

**COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 2097/2022 with MA 2765/2022

Ex NK Manjeet Singh

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. Ravi Kumar, Advocate

For Respondents: Mr. Sundeep Kumar, Advocate
Capt Abhishek Kumar, OIC Legal Cell

CORAM

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)**

ORDER

MA 2765/2022

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 MA is allowed condoning the delay in filing the OA. The MA stands disposed of.

OA 2097/2022

BRIEF FACTS

2. The applicant was enrolled in the Territorial Army (102 Inf Bn TA PUNJAB) on 28.09.2001 and discharged from

service on 30.09.2021 after rendering 14 years 196 days service (on completion of Terms of Engagement) in Low Medical Category, 'H3' (Permit) on account of the disability "**Sensorineural Hearing Loss (Bilateral)**" assessed @ 60% for life vide AFMSF-16 dt. 21.05.2021 on the recommendations of the Release Medical Board (RMB) held on 21.05.2021 considering the disability of the applicant 'aggravated' by military service. The Punjab Regiment processed the claim of the applicant to PCDA (P), Prayagraj for grant of Disability Element of Pension. Vide PPO No. 229202100124 dt. 04.07.2022, PCDA (P), Prayagraj granted Disability Element of Pension to the applicant wef 01.10.2021 for life.

3. The applicant sent legal notice dt 09.05.2022 and reminder on 08.07.2022 for grant of Service Pension w.e.f. his date of discharge i.e. 30.09.2021 after condoning shortfall of qualifying service of 190 days of service. Records, The Punjab Regiment vide letter dt. 03.06.2022 processed the case of the applicant to 102 Inf Bn (TA) Punjab for condonation of shortfall of qualifying service in accordance with IHQ of MoD (Army) letter dt. 07.06.2022.

4. The claim of the applicant was rejected by the respondents vide impugned letter 30.07.2022 (forwarding therewith letter dt. 14.07.2022 issued by 102 Inf Bn (TA) Punjab) stating the reason for rejection of his appeal.

5. Aggrieved by the decision of the respondents, the applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, seeking the following relief:

(a) To set aside the impugned order and direct the Respondents to grant Service Pension to the Applicant for service rendered in Army (TA) after condoning shortfall/deficient period of 190 days (or any other period, upto 12 months) from the date of his discharge viz, 30 Sep 2021.

(b) To direct the Respondents to pay the due arrears of Service Pension with interest @12 p.a. from the date of discharge/retirement with all other consequential benefits.

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

CONTENTIONS OF THE PARTIES

6. According to the applicant he is entitled to Service Pension as he was discharged after rendering 14 years 196 days, (including 20 days of non qualifying service) of embodied service. He was discharged in low medical category for the disability “**Sensorineural Hearing Loss (Bilateral)**”

assessed @ 60% for life aggravated by military service and getting disability element of pension. It is the contention of the counsel for the applicant that Regulation 125 of the Army Pension Regulations 1961 (Part-1) provides for condonation of deficiency upto six months and thereafter, as per amended provision contained in Regulation 182 (Chapter-IX) under subject Territorial Army, Section-1 Extent of Application) Regulation 44 of the Pension Regulation for the Army 2008, Part-I, the applicant is eligible for condonation of shortfall period of qualifying service upto 12 months and hence, eligible for Service Pension/Gratuity.

7. Learned counsel for applicant argued that the applicant has served 14 years 196 days (including 20 days Non qualifying service) and the character of the applicant was '*exemplary*' throughout his service and as the provision of condonation of shortfall of service for grant of Service Pension are equally applicable to PBOR's served in Territorial Army, the applicant is eligible for grant of service pension.

8. Per contra, learned counsel for the respondents submitted that the actual service rendered by the applicant is 14 years and 196 days (including 20 days of Non qualifying

service). The applicant during his service had also volunteered several times for disembodiment. At the time of discharge, Punjab Regiment sent the case of the applicant for condonation of shortfall in qualifying service in the light of IHQ of MoD (Army) letter dt. 07.06.2022 to 102 Inf Bn (TA) Punjab but the same was rejected on the strong recommendations of the Commanding Officer, Records, The Punjab Regiment vide letter dt 14.07.2022 stating that the individual should not be considered for condonation of shortfall in qualifying service to earn pensionary benefit due to indisciplined and lackadaisical attitude exhibited by him towards the organisation.

9. Learned counsel for the respondents further drew our attention to Regulation 186 of Pension Regulations for the Army (Part-1) 2008 and Para 1(a) (v) of GoI, MoD letter dt 14.08.2001 regarding admissibility of Service Pension to Territorial Army personnel who have a minimum qualifying service of 15 years in case of PBOR and condonation of shortfall in qualifying service for grant of pension beyond six months and upto 12 months. It is stated that the discretion to recommend/not recommend the case for condonation of

shortfall of service to earn service pension rests with the administrative authorities as per service profile of an individual. It is further submitted by the respondents that the applicant has been awarded two Red Ink Entries during his service in the year 2013 and 2015 which also debarred him from any promotional opportunities, as given below:

S. No.	Date of Punishment	Army Act Section	Punishment Awarded	Remarks
(a)	30.10.2013	AA Sec 48	Severe Reprimand & 14 days pay fine (Red Ink Entry)	Copy of IAFF-2013 (Field Conduct Sheet enclosed as Annexure-3)
(b)	26.09.2015	AA Sec 48	Severe Reprimand & 14 days pay fine (Red Ink Entry)	

ANALYSIS

10. Having heard the learned counsel for the parties and on the careful perusal of the materials available on record we are of the view that this OA deserves to be allowed.

11. We may at this stage gainfully extract the relevant part of the Pension Regulations as applicable to Territorial Army Personnel. Regulation 182 of Pension Regulations for the Army, 2008 (Part-I), Territorial Army personnel are governed by the same general regulations as applicable to the regular Army. The aforesaid Section is reproduced as under:-

"182. The Grant of pensionary awards to the service personnel shall be governed by the same general regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of regulations in this chapter. These regulations shall not apply to those who are:-

(i) Civil Government servants holding permanent appointment.

(ii) Retired Civil Government servants."

12. Further, Regulation 186 of Pension Regulations for the Army, 2008 (Part-I) provides that Territorial Army personnel below officer rank are eligible for grant of service pension after completion of 15 years embodied service. The aforesaid Para is reproduced as under:-

"186. All Territorial Army personnel (other than civil government servants and civil pensioners), who have a minimum qualifying aggregate embodied service of 20 years in the case of officer and 15 years in the case of personnel below officer rank, shall be eligible for service pension".

13. Regulation 184 (a) of Pension Regulations for the Army, 2008 (Part-I) provides that the service qualifying for pension and reckonable emoluments in case of Territorial Army personnel shall be specified in Section-2 of Chapter-I:

(i) Aggregate of qualifying embodied service whether continuous or broken shall count for service pension and gratuity. For calculating the total embodied service the break in embodied service due to disembodiment shall be treated as condoned but the period of

breaks itself shall not be treated as qualifying service for pension. Where qualifying embodied service has been rendered in broken spells, 5 percent cut shall be imposed on the pension of the Personnel Below Officer Rank who have completed 15 years or more of aggregate embodied service, but have not completed 20 years of aggregate embodied service.

(ii) Former qualifying regular service in Army, Navy and Air Force in any rank irrespective of regular, short service or emergency commission shall be counted as qualifying service to the same extent as admissible to the regular Armed Forces personnel where one has opted for counting of the former service for pensionary benefits.

(iii) Former service in Civil Department of Central Government.

(iv) Service in Central Government Civil Department during disembodied period while in Territorial Army Service.

14. Further, Regulation 44 of the Pension Regulations for the Army, 2008, (Part-I), provides that the deficiency in service for eligibility pension/gratuity may be condoned upto 12 months. Regulation 44 provides as under:

44. The deficiency in service for eligibility to pension/gratuity may be condoned upto 12 months in each case by competent authority except in the case of:-

(i) an individual who is discharged at his own request;

(ii) an individual who is invalided with less than 15 years of service.

(iii) who is eligible for special pension or gratuity under these Regulations.

15. A careful reading of the aforementioned Statutory Regulations would show that:

- (i) Territorial Army personnel are subject to Army Act, 1950 and Rules made for regular Army personnel are applicable to Territorial Army personnel as well.
- (ii) Territorial Army personnel are eligible for grant of service pension after completion of 15 years of service (Para 186 of Regulations).
- (iii) Territorial Army Personnel are also entitled to the benefit of condonation of shortfall in qualifying service up to one year in terms of Regulation 44 of Pension Regulations for the Army, 2008 (Part-1), except in the case where the individual has been discharged on his own request, or invalidated out with less than 15 yrs. of service, or is eligible for Special Pension or gratuity under the Regulations.

16. Further, GoI, MoD letter No. 4684/DIR(PEN)2001 dt 14.08.2001 and ADGTA IHQ of MoD (Army) letter No. 34456/GS/TA-3 dt 07.06.2012 delegates administrative powers to Service Head Quarters for condonation of shortfall in qualifying service for grant of pension beyond six months and upto 12 years. The discretion to recommend/not recommend the case for condonation of shortfall of service to earn service pension however rests with the administrative authorities as per service profile of an individual.

17. These administrative instructions regulate the exercise of the power by the Competent Authority qua an individual who qualifies for consideration for grant of service pensionary

benefits. These instructions do not in specific terms make it mandatory for the Competent Authority to reject/deny pension to an individual just because he had been awarded 2 red ink entries. While considering the question of condonation of shortfall of service, the authority concerned has to exercise his power in a fair, reasonable and judicious manner. The Competent Authority is duly bound to consider not only the nature of the offences for which such red ink entries had been awarded but also take into consideration the long service and the harsh conditions to which the individual had been exposed during his tenure and not to be harsh with the individual, especially when he is about to complete the pensionable service. Moreover, he was already punished for the offences and cannot be punished twice for the same offences.

18. Coming to the case at hand we find that the applicant had two Red Ink Entries in the year 2013 and 2015 and therefore, his case for condonation of deficiency of shortfall of 190 days of service was not recommended by the Commanding Officer. It is also pertinent to note that applicant was discharged in 2021 on completion of his term

of engagement after rendering 14 yrs 196 days embodied service including 20 days of non qualifying service in Low Medical Category H3 (Permanent) on account of the disability "**Sensorineural Hearing Loss (Bilateral)**" aggravated and assessed @ 60% . The applicant has put in long years of service, he has been exposed to hard situations and difficult living conditions resulting in his disability which was held aggravated due to service. Further, there is nothing on record to show that between 2015 to 2021 i.e. date of discharge there was any other complaint or action taken against the applicant. In such fact situation the decision by the Competent Authority, not to recommend the case of applicant for condonation of shortfall of service is not only against statutory mandate but also, without application of mind hence cannot be sustained.

19. In the case of **Veerendra Kumar Dubey** v. **Chief of Army Staff** (2016) 2 SCC 627, the Hon'ble Supreme Court has observed in para 10 that "*four red ink entries is not some kind of Laxman rekha, which if crossed would by itself render the individual concerned undesirable or unworthy of retention in*

the force. Award of four red ink entries simply pushes the individual concerned into a grey area where he can be considered for discharge. But just because he qualifies for such discharge, does not mean that he must necessarily suffer that fate. It is one thing to qualify for consideration and an entirely different thing to be found fit for discharge. Four red ink entries in that sense take the individual closer to discharge but does not push him over. It is axiomatic that the Commanding Officer, is even after the award of such entries, required to consider the nature of the offence for which such entries have been awarded and other aspects made relevant by the Government in the procedure it has prescribed".

Further in para 19:

"19. It is common ground that a red ink entry may be earned by an individual ind for overstaying leave for one week or for six months. In either case the entry is a red ink entry and would qualify for consideration in the matter of discharge. If two persons who suffer such entries are treated similarly notwithstanding the gravity of the offence being different, it would be unfair and unjust for unequals cannot be treated as equals. More importantly, a person who has suffered four such entries on a graver misconduct may escape

discharge which another individual who has earned such entries for relatively lesser offences may be asked to go home prematurely. The unfairness in any such situation makes it necessary to bring in safeguards to prevent miscarriage of justice. That is precisely what the procedural safeguards purport to do in the present case”.

20. Further, the Hon'ble Supreme Court of India in **UoI Vs Ashok Kumar Aggarwal** (2013) 16 SCC 147 upheld the primacy of statutory provisions. The operative portion of the aforesaid judgment is as under:-

"It is settled law that in the event of an inconsistency or conflict between a statutory provision and an executive instruction, the former must be given effect. Memorandums or executive instructions issued by the govt can be used only to supplement the statutory rules but not to supplant them."

21. Similarly, in the case of **Pani Ram Vs UoI & Ors**, 2021 SCC On Line SC 1277, the Hon'ble Apex Court has held-

"16. It could thus be seen that the grant of pensionary award to the members of the Territorial Army shall be governed by the same rules and regulations as are applicable to the corresponding persons of the Army except where they are inconsistent with the provisions of Regulations in the said chapter."

21. In case of conflict between what is stated in internal communication between the two organs of the State and the Statutory Rules and Regulations, it is needless to state that the Statutory Rules and Regulations would prevail. In that view of the matter, we find

that AFT was not justified in rejecting the claim of the appellant."

22. The present as such is a case where service pension ought to have been granted to the individual at the time when he was granted the Disability Element thereof vide PPO No. 229202100124 dt. 04.07.2022. It is pertinent to note that the threshold of 'red ink entries' as a ground to deny service pension has no statutory sanction. Its genesis lies in administrative instructions, which cannot prevail over the statutory rules and regulations in view of the aforestated legal position.

23. As a result, the OA 2097/2022 is allowed. The respondents are directed to condone shortfall of 190 days (less than one year of qualifying service) for grant of service pension in respect of the applicant. The respondents are directed to pay the arrears of Service Pension to the applicant from the date of his discharge i.e. 30.09.2021 and to issue Pension Payment Order (PPO) within four months from the date of receipt of the copy of this order, failing which the applicant will be entitled for interest @ 6% p.a. from the date of receipt of copy of the order by the respondents.

24. No orders as to costs.

Pronounced in the open Court on this day 22nd September,
2025.

**[JUSTICE NANDITA DUBEY
MEMBER (J)]**

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

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