defence Regiment with effect from 08 Nov 1989. Vide the Summary Court Martial proceedings dated 21.12.1998, the applicant was found guilty under Section-40(a) of the Army Act, 1950 and was sentenced "To suffer Rigorous Imprisonment for six months in civil prison" with it having further been directed to the effect that he had to be dismissed from service. Pursuant to further litigation vide order dated 08.10.2013 in TA 460/2009 in CWP No. 2247/1999, this Tribunal directed the Chief of the Army Staff to consider the question regarding the quantum of punishment with a compassionate view. The Chief of Army Staff vide directions vide Ref. No. A/38019/PC-553 /AAD (Legal) dated 15.01.2015, converted the dismissal of the applicant to discharge alongwith with all consequential benefits. Vide order dated 09.02.2015 in MA 488/2014 in TA 460/2009 (Writ petition No. 2247/1999), it was observed by the Tribunal as under:-

*"It is contended by the learned counsel for the petitioner that he will not be eligible for the pension as he does not have requisite qualifying service for pension. Therefore, he wants a direction from this court to grant him pensionary benefits also. We are afraid that such a direction cannot be issued in the execution application. We accordingly direct that in case the petitioner is aggrieved, he may move necessary application before the appropriate authority seeking condonation of delay in the qualifying service. If any such representation is made, the same shall be decided expeditiously. MA is disposed off accordingly."*

The Online Grievance Registration application No. PMOPG/D /2018 /0382918 dated 09.10.2018, was responded to by the respondents vide letter no. AAD/14393080F/NP/Misc dated 31.10.2018, stating to the effect:-

*“2. It is intimated that as per service records held with this office, you were enrolled in Army on 05 Nov 85 and dismissed from service on 12 Dec 97 due to tried by SCM under section 40(a) of the Army Act 1950 for using criminal force to superior officer after rendered 13 years, 01 month and 07 days (incl 04 days NQS pd) of service.*

*3. As per para 132 of Pension Regulations for the Army 1961(Part-I), it is clarified that a minimum period of 15 years of qualifying service required for earning service pension. Since, your qualifying service is below 15 years, you are not eligible for grant of service pension.”*

3. The applicant has thus served the Indian Army for 13 years, 01 month and 07 days of qualifying service as averred in Para-10 of the Counter Affidavit dated 13.09.2019 filed by the respondents from Para- 1 to 4. The respondents have thus submitted that the applicant is thus neither entitled to the grant of service pension, nor to any condonation of shortfall of service that is of more than one year, as the duration of the shortfall in qualifying service that the applicant seeks in the instant case is of 1 year 10 months and 3 days.

4. The contention that the applicant seeks to urge is that in as much as vide order dated 08.10.2013 in TA 460/2009 (Writ petition

No. 2247/1999), which has been transferred to this Tribunal by the Hon'ble High Court of Delhi, it had been directed to the effect:-

*"This writ petition has been received on transfer from the Hon'ble High Court of Delhi.*

*2. Petitioner has come up before this court against the punishment awarded by summary court martial. Petitioner has been sentenced to RI for six months and ordered to be dismissed from service. This is the subject matter of challenge before this court.*

*3. After conclusion of summary of evidence, summary court martial was convened. Petitioner pleaded guilty. His contention in this petition is that he had unblemished record prior to the date when the occurrence took place. Even while scanning through the summary of evidence which has come on record, it appears that reaction of the petitioner was spontaneous and not pre-meditated. He has reacted at a spur of moment. Even though, reaction was disproportionate as he was required to exercise restraint. Be that as it may. The fact remains that there are weaker moments in ones life when man crosses limits of discretion. There is no evidence that the petitioner was habitual in committing any such type of offence. While ordering dismissal, he is deprived of pension and other post retirement benefits. The consequence of the decision are not being suffered by the petitioner alone but his family members also. Looking to the overall circumstances and summary of evidence, we direct the Competent Authority (Chief of the Army Staff) to reconsider the question regarding quantum of punishment awarded to him by the court martial. Looking to the facts and circumstances of the case and that the petitioner had put in more than 13 years service, this power be exercised in a manner so that the petitioner and his family does not suffer on account of the punishment awarded to him. We hope and trust that compassionate view will be taken by the Chief of the Army Staff while considering his case. We accordingly remit the case to the Chief of the Army Staff to take a decision for altering the quantum of punishment awarded by summary court martial. This*

***action be taken within three months. Petition stands disposed off accordingly. No order as to costs."***

with it having been submitted on behalf of the applicant that thus consequentially vide order dated 15.01.2015, the Chief of the Army Staff vide order no. A/38019/PC-553/AAD(Legal) had observed as under:-

***"Whereas in deference to the Order of Hon'ble AFT, the Petition has been re-examined. I find that whereas the proceedings of SCM is legally in order but taking a compassionate view in the facts and circumstances of the case, particularly the fact that the Petitioner had put in 13 years of unblemished service. I hereby direct that the sentence of 'Dismissal from the service' awarded by the SCM be converted to 'Discharge from the date dismissal took effect. The Petitioner shall be entitled to all consequential benefits as admissible."***

and thus the applicant seeks that as his dismissal from service has been converted to discharge from the date the dismissal took effect, in as much as at the time of dismissal on 12.12.1998, which dismissal from service awarded by the Summary Court Martial was converted to discharge from the date of dismissal took effect in terms of order dated 15.10.2015 of the Chief of Army Staff on which date the applicant had completed 13 years, 1 month and 7 days of service, the applicant submits that the period of six months that he was confined in the civil imprisonment, Ambala from 12.12.1998 to 11.06.1999, be computed and consequentially added into the length of qualifying

service of the applicant as a consequence of which addition of six months if so granted, the applicant would have rendered 14 years 7 months and 7 days of service which would thus make him eligible for pensionary benefits. Significantly, in relation to the said contention it is essential to observe that MA 488/2014 had been filed by the applicant apparently for the same reason as depicted vide the order 09.02.2015 in MA 488/2014 already adverted in Para- 2 herein above and in relation to the prayer made therein, it was categorically observed to the effect that

*“It is contended by the learned counsel for the petitioner that he will not be eligible for the pension as he does not have requisite qualifying service for pension. Therefore, he wants a direction from this court to grant him pensionary benefits also. We are afraid that such a direction cannot be issued in the execution application.”*

However, it was further directed that the applicant could move the necessary application before the appropriate authority seeking condonation of delay in the qualifying service and if any such representation is made, the same shall be decided expeditiously. Written submissions dated 23.08.2023 were submitted on behalf of the applicant.

5. The applicant submits that in terms of Regulation-113(b) of the Pension Regulations for the Army, 1961 which reads as under:-



***“113(b): An individual who is discharged under the provisions of the Act and the Rules made thereunder remains eligible for pension and gratuity under these Regulations.”,***

the applicant remains eligible for the grant of pension and gratuity. The applicant further submits that in terms of Regulation 125 of the said Pension Regulations for the Army, 1961, an individual is entitled to the pensionary benefits if service at a time of discharge/invalidation is six months, less than the eligible service and that further in terms of Regulation-44 of the Pension Regulations for the Army, 2008(Part-I), the grace period provided thereunder is of 12 months. Thus the applicant submits that if the period of six months of civil imprisonment is computed into the period of qualifying length of service, the applicant's deficiency in the service period would only be 7 months and 23 days, making him eligible for the grant of pensionary benefits in terms of Regulation-44 of the Pension Regulations for the Army, 2008(Part-I).

6. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in ***DS Nakara Vs. UOI & Ors.***, 1983(1) SCC 305, to contend to the effect that pension is a payment for the past service rendered and a social welfare measure rendering socio economic justice to those who have ceaselessly toiled for the

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employer in their hey days on the assurance that they would not be left in the lurch in their old age. The applicant has thus placed reliance on the verdict of the Hon'ble Supreme Court in **Major GS Sodhi Vs. UOI & Ors.**, AIR 1991 SC 1617, to contend to similar effect. We have perused the judgment relied upon on behalf of the applicant in **Major GS Sodhi Vs. UOI & Ors**, decided on 30.11.1990 from the website of the SCC Online and it is apparent that the said issue of condonation of shortfall in service was not subjudice in the said matter and reliance placed on behalf of the applicant in relation thereto, to submit to the effect that the deficiency of 3 years in qualifying length of service of 20 years was condoned by the Hon'ble Supreme Court therein, for the grant of pensionary benefits, is wholly misplaced. Reliance was also placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in **UOI & Ors. Vs. Surinder Singh Parmar**, (2015) 3 SCC 404 to submit to the effect that the deficiency of eligible pensionary service has been condoned as well.

7. We considered it essential to peruse the records of WP(C) 2247/1999 in TA 460/2009 and the records in MA 488/2014, which have thus been put up. Significantly the prayers made in MA 488/2014 were to the effect:-



*“(a) Issue/pass suitable appropriate orders /directions against the respondents to execute judgment of the court dated 08.10.2013. respondents Issue to appropriate place on orders directing record the action taken/compliance report in pursuance of the aforesaid court order besides imposing heavy and exemplary costs in favour of the Applicant in the Interest of justice;*

*(b) Pass such other and further orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.”*

8. On behalf of the respondents, as already observed herein above, it has been categorically submitted to the effect that the applicant has rendered only 13 years 1 month and 8 days of qualifying service that is including 4 days of non qualifying service and thus in the instant case, in view of guidelines for condonation of service issued by Integrated Headquarters of Ministry of Defence(Army) vide letter No. B/38022/Misc/AG/PS-4(Imp-I) dated 26.03.2009, condonation of shortfall of service for grant of service pension has been provisioned for deserving cases only subject to consideration of the competent authority and the same cannot be considered as a routine for all cases. It is thus contended on behalf of the respondents that the spirit of condonation of shortfall of service for pensionary benefits lies with for those cases where the span of service of an individual is more than 15 years, but qualifying service is less than 15 years and individual has rendered exemplary service. The respondents

thus submit that the prayer made by the applicant is not tenable in law and is liable to be dismissed.

9. On a consideration of the submissions that have been made on behalf of either side, as has been observed by us herein above, the applicant has rendered 13 years 1 month and 8 days of qualifying service as on the date of dismissal which was converted into discharge vide order no. A/38019/PC-553/AAD(Legal) dated 15.01.2015 of the Chief of Army Staff. Thus the date of discharge of the applicant is consequentially 12.12.1998 which computes to 13 years 01 month and 07 days of service and even if the period of six months which the applicant seeks of his civil imprisonment is added into the said period of 13 years 01 month and 07 days of service, the length of service would performed would be 13 years 07 months and 07 days of service which too makes the total length of service of the applicant of 13 years 07 months and 07 days which too is short of more than 12 months for the requisite qualifying length of service of 15 years for the grant of pensionary benefits in terms of Regulation-125 of the Pension Regulations for the Army, 1961 read with Regulation-44 of the Pension Regulations for the Army, 2008(Part-I). In these circumstances, though undoubtedly the applicant has rendered more than 13 years of service to the Indian Army and in as much as his

dismissal from the Indian Army stands converted to a discharge, the same *per se* cannot detract from the aspect of the payment of the grant of pensionary benefits beyond the permissible length of condonation of shortfall of deficiency in service, even in terms of the Integrated Headquarters of Ministry of Defence(Army) vide letter dated 26.03.2009, which relates to guidelines for consideration of mercy appeals for grant of service pension to officers dismissed from service, it is provided to the effect:-

“ **GUIDELINES FOR CONSIDERATION OF MERCY APPEALS FOR GRANT OF SERVICE TO OFFICERS AND PBOR DISMISSED FROM SERVICE**

*In terms of Regulations 16 and 113 (a) of Pension Regulations for the Army, 1961 (Part-1), an individual who is dismissed from service under the provisions of Army Act or removed under Army Rule 14, i.e. as a measure of penalty, is not eligible for pension or gratuity in respect of all previous service. However, in exceptional cases, the Competent Authority on submission of an appeal to that effect may, at his discretion, sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible to him on retirement/discharge. The Competent Authority was the President of India till the power was delegated to the AG vide Min of Def Order No 46847Dir (PEN)2001 dated 14 Aug 2001 as amended vide corrigendum No 4684/DIR (PEN)/2001 dated 07 Nov 2001.”,*

thus, making it apparent that even pursuant thereto, the Competent Authority may sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible to him on

retirement/ discharge. Though undoubtedly in the instant case, the dismissal stands converted to discharge vide the order of the Chief of Army Staff dated 15.01.2015, the same is inconsequential qua the grant of pensionary benefits for computation of the qualifying length of service.

10. As regards reliance that has been placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *UOI & Ors. Vs. Surinder Singh Parmar*, (2015) 3 SCC 404, it cannot be overlooked that though in that case, the respondent had completed 13 years 10 months and 13 days of service with the minimum qualifying period of pensionable service in the Indian Navy being 15 years, it was categorically observed vide Para-12 of the verdict of the Hon'ble Supreme Court in *UOI & Ors. Vs. Surinder Singh Parmar*(Supra), to the effect:-

“

12. In view of the aforesaid provision, the respondents is also entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months and up to 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.”

making it apparent that thus the condonation of shortfall in qualifying service for grant of pension was permissible to the respondents therein for a period beyond six months and upto 12 months and it was further observed vide the said para-12 of the verdict in *Surinder Singh Parmar*(Supra) by the Hon'ble Supreme Court, to the effect:-

*"However, as we find that the respondent was allowed to retire from service on 24.06.1985 when the Instruction dated 14.08.2001 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 stands condoned.",-*

thus making it further apparent that in that particular case, the facts of which are not in *pari materia* with the facts of the instant case, the respondent therein was allowed to retire from service on **24.06.1985** where the instructions dated **14.08.2001** of the GoI, MoD order of delegation of administrative power to the competent authority to condone shortfall in qualifying service to grant of pension beyond six month and upto 12 months had not taken effect, and that the respondent was held entitled to the benefit of the same from such date on which the said instructions came into effect.



Furthermore, it is essential to observe that the powers to do complete justice vide the constitutional provisions of Article-142 of the Constitution of India vest in the Hon'ble Supreme Court alone. In as much as the applicant herein does not fulfil the requisite qualifying length of service of 15 years and the deficiency of shortfall for which the applicant seeks condonation is beyond a period of 12 months even when the period of 6 months that he continued to remain in Civil prison is taken into account, the applicant would have rendered 13 years 7 months and 7 days of qualifying service and thus the applicant is not entitled to the prayer made by him.

11. Significantly, it is essential to observe that vide order dated 19.11.2013 of this Tribunal in OA 401/2013 in the case of **Surender Singh Parmar vs UOI & Ors**, it was observed vide Para-18 to the effect:-

*"18. So far as shortfall of the petitioner's service to the fourteen years is concerned that issue was raised specifically by the UOI and was contested by the petitioner and initially it was challenged by the petitioner because of the reason that in the impugned order dated 14.08.2001 before the Delhi High Court in petitioner's writ petition whereby the petitioner's claim was rejected on the ground that he rendered service of 13 years, 10 months and 13 days only but that order has been set aside by the Division Bench of the Delhi High Court after considering the Government of India instructions of 30.10.1987. The Hon'ble Division Bench of Delhi High Court firstly did not reject petitioner's Writ Petition on the ground raised by the UOI of shortfall of service to the*



*fourteen years service of the petitioner. Therefore, this issue cannot be re-opened before use."*

and it was in these circumstances that vide Para-19 of the said order of this Tribunal, it was held to the effect:-

*"19. In view of the above reasons this OA deserves to be allowed hence allowed. It is held, that petitioner rendered actual service to the extent of fourteen years by rounding off which makes him eligible for consideration of condonation of shortfall of pensionable service of one year and in view of striking off of rule 82(a) the petitioner cannot be denied the benefit of condonation of shortfall in service on the ground that he took the discharge from service voluntarily at his own request. Therefore, we declare that petitioner's shortfall in service stands condoned in the facts of the case and the respondents shall calculate the total benefit of pension within a period of three months from the date of receipt of the copy of the order. However, no order as to costs. The payments shall be calculated and made within a period of three months."*

Reliance thus placed on behalf of the applicant on the case of

*Surender Singh Parmar*(Supra) is of no avail to the applicant.

### **CONCLUSION**

12. The OA 654/2019 is dismissed.

Pronounced in the open Court on the 23 day of November, 2023.

[REAR ADMIRAL DHIREN VIG]  
MEMBER (A)

[JUSTICE ANU MALHOTRA]  
MEMBER (J)

/TS/