

COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

56.

OA 4096/2023 with MA 5397/2023

Deoki Devi Wd/O DSC L/Naik Dalip Singh Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. Shayam Narayan, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
18.01.2024

MA 5397/2023

Keeping in view the averments made in the miscellaneous application and finding the same to be bona fide, in the light of the decision in Union of India and others v. Tarsem Singh (2008) 8 SCC 648, M.A No. 5397/2023 is allowed condoning the delay in filing the O.A.

OA 4096/2023

2. The challenge in this O.A is against the letter issued by the respondents dated 17th July, 2023 (Annexure A1), whereby the respondents have rejected the request of the applicant for grant of second service pension to her husband for the service rendered by him in the Defence Security Corps (DSC) on the ground that there was a shortfall of 365 days in the mandatory qualifying service of 15 years to make him eligible for second service pension and

resultantly, the applicant is also not eligible for grant of dual family pension based on her late husband's second service in the DSC.

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

4. It is the conceded position that the husband of the applicant had rendered 14 years of service in DSC and there is a shortfall of 365 days against the mandatory 15 years of qualifying service, which made him ineligible for the second service pension for the service rendered with DSC.

5. As already noted, the applicant is the widow of DSC/L Naik Dalip Singh (Retd). The husband of the applicant was enrolled in the DSC on 31.03.1984 and was discharged from service on 31.03.1998, after rendering 14 years of service. However, there was a shortfall of 365 days to complete the qualifying service for second service pension. The husband of the applicant died on 30.05.2010.

6. The question involved in this case is no longer *res integra*, as the same had already been settled by this Tribunal in the case of Bhani Devi Vs. Union of India and others (O.A. No. 60 of 2013 decided on 07.11.2013) and Smt. Shama Kaur Vs. Union of India and others (O.A No. 1238 of 2016 decided on 14.10.2020). In the light of the decision in *Bhani Devi* (supra), the personnel of DSC are entitled for condonation of the shortfall in qualifying

service up to 'one year' for grant of pension. Taking into account the aforesaid factual and legal aspects, the shortfall of 365 days to complete 15 years of qualifying service in DSC by the husband of the applicant to get second service pension is liable to be condoned. In the light of the decision of Hon'ble Supreme Court in the case of Union of India and Anr. Vs. Surender Singh Parmar (C.A No. 9389 of 2014 dated 20.01.2015); the arrears of second service pension can be given only from 14.08.2001, the date of issuance of GOI, MoD letter No.4684/DIR(PEN)/2001. There is no doubt that as per Section 2(2) of the Armed Forces Tribunal Act, 2007, widows of Defence personnel have full right to approach the Tribunal in the capacity of being dependent, heir or successor in so far it relates to service matters of deceased personnel, which term includes pension as per Section 3(o)(i) of the said Act, but in cases where widows are entitled to dual family pension, the second family pension, in addition to the first family pension, is authorised only with effect from 24.09.2012 as per the Ministry of Defence letter No. 01(05)/2010-D(PEN)/Policy) dated 17.01.2013.

7. In the light of the aforesaid finding, we hold that the late husband of the applicant is eligible for condonation of shortfall of 365 days and he is eligible for second service pension for the services rendered in DSC with effect from 01.04.1998. However, in the light of the decision in Surender Singh Parmar

(supra), he is not entitled to payment of any arrears.

From 31.05.2010, the applicant, being the widow of DSC K/Naik Dalip Singh, will be eligible for second family pension, in addition to the first family pension. However, in view of the contents in the Ministry of Defence letter dated 17.01.2013, she will be eligible for arrears of second family pension only with effect from 24.09.2012.

8. Taking into account the aforesaid factual and legal aspects, we are of the considered view that the facts of this case are squarely covered by the decisions in *Bhani Devi* and *Smt Shama Kaur* (supra) and, therefore, the shortfall of 365 days to complete 15 years of qualifying service in DSC by the late husband of the applicant to get second service pension is liable to be condoned, which will enable the applicant also to get second family pension from the date on which her husband died.

9. The instant OA is, therefore, allowed with the following directions:

- (i) The shortfall of 365 days of qualifying service for second service pension in respect of the late husband of the applicant is condoned;
- (ii) Subject to verification of records, the respondents are directed to issue a corrigendum PPO granting service pension for the service rendered by the late husband of the applicant in DSC with effect from 01.04.1998 till his death, i.e. 30.05.2010 and

thereafter second family pension to the applicant with effect from 31.05.2010;

- (iii) The respondents are further directed to calculate and pay the arrears of second family pension to the applicant with effect from 24.09.2012. However, the arrears payable to the applicant shall be restricted to three years prior to the filing of the OA;
- (iv) The respondents shall implement this order 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.

10. However, this is subject to verification, in case, the respondents feel that the shortfall is more than 365 days, they will have the liberty to file the same and reject the claim of the applicant by a speaking order.

11. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

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