

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

130.

OA 575/2022 with MA 706/2022

Ex Sgt Arvind Bajpai Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Shiva Nand Mishra, Advocate

For Respondents : Mr. Y P Singh, Advocate

CORAM

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
03.01.2024

MA 706/2022

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 Vs. Tarsem Singh (2008) 8 SCC 648, the same is allowed condoning the delay in filing the O.A.

OA 575/2022

2. In the Present OA, the applicant is seeking following reliefs:-

(a) Quash and set aside the impugned order dated 26.02.2021 passed by Respondent No. 04 rejecting to, condone shortfall deficient service to grant service pension.

(b) Condone the shortfall of 290 days of service of Applicant in qualifying for pensionable service for his service in the Indian Air Force.

(c) Order Respondent No. 2, 3 and 4 to grant service pension to the Applicant for his service in the Indian Air Force w.e.f. the date of his discharge from service with arrears of pension with interest @18% per annum.

(d) Pass any such further or other orders/directions to the Respondents as may be deemed just and proper to the Hon'ble Tribunal in the interest of justice and equity.

3. The applicant was enrolled in the Indian Air Force on 18.10.1999 and he was discharged on 31.12.2013 after rendering qualifying service of 14 years and 75 days. Hence there is a shortfall of less than one year in eligibility for service pension.

4. The applicant made a representation dated 04.02.2021 for grant of service pension for the service in the army but the same has been rejected vide letter No. Air HQ/99798/743505/SP/DAV dated 26th February, 2021, the extracts of which read as under:-

"3. As per Regulation 121 Pension Regulation for the Air Force (Part I), the minimum qualifying regular service required to earn Service Pension is 15 years: Further, as per Regulation 114, read in conjunction with GoI MoD letter No. 4684/Dir)Pen)2001 dated 14 Aug 01, grant of pension by condonation of shortfall in qualifying service is not applicable to those who have taken discharge from service under the clause "at his own request".

Hence, this OA.

5. The question of the maximum condonation in qualifying service for grant of pension is no longer *res integra* as it has been dealt with at great length by the Full Bench constituted by the Principal Bench of Armed Forces Tribunal in Smt. Shama Kaur v. Union of India and Others (O.A.No.1238 of 2016) with (O.A. No.272/2018) Ex-Nk Vijay Singh v. Union of India and Others.

6. After very detailed and exhaustive deliberation on condonation of deficiency in service for grant of service pension, the Full Bench of this Tribunal arrived at the following:- .

"18. As observed above, various Government letters and provisions of the Pension Regulations provide for 15 years of qualifying service for grant of normal service pension. However, Regulation 125 of the Pension Regulations, 1961, provided for condonation of deficiency upto 6 months by the respondents, meaning thereby that a person with 14 years and 6 months of service could be granted pension by condoning the shortfall for 6 months. This condonation was exercisable by the respective Record Offices. Further, Government of India, Ministry of Defence, vide letter No.4684/DIR(PeN)/2001 dated 14.08.2001, enhanced the condonable period upto one year (12 months) by providing the following:-

Sanctioned is hereby accorded in pursuance of MoD ID No.34(3)/2001/D(O&M)n 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:- 10

*(a) *****

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

19. Hence, as things stand as on date, condonation of shortfall is available upto one year (12 months), meaning thereby, that a person can be granted service pension even

if his service is 14 years, by condoning the shortfall upto the above said period."

7. From the above, it is crystal clear that the Full Bench has very categorically concluded that condonation of shortfall of qualifying service for pension can be granted upto one year only. Similar view condoning the shortfall of less than one year of qualifying service has also been taken by a Coordinate Bench of this Tribunal in the case of *Ex Cpl Nishant Kumar Vs. Union of India and Ors.* (OA 363/2019 decided on 31st May, 2023).

8. Taking into account the aforesaid actual and legal aspects, we are of the considered view that the shortfall of less than one year to complete 15 years of qualifying by the applicant is liable to be condoned.

9. In light of the above consideration, the instant OA is, therefore, allowed with following directions.

(a) The shortfall of less than one year of qualifying service for service pension is condoned.

(b) Subject to verification of records, the respondents are directed to issue a PPO to the applicant granting him service pension.

(c) Arrears shall be paid within four months from date of receipt of the copy of this order. In default the

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

10. No order as to costs.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

Priya