

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

40.

OA 828/2024

5043751-K Ex Nk (DSC)Top Bahadur Thapa Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Banvendra Singh Gandhar, Advocate
For Respondents : Mr Kamar Gaurav, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
22.11.2024

The applicant 5043751-K Ex Nk (DSC)Top Bahadur Thapa vide this OA seeks the following reliefs:

- "(a) Direct the respondents to grant 2nd Service Pension of DSC to the applicant after condoning the shortfall/ deficiency of 315 days in qualifying service of pension in DSC.*
- (b) Direct respondents to pay the due arrears of 2nd Service Pension with interest @12% per annum from the date of retirement with all the consequential benefits.*
- (c) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case*

alongwith cost of the application in favour of the applicant and against the respondents.

2. The applicant submits that he was enrolled in the Indian Army on 08.01.1985 and was discharged from service on 30.01.2009 on completion of more than 24 years of pensionable service and was then re-enrolled in the Defence Security Corps(hereinafter referred to as DSC) on 12.12.2009 and was discharged from the DSC service on 31.01.2024 on completion of 14 years 01 month and 19 days of service and thus seeks directions to the respondents to grant second service pension for the services rendered in the Defence Security Corps after condoning the shortfall/deficiency of **315 days** of the qualifying service of pension in the DSC. Apart from this, he seeks directions to pay the arrears of the 2nd service pension with interest @ 12% p.a. till the final payment is made.

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

4. 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 he was eligible for condonation of deficiency of service of **315 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; PBOR, Sub-Section I. General, the deficiency in service for eligibility to pension may be condoned upto 12 months.

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

i) OA 1238/2016 - *titled Smt. Shama Kaur versus UoI & Ors.* of the Larger Bench, AFT(PB).Delhi

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.

6. The learned counsel for the respondents fairly does 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.

7. 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."

8. It is thus apparent that the applicant in the instant case is entitled for the grant of the 2nd Service Pension after condonation of shortfall/deficiency of 315 days of qualifying service for pension, in as much as the facts of this case are also *pari materia* 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.

9. 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.

10. Furthermore, in view of the judgment dated 04.09.2024 of the Division Bench of the Hon'ble High Court of Delhi in W.P.(C) No.2986/2024 titled **Union of India & Ors Vs Ex/NK Chinna VEDIYAPPAN** which has been treated as a lead case with several other connected petitions with observations in paragraphs 20,21,22,23, 26 and 27 therein which read to the effect:

"20. From a bare perusal of the aforesaid clauses of both PRA of 1961 and PRA of 2008, it is evident that the respondents are correct in urging that all the provisions of the Pension Regulations, unless they are found to be inconsistent with Chapter VIII of PRA, 2008 and Chapter IV of PRA, 1961, would be equally applicable to the service in the DSC. Except for making a bald statement that the condonation of shortfall in service as provided under paragraph 125 of PRA, 1961 and paragraph 44 in PRA, 2008 is not applicable to service in the DSC, the petitioners have not even pointed out any

express provision in the Chapters dealing with the DSC service which bars condonation of shortfall in qualifying service.

21. From the submissions made at the bar as also the detailed written submissions filed by the petitioners, we find that the petitioners have, in fact, not even urged that there is any provision in these Chapters dealing with the DSC which put an embargo on condonation of shortfall. We are, therefore, unable to appreciate as to how the provisions in paragraph 125 of the PRA of 1961 and paragraph 44 of the PRA of 2008, providing for condonation of shortfall in service, would not be applicable to service in the DSC. In our considered view, when no inconsistency between the provisions for condonation and the provisions dealing with the DSC service has been pointed out, it is not open for the petitioners to contend that the provisions of paragraph 125 of the PRA of 1961 and paragraph 44 of the PRA of 2008, which provide for condonation of shortfall in service, would not be applicable to the service in DSC.

22. It is also noteworthy that the scheme of the Regulations in itself provide for two independent service pensions, one for service in the Indian Army

and the second for the service in the DSC. It is only because of the provision for two service pensions in the Regulations that the respondents, while joining the DSC, did not opt for including their past service in the Indian Army and have, therefore, been deprived of benefits which could have accrued to them had they sought inclusion of their past service with the Army. Merely because the claim of the respondents, if allowed, would entitle them to earn a second pension, which is envisaged in the Regulations itself, the petitioners cannot be permitted to raise a plea which is contrary to the specific provisions of the Regulations.

23. We have also considered the letters dated 23.04.2012 and 20.06.2017 issued by the Ministry of Defence, wherein it has been provided that no condonation for shortfall in qualifying service will be granted for second service pension with the DSC. Even though we find that these letters already stand quashed by the learned Tribunal in Ex Mohanan T (supra), we have, at the insistence of the learned counsel for the petitioners, examined the same, but are of the view that once the pension Regulations do not create any bar for condonation of shortfall in qualifying service, contrary instructions could not

have been issued by the Ministry of Defence. It is trite law that administrative instructions cannot override the statutory regulations and therefore, we are of the considered opinion that the petitioners, by way of these letters, could not deprive the respondents of the rights accruing to them under the specific provisions of the Pension Regulations.

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26. *On the other hand, we find that an appeal assailing the detailed order passed by the learned Tribunal in Ex Mohanan T (supra) allowing an identical prayer, as raised in the present petitions, seeking condonation of shortfall of upto 12 months in the DSC service as per paragraph 125 of the PRA of 1961 and paragraph 44 of the PRA of 2008, already stands dismissed by the Apex Court on 27.08.2018. Even though, while dismissing the appeal, the question of law was left open by the Apex Court, having examined the Scheme of the Regulations, we are not persuaded by the petitioners' plea that the shortfall in qualifying service for pension in the DSC is not condonable only because it happens to be a second service pension.*

27. For all the aforesaid reasons, we find absolutely no merit in the writ petitions, which are, accordingly, alongwith the pending applications, dismissed. Consequently, all interim orders stand vacated."

the issue involved in the present OA is no more *res integra*.

11. 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.

12. The instant O.A. 828/2024 is, therefore, allowed with the following directions:

(i) The shortfall of **315** days of qualifying service 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;

(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 him in the DSC, from the date of his discharge; and

(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)

22.11.2024

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

/CHANANA/