

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

114.

OA 2635/2023

Sep/MT Manoj Kumar Pandey (Retd) Applicant
Versus
Union of India & Ors. Respondents

For Applicant : Mr. Bipin Bihari, Advocate
For Respondents : Mr. Prabodh Kumar, Advocate

CORAM

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

ORDER
10.01.2024

OA 2635/2023

Invoking the jurisdiction of this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant seeks grant of service pension for the service rendered by him in Indian Army after condoning the shortfall of 349 days.

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

- (a) To direct the Respondents to grant Service Pension to the Applicant for service rendered in Indian Army after condoning shortfall/deficient period of (349 days) (or any other period upto 12 months), if any, from the date of his discharge viz 01.03.2020.

- (b) To direct the respondents to grant gratuity, Leave Encashment with interest @ 12 % per annum from the date of discharge, or/and
- (c) To direct the respondents to issue ECHS Card, CSD Smart Card, Ex-servicemen ID Card and certificate with regard to Ex servicemen for employment in civil, or/and,
- (d) To direct the Respondents to pay the due arrears of Service Pension and Pensionary benefits with interest@12% per annum from the date of discharge/retirement viz, 01.03.2020 with all other consequential benefits..
- (e) To pass such orders, direction/directions as this Hon'ble Tribunal may deem fit and proper in accordance with Law.
- (f) To award the litigation cost of Rs 50,000/- to the applicant,
- (g) To pass such further order or orders, direction/directions as the Hon'ble Tribunal may deem fit and proper in accordance with law.

3. The applicant was enrolled in the Indian Army on 10.02.2003 and he was discharged on 29.02.2020 after rendering qualifying service of 17 years and 19 days which included 1097 days (03 years and 02 days) of non-qualifying service. Hence there is a shortfall of less than one year in eligibility for service pension.

4. The applicant made a representation dated 12th July, 2023 for grant of service pension for the service in the army but the same has been rejected vide letter No.14830558/LN/Legal Cell dated 28th August, 2023, the extracts of which read as under:-

“2. On perusal of your Service Documents, it is observed that you were enrolled in the Army on 10 Feb 2003. Since, you were rendered an unwilling certificate for extension of service on 02 Feb 2018 signed by you and countersigned by your CO unit. You have been discharged from service with effect from 29 Feb 2020 on fulfilling the conditions of terms of engagement under Para 13 (3) III (i) of Army Rule 1954. It is obvious to mention that during your service, you were committed several offences and awarded punishments which is included in the Non Qualifying Service. You had rendered 17 years and 19 days of service including 1097 days (03 years and 02 days) Non Qualifying Service. Thus your Qualifying Service was less than the mandatory requirement of 15 years service for claiming Service Pension. Hence you are not eligible for Service Pension. On completion of Final Settlement of Accounts, you have been credited Rs-44,817/- as credit balance and Rs- 49,592/- as AFPP Fund balance.

3. Further, your Mercy Petition for condonation of 349 days of shortfall of service dated 12 Feb 2020 was submitted to IHQ of MoD (Army) duly rectifying the observations vide this office letter No. 14830558/SP(T-IA) dated 20 Dec 2021. However, you mercy appeal has been rejected by IHQ of MoD (Army) vide letter No. 78402/14830558/MKP/Q/IV/ST-12/AG/PS-4(Imp) dated 26 Apr 2023 (copy attached). Hence, you are not entitled for Service Pension.”

5. On 15th September, 2023 when notice was issued to the respondents, they were directed to verify and confirm the

period of shortfall as claimed by the applicant by way of an affidavit. However, time having been granted, the respondents have not filed the counter affidavit.

6. The question of the maximum condonation in qualifying service for grant of pension is no longer *res integra* as it has been dealt with a 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).

7. 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) *****

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."

8. 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).

9. 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.

10. 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.

11. No order as to costs.

12. Let a copy of this order be provided *DASTI* to learned counsel for the parties.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

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

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