

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

**OA 427/2019**

**Ex Sgt Chandra Mani Swain** ..... **Applicant**

**VERSUS**

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

**For Applicant** : Mr. VS Kadian, Advocate

**For Respondents** : Mr. Prabodh Kumar, Sr. CGSC

**CORAM**

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

**HON'BLE MS. RASIKA CHAUBE, MEMBER (A)**

**ORDER**

The applicant has invoked the jurisdiction of this Tribunal under Section 14, aggrieved by the Air HQ letter No. Air HQ/99798/778967/SP/DAV dated 26.02.2019, whereby his prayer/appeal for grant of pension by condonation of shortfall in qualifying service has been rejected.

**BRIEF FACTS**

2. The factual matrix of the case is that the applicant joined the Indian Air Force on 12.01.2004 and was discharged on 09.03.2018 after rendering 14 years and 57 days of qualifying

service, at his own request before fulfilling the condition of enrolment in order to join a civil post in other organization for better prospects.

3. The applicant sent legal notice cum representation dated 01.12.2018 for condonation of deficiency in qualifying service and grant of service, but the same was rejected by the respondent vide the impugned letter dated 26.02.2013. Aggrieved thereby, the applicant has preferred the present Original Application seeking the following reliefs:

***“(a) Quash and set aside the impugned letter No. Air HQ/99798/778967/SP/DAV dated 26.02.2013. And/or***

***(b) Direct respondents to condone the short fall of deficiency of 10 months and 03 days and grant Service Pension to the applicant wef the date of his retirement along with all retiral benefits. And/or***

***(c) Direct respondent to pay the due arrear of service pension with interest @12% p.a.***

***(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case along with cost against the respondents.”***

#### **CONTENTIONS OF THE PARTIES**

4. A preliminary objection regarding the maintainability of the OA has been raised by the respondent, stating that the applicant

has directly approached this Tribunal without exhausting the remedies available under Section 21 of the AFT Act. It is not in dispute that the applicant has not availed the remedies available under Section 21 of the AFT Act. However, this OA has been pending before this Tribunal since 2019. Hence, in the interest of justice, the objection is overruled.

5. The Learned Counsel for the Applicant submitted that the applicant has already completed 14 years and 57 days of qualifying service and entitled to condonation of shortfall in service i.e. 303 days in view of the AIR HQ letter dated 14.08.2001 which provide for condonation of shortfall in qualifying service for grant of pension beyond 6 months and up to 12 months. It is further submitted that in identical case of **EX Sgt Sushant Kumar Baral v. UOI & Ors. [OA 428/2019]**, this tribunal has condoned the deficiency in qualifying service and extended the benefit of the service pension to the ex- servicemen. He has further placed reliance on the verdict of the Hon'ble Supreme court in **UOI v. Surender Singh Pawan [(2015) 3 SCC 404]**, **Gurmukh Singh v. UOI [WP (C) No. 430/2005]** and **Ex AC Hemraj Singh v. UOI & Ors. [OA 396/2014]** to contend that when an individual is

given relief by the court, all other identically situated persons need to be treated alike by extending the same benefit.

6. The respondent has opposed the prayer on the ground that the applicant has not completed the requisite qualifying service. It is stated that the applicant was discharged from service at his own request before fulfilling the condition of his enrolment. Further, he was not transferred to the regular Air Force Reserve after being discharged from service. It is pointed out that **Regulation 121 of the Pension Regulations for the Air Force, 1961 (Part I) [‘PRA, 1961’]** prescribes 15 years as the minimum qualifying regular service required to earn a service pension. Further, as per Regulation 114 of PRA, 1961, read in conjunction with the Government of India, MoD letter No. 4684/DIR/PEN/2001 dated 14.08.2001, the grant of pension by condonation of shortfall in qualifying service is not applicable to those who have taken discharge from service under the clause “at their own request.” However, he was eligible for service gratuity in terms of Regulations 127 and 128 of PRA, 1961, and accordingly the applicant’s case was processed for the grant of service gratuity and Death-cum-Retirement Gratuity. It is urged that the judgment

relied upon by the applicant is specific in nature, and the relief so granted cannot be considered as a precedent for other cases.

### **ANALYSIS**

7. Heard learned counsel for the parties and also perused the material available on record.

8. The only question that falls for our consideration is whether the applicant, who sought discharge at his own request, is entitled to condonation of the shortfall in qualifying service.

9. Para 121 of the PRA, 1961 provides for the minimum qualifying regular service for earning a service pension as 15 years.

10. Further Para 114 of PRA, 1961 provides as under:

***“Condonation of deficiency in service for eligibility to service/reservist pension 114. Except in the case of —***

***(a) an individual who is discharged at his own request,***

***(b) an individual who is eligible for special pension or gratuity under regulation 144, or***

***(c) an individual who is invalided with less than 15 years service, deficiency in service for eligibility to service pension or reservist pension of gratuity, in lieu, may be***

**condoned by a competent authority up to six months in each case.”**

11. The GOI MOD letter dated 14.08.2001 stipulates:

**“No.4684/DIR(PEN)/2001**

**Government of India**

**Ministry of Defence,**

**Deptt. of Defence,**

**New Delhi, the 14th August, 2001**

**ORDER**

**Sanction is hereby accorded in pursuance of MOD ID No. 34(3)/2001/D(O&M) dated 3.8.2001 for delegation of administrative powers with the approval of Raksha Mantri to the Services HQrs. in respect of the subjects indicated below:-**

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**(v) Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months.**

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12. In the case of **Hemraj Singh v. UOI & Ors. [OA 396/2014]**, the AFT (PB), New Delhi, vide order dated 10.04.2015, held that the applicant, who was discharged at his own request after rendering 14 years, 9 months, and 1 day of service, was entitled to condonation of the shortfall in qualifying service. The Tribunal further declared clause (a) of Regulation 114 of the PRA,

1961 as ultra vires, being violative of Article 14 of the Constitution of India.

13. Furthermore, in the case of ***Ex Sgt Sushant Kumar Baral v. Union of India & Ors.*** [OA No. 428/2019], this Tribunal observed that the provisions of Regulation 114(a) of the PRA, 1961 are in *pari materia* with the provisions of Regulation 82(a) of the Pension Regulations for the Navy, 1964, which were declared *ultra vires* the Constitution of India by the Hon'ble Bombay High Court in ***Gurmukh Singh v. Union of India & Ors.*** [WP (C) No. 430/2005], and the said judgment was subsequently upheld by the Hon'ble Supreme Court in SLP (Civil) No. 13893/2007.

14. In view of the various judicial verdicts examined and the Government of India, Ministry of Defence letter No. 4684/Dir(Pen) 2001 dated 14.08.2001 vide which the condonation of shortfall in qualifying service for the grant of pension in respect of PBOR beyond six months and up to twelve months has already been granted, the applicant, despite retiring at his own request/PMR, is entitled to claim condonation of shortfall in qualifying service for the grant of pension beyond six months and up to twelve months.

15. In view of the prayer made by the applicant is allowed. The impugned letter No. Air HQ/99798/778967/SP/DAV dated 26.02.2019 is set aside. The shortfall of 10 months and 03 days of qualifying service of the applicant for the grant of service pension is condoned. Subject to verification of records, the respondents are directed to issue a corrigendum PPO to the applicant granting service pension for the service rendered from the date of his discharge. The arrears shall be paid within three 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.

16. The instant O.A. 427/2019 is, therefore, allowed.

17. No order as to costs.

18. Pending miscellaneous application(s), if any, stand closed.

Pronounced in open Court on 18<sup>th</sup> day of February,

2026.

**(JUSTICE NANDITA DUBEY)**

**MEMBER (J)**

**(RASIKA CHAUBE)**

**MEMBER (A)**

/s/