

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

OA 2354/2022 with MA 1030/2024 and MA 3169/2022

Ex L/Nk Gajendra Singh Gurjar **Applicant**
VERSUS
Union of India and Ors. **Respondents**

For Applicant : Mr. Shiva Nand Mishra Advocate
For Respondents : Mr. Niranjana Das, Advocate

CORAM

**HON'BLE MS. JUSTICE NANDITA DUBEY, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

ORDER

MA 3169/2022

Keeping in view the averments made in this application and finding the same to be bonafide, in the light of the decision in the case of **Union of India and Ors.** Vs. **Tarsem Singh** [(2008) 8 SCC 648], the instant application is allowed condoning the delay of 2825 days in filing the OA. MA stands disposed of.

MA 1030/2024

2. Keeping in view the averments made in this application and finding the same to be bonafide, the instant application is allowed condoning the delay of 31 days in filing the Rejoinder. MA stands disposed of.

OA 2354/2022

3. The present application u/s 14 of the Armed Forces Tribunal Act, 2007, has been filed by the applicant for grant of Service Pension alongwith other service benefits with effect from the date of discharge of the applicant, condoning the shortfall of 249 days in qualifying service.

BRIEF FACTS

4. The applicant was initially enrolled in the Army (The Rajput Regiment) on 11.02.2000 and discharged from service on 07.06.2014 under the provisions of Army Rule, 13(3) item iii (v) as service no longer required being an undesirable soldier. The applicant was a highly undisciplined soldier and a perpetual offender of deserting the service repeatedly. While serving with the Rajputana Regiment, in a short span of time, the applicant had earned five punishments, out of which 4 red ink entries and 1

black ink entry for committing offences under various sections of the Army. Thereafter, the case of the applicant was processed for considering his discharge under the provisions of Army Rule 13(3)III(V) read alongwith IHQ MoD letter A/13210/159/AG/PS 2(C) dt. 28.12.1988 as service no longer required being an undesirable soldier. Accordingly, on getting sanction of the Competent Authority on 24 May 2014, the applicant was discharged from service wef 07 June 2014 being an undesirable soldier.

5. The applicant served legal notice on 27.06.2014 for reinstatement into Army Service with all service benefits including promotion and pension which was replied by Record, Rajput vide letter dt 12.02.2015. Again after 7 years the applicant served second legal notice on 19.11.2021 requesting for Discharge Certificate. Records, Rajput vide letter dt. 07.12.2021 issued the Discharge Certificate. The third legal notice was served by the applicant on 08.01.2022 for grant of Service Pension. Record, The Rajput Regiment vide letter dt. 07.04.2022 rejected the claim of the applicant due to non completion of minimum qualifying service

for earning service pension i.e. 15 years as per Para 47 of Pension Regulations for the Army Part-1 (2008).

Contentions of the parties

6. Learned counsel for the applicant stated that the applicant was discharged from service on 07.06.2014 in accordance with Rule 13(3)III(V) as service no longer required being an undesirable soldier and thereby served for 14 years 3 months and 18 days falling short of 249 days in qualifying service for grant of Service Pension i.e. 15 years.

7. Reliance was placed on Regulation 44 of Pension Regulation Part-1 (2008) and the judgment of the Hon'ble Supreme Court in the case of **Union of India Vs Surender Singh Parmar** CA No. No.9389/2014 decided on 20.01.2015 and **D.S. Nakara & Ors.** v. **Union of India (1983) 1 SCC 305** decided on 17.12.1982 stating that Condonation of shortfall in qualifying service for grant of pension in respect of PBOR is beyond six months and upto 12 months and that pension is a right, not a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right. It is further submitted that the case of

the applicant is squarely covered by the order of the AFT (RB) Lucknow in O.A. No. 526 of 2019 **Ram Chander, Ex Spr vs UOI & Ors** wherein the applicant was discharged from service under the provisions of Army Rule, 13(3) item iii (v) of Army Rules 1954 and Service Pension was allowed to the applicant who has rendered 14 yrs 03 months 21 days of service after condoning shortfall in qualifying service.

8. It is the contention of the counsel for the applicant that 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 months. The applicant is eligible for condonation of shortfall period of qualifying service upto 12 months and hence, eligible for Service Pension/Gratuity.

9. *Per Contra*, Learned Counsel for the respondents submitted that the applicant was a highly undisciplined soldier. The qualifying service rendered by the applicant was only 14 yrs and 03 months and 18 days days. As per Regulation 47 of Pension

Regulations for the Army Part-1 (2008) minimum 15 years of qualifying service is required to earn Service Pension.

10. It is further submitted that during short span of time the applicant had earned four red ink entries and one black ink entry due to his indisciplined attitude/character for various offences committed under Army Act, 1950. A Show Cause Notice was issued to the individual on 24.03.2014 to explain why he should not be discharged from service under Rule 13(3)III(v). The reply on the Show Cause Notice was submitted by the applicant on 23.04.2014 which was not found satisfactory. Accordingly, discharge of the applicant was sanctioned wef 24.05.2014 under Rule 13(3) III (v) of Army Rules 1954 and the applicant was discharged from service wef 07.06.2014.

Analysis

11. We have heard learned counsel on both sides and perused the documents placed before us.

12. Now, the only question for our consideration is whether the applicant who had earned Red Ink Entries and discharged from service on administrative grounds under Army Rule 13(3) Item

III(v) is eligible for grant of Service Pension condoning the shortfall of 249 days in qualifying service for pension i.e. 15 years.

13. The details of offences and punishments awarded are reproduced as under:

S. No	AA Sec	Offences	Date of Punishment	Punishment award
a)	AA Sec 39 (b)	Without sufficient cause overstaying leave granted to him	17.05.2002	14 days Rigorous imprisonment
b)	63	An omission prejudicial to good order and military discipline	28.04.2003	28 days Rigorous imprisonment
c)	40(a)	Using criminal force to his superior officer	24.12.2010	Deprived of appointment of Lance Naik and 14 days pay fine
d)	63	An act prejudicial to good order and military discipline	01.03.2014	Service Reprimand and 14 days pay fine
e)	63	An act prejudicial to good order and military	03.03.2014	Severe Reprimand

14. 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. 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 4 red ink entries and one blank entry. 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.

15. In the case in hand no doubt the applicant had earned 4 red and one black ink entry, however discharge need not be ordered merely because of these entries. The fact that the applicant was about to complete his pensionable service was an important factor for consideration. In such 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. Moreover, he was already punished for the offences and also deprived of appointment of Lance Naik as punishment for earning black ink entry. One cannot be punished twice for the same offence.

16. 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 & 19 that:

“10. The Government has, as rightly mentioned by the learned counsel for the appellant, stipulated not only a show-cause notice which is an indispensable part of the requirement of the Rule but also an impartial enquiry to an adequate opportunity of putting up his defence and adducing evidence in support thereof. More importantly, certain inbuilt safeguards against discharge from service based on four red ink entries have also been prescribed. The first and foremost is an unequivocal declaration that mere award of four red ink entries to an individual does not make his discharge mandatory. This implies 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”.

“19. It is common ground that a red ink entry may be earned by an individual 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”.

17. In the case of **Deokinandan Prasad Vs. State of Bihar** [AIR 1971 SC 1409], Hon'ble Supreme Court has observed that pension is a Statuoty right and not a bounty payable on the sweet will of the Government and the State has no power to withheld it by passing a mere executive order.

18. 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."

19. The present as such is a case where 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.

20. As a result, the OA 2354/2022 is allowed. The respondents are directed to condone shortfall of 249 days (less than one year of qualifying service) for grant of service pension in respect of the applicant.

21. The respondents are thus directed to calculate, sanction and issue the necessary PPO to the applicant within a period of three months from the date of receipt of copy of this order. The amount of arrears however is directed to commence to run from a period of three years prior to the institution of the present OA, in terms of the verdict of the Hon'ble Supreme Court in **Union of India & Ors. Vs. Tarsem Singh** reported in 2008 8 SCC 648 which shall be paid by the respondents, 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.

22. Miscellaneous applications, if any, pending stand closed.

23. There is no order as to costs.

Pronounced in open Court on this 29th day of January, 2026

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

**(RASIIKA CHAUBE)
MEMBER (A)**

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