

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

**4.
OA 275/2024 with MA 333/2024**

**Smt. Bali Devi W/o Ex LNK(DSC/GD)
Lal Bahadur Chhetri** **Applicant**

VERSUS
Union of India and Ors. **Respondents**

For Applicant : Mr. Ravi Kumar, Advocate
For Respondents : Mr. Rajan Khosla, Advocate

CORAM

**HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT. GEN. P.M.HARIZ, MEMBER (A)**

**ORDER
12.02.2024**

MA 333/2024

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 9380 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 333/2024 is allowed and the delay of 9380 days in filing the OA 275/2024 is thus condoned. The MA is disposed of accordingly.

OA 275/2024

The applicant vide this OA seeks the following reliefs:

“(a) To direct the respondents to grant service pension to the applicant’s husband for service rendered in DSC after condoning shortfall/deficient period of 274 days(or any other period, upto 12 months) from the date of his discharge viz 31 May 1998 till his death viz on 12 Jul 2014.

(b) Direct the respondents to pay the due arrears of service pension for DSC service with interest @12% p.a. from the date of discharge/retirement viz 31 May 1998 and till his death viz on 12 July, 2014 with all other consequential benefits.

(c) To direct the respondents to grant ordinary family pension to the applicant from the date of death of her husband viz on 12 Jul 2014.

(d) To direct the respondents to pay the due arrears of ordinary family pension with interest @12%p.a. from the date of death of her husband viz 12 Jul 2014 with all other consequential benefits.

(d) To pass such orders, direction/directions as this Hon’ble Tribunal may deem fit and proper in accordance with law.

2. The applicant submits that her late husband Ex LNK (DSC/GD) Lal Bahadur Chhetri was re-enrolled in the Defence Security Corps on 02.03.1984 and was discharged from service on 31.05.1998 on completion of 14 years 02 months and 30 days of service and thus seeks directions to the respondents to grant second service pension for the services rendered by her husband in the Defence Security Corps (hereinafter referred to as DSC) after condoning shortfall/deficiency of 274 days of the qualifying service of pension in the

DSC till his demise. Apart from this, she seeks directions to pay the arrears of the 2nd service pension with interest @ 12% p.a. from the date of retirement with all the consequential benefits.

3. Notice of the OA was issued to the respondents which was accepted on their behalf.

4. The facts of the case put forth by the applicant are to the effect that her husband was enrolled in the Indian Army on 11.05.1961 and discharged from service on 30.11.1976 after rendering 15 years of service and was re-enrolled on 02.03.1984 in the Defence Security Corps and was discharged from service on 31.05.1998 after completing 14 years 02 months and 30 days of service and submits that her husband was entitled for the 2nd Service Pension after condonation of shortfall/deficiency of service of 274 days in completing the period of 15 years in the Defence Security Corps. The applicant has further submitted that her husband Ex LNk Lal Bahadur Chhetri expired on 12.07.2014.

5. The applicant further submits that as per para 266 of the Pension Regulations for the Army, 1961, it is provided that:

the grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same general rules as are applicable to combatants of the Army, except where

they are inconsistent with the provisions of the regulations in this chapter.

and that all the general rules were applicable to him. Inter alia, the applicant submits that in terms of para 125 of the Pension Regulations for the Army, 1961, which 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"*

and that her husband was eligible for condonation of deficiency of service of 274 days, as the said regulation empowers the competent authority to condone shortfall of service for a period of 06 months. Inter alia, the applicant has submitted that under the GOI/MoD letter No. 4684/Dir (Pension) 2001 dated 14.08.2001, the shortfall in the qualifying service for the grant of pensionary benefits in respect of Personnel Below Officer Rank can be condoned up to 12 months. The applicant further submits that as per Rule 44 of the Army Pension Regulations, 2008, Part I, Sub Section 2; POBR, Sub-

Section I. General, the deficiency in service for eligibility to pension may be condoned upto 12 months.

6. The applicant further places reliance *inter alia* on the following verdicts of the Armed Forces Tribunal:

- i) OA 60/2013 titled as **Bhani Devi** versus **UoI & Ors., AFT(PB)**
- ii) OA 1238/2016 – titled as **Smt. Shama Kaur** versus **UoI & Ors.** of the Larger Bench, AFT(PB).Delhi
- ii) OA 131/2017 titled as **Ex Nk Mohanan T** Vs **Union of India & Ors, AFT(RB) Kochi.**

in support of his contention that in cases where though the applicants thereof had not completed 15 years of service and were discharged from service, they were held entitled to the 2nd Service Pension for services rendered in the DSC by condonation of the said shortfall for a period of 12 months to qualify for the purpose of the 2nd service pension.

7. 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.

8. Significantly in **Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P., (2006) 10 SCC 346** the Hon'ble Supreme Court has laid

down that service jurisprudence postulates that all the persons similarly situated should be treated similarly.

9. 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."

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(ii) Clubbing point of reference (b) and (c), it is held that widows of defence personnel have the right to approach this Tribunal to claim pension or family pension in consequence to the claim of pension qua deceased employees which falls within the definition of "service matter" under the Act and this right is provided by Section 2(2) of the Armed Forces Tribunal Act, 2007. Though there is no applicability of limitation in continuing wrongs and recurring causes of action, the arrears of pension, in the specific cases of condonation of shortfall, would however have to be restricted from 14.08.2001 as already directed in Paragraph 12 of Surrender Singh Parmar(supra) which is binding on us. Further, the claims of dual family pension (in addition to the first family pension) would have to be restricted from 24.09.2012, as already provided by Ministry of Defence letter dated 17.01.2013 (supra).

(iii) In reference to Point (d), It is held that the law being fully settled, including by Constitutional Courts, there is no scope or occasion to doubt the correctness of the earlier decision of this Tribunal in Bhani Devi's case. It thus lays down the correct legal proposition of law.

(iv) Question No. (e) stands answered in Para 47 herein above."

10. It is thus apparent that the husband of the applicant in the instant case was entitled for the grant of the 2nd Service Pension after condonation of shortfall/deficiency of 274 days of qualifying service for pension, in as much as the facts of this case are also in *pari materia* with the facts of the case in *Bhani Devi*(supra) *Ex NK Vijay Singh*(Supra) and in view of the verdict of the Larger Bench of the Principal Bench, Armed Forces Tribunal in *Shama Kaur*(supra) and in *Ex Nk Mohanan T Vs Union of India & Ors*(OA 272/2018) of the Kochi Bench of this Tribunal wherein it was held that the provisions for condonation of shortfall in service under Regulation 125 of the Pension Regulations for the Army 1961 (Part I) are equally applicable to the Armed Forces personnel serving in the Defence Security Corps making them eligible for grant of the second service pension. However, the arrears of the second service pension have to commence to run from 14.08.2001.

11. Significantly, against the order in *Ex Nk Mohanan T* (supra), granting condonation of shortfall of DSC service, subsequent to the issue of the GoI (MoD) letter dated 20.06.2017, though the respondents had approached the Hon'ble Supreme Court by filing Civil Appeal (Diary)

No.27100 of 2018, the same was dismissed vide order dated 27.08.2018 and thus the matter has attained finality.

12. The prayer made on behalf of the applicant in relation to the grant of ordinary family pension for the service pension earned by her husband whilst serving in the Defence Security Corps. from 02.03.1984 to 31.05.1998, from the date of death of her husband on 12.07.2014 is allowed. She being the widow of Ex LNK (DSC/GD) Lal Bahadur Chhetri who is thus eligible for second family pension in terms of the Ministry of Defence Letter No.01(05)/2010-D(Pen/Policy) dated 17.01.2013, in addition to the first family pension. She will be eligible for the arrears of second family pension from the date of demise of her husband i.e. 12.07.2014.

13. The instant O.A. 275/2024 is, therefore, allowed with the following directions:

(i) The shortfall of **274** days of qualifying service of Late LNK Lal Bahadur Chhetri as claimed in the O.A. for grant of second service pension of the DSC 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 and the respondents are also directed to release the second family pension to the applicant for the services rendered by the deceased husband of the applicant in Defence Security Corps.

(ii) Subject to verification of records, the respondents are directed to issue a corrigendum PPO to the applicant granting second service pension for the service rendered by her husband in the DSC, from the date of his discharge and consequently the ordinary family pension from the date of demise of her husband Ex LNk Lal Bahadur Chhetri.

(iii) 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.

13. No order as to costs.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

12.02.2024

/CHANANA/

(LT. GEN. P.M.HARIZ)
MEMBER (A)