

**ARMED FORCES TRIBUNAL, CHANDIGARH REGIONAL
BENCH AT CHANDIMANDIR**

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OA 89 of 2015

Shambhu Ram	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr CD Singh Guleria, Advocate
For the Respondent(s) :	Mr Suveer Sheokand CGC

Coram: Justice Prakash Krishna, Judicial Member.
Lt Gen DS Sidhu (Retd), Administrative Member.

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ORDER
02.02.2016

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Whether the shortfall in service up to the extent of one year in DSC service to earn pension can be condoned or not, is the only point involved in the present petition.

2. The petitioner was re-enrolled in Defence Security Corps on 11th October, 1983 and discharged on 31st December, 1997 on superannuation after rendering 14 years and 82 days qualifying service. He applied for grant of pension for DSC service which has been declined on the short ground by the impugned order dated 27th October, 2012 filed as Annexure A-3 and order dated 23rd December, 2014 filed as Annexure A-6 that since the petitioner is already getting service pension for life for the former service rendered with JAK RIF, the shortfall in the DSC service cannot be considered. Moreover, vide GOI, MoD/Department of Ex-Servicemen Welfare letter No. 1(2)/2011/D

(Pen/Pol) dated 23rd April, 2012, condonation of deficiency in qualifying service is not applicable for the grant of second service pension.

3. In reply, the respondents have come out with the case that since the petitioner is in receipt of service pension for the former service rendered by him in J&K Rifles and has not served for 15 years minimum service to earn the pension, therefore, is not entitled to get the pension for DSC service.

Regulation 125 of the Pension Regulation for the Army, 1961 will not be invoked in such cases as this would amount to enhancement of pension. The said Regulation will not apply to an individual who is already getting pension.

4. Heard the learned counsel for the parties and perused the record.

5. The submission of the petitioner is that in terms of **Rule 125** and the policy of the respondents, he is entitled to condonation of shortfall in service. The denial by the respondents on the ground that he is getting pension from the Army, therefore, not entitled for condonation of shortfall in the **second spell of service with DSC**, is unjustified.

6. The stand of the respondents in the impugned order as well as in the reply filed is that the petitioner is not eligible for grant of another service pension as he is already in receipt of Service Pension.

Moreover, the intention behind grant of condonation of deficiency of service for grant of service pension is that the individual must not be left high & dry, but, should be made eligible for at least one pension which the petitioner is already in receipt of. As per the provisions contained in Para 132 and 271(a) of the Pension Regulations for the Army 1961 (Part-I), minimum 15 years qualifying service is mandatory to earn 2nd service pension and as per GOI, Ministry of Defence/ Department of Ex-Servicemen Welfare letter No.1(20/2011/D(Pen/Pol) dated 23.04.2012 the condonation of deficiency in qualifying service is not applicable for the grant of second service pension.

7. We find that the controversy involved in this case is no longer *res integra* and has been set at rest in favour of the petitioner in the following case:-

- (i) **OA No.931 of 2012, titled Ex Sub Krishan Singh Tanwar vs. Union of India & others,** decided by the Jaipur Bench of AFT on **18.05.2015**; and,
- (ii) **OA No.60 of 2013, titled Bhani Devi vs. Union of India & Ors.,** decided by the AFT, Principal Bench, New Delhi on **07.11.2013**.

8. In the case of Bhani *Devi vs. Union of India (supra)*, the Principal Bench has considered: (i) Rule 266, given in Chapter 4 of the provisions for the DSC; (ii) Rule 125, relating to condonation of deficiency in service for eligibility of service/ reservist pension; and

(iii) the letter dated 23.04.2012, issued by the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, D(Pension/Policy). The said letter dated 23.04.2012 being the anchor sheet of the respondents' arguments, is reproduced below:-

*"No.14(2)/2011/D(Pen/Pol)
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare
D(Pension/Policy)*

...

New Delhi, the 23rd April, 2012

To

*The Chief of Army Staff
The Chief of Naval Staff
The Chief of Air Staff*

*Subject: Review of Rule 125 of Pension Regulation for Army Pt. I
(1961): Condonation of deficiency in service for grant of 2nd
service pension.*

The matter regarding condonation of shortfall in service towards second service pension in respect of DSC (Defence Security Corps) personnel raised by ADGPS vide their No.B/46453/AG/PS-4(Legal) dated 9th March 2012 has been examined in this department. It is conveyed that the intention behind grant of condonation for deficiency of service for grant of service pension is that the individual must not be left high and dry but should be made eligible for at least one pension. On the principle that no dual benefit shall be allowed on same accord. It is clarified that no condonation shall be allowed for grant of 2nd service pension.

2. *This has the approval of Secretary (ESW).*

*Yours faithfully,
sd/-*

*(Malathi Narayanan)
Under Secretary (Pen/Pol)"*

9. The Principal Bench, after taking into consideration the aforesaid letter in the light of the relevant provisions of the Pension Regulations for the Army, has concluded in the following manner:-

"The communication dated 23.04.2012 (R-1), nowhere conveys that the Rule 125 stands modified by the order/ communication dated 23.04.2012 (Annexure R-10). It appears that the matter was brought to the notice of the Ministry with respect to the

interpretation of Rule 125. The communication dated 23.04.2012 is only an opinion given by the Government and therefore observed that “intention behind grant of condonation” is that individual must not be left high and dry “but should be made available for at least one pension”. The benefit of Rule 125 “for at least for one pension” is not in the Rule 125. The communication dated 23.04.2012 nowhere supersedes the original Rule 125 nor reviewed Rule 125, but it is only an opinion of the Govt. that according to Govt. what was the intention behind the grant of condonation for deficiency of service for grant of service pension. When the rule is very clear the intention is irrelevant. The Rule 266 clearly declared that all general rules shall be applicable to the employees governed by the provisions of Chapter 4 and we have already observed that there is no inconsistent rule to the Rule 125 under Chapter 4 of the Regulations. The communication/ letter dated 23.04.2012 neither have modified the Rule 125 nor reviewed it but it only conveyed that according to opinion of Govt. what was the intention for making Rule 125. In view of the above reasons, mere opinion of the Govt. and interpretation of Rule 125, is not binding upon the Tribunal, particularly, when the Rule 266 and Rule 125 as are in force today are very clear.

11. In view of the above reasons, we are of considered opinion that petitioner’s husband was eligible under Rule 125 for condonation of shortfall in service in pensionable service. So far as the fact is concerned, petitioner’s husband’s shortfall in service was only less than one year which could have been condoned. In view of the clear rules made under Pension Regulations for the Army 1961, and particularly, Rule 266, which provides that the general rule shall not be applicable when they are inconsistent with the rules framed under Chapter 4, the Govt.’s communication dated 23.04.2012, just runs just contrary to Rule 266 and therefore, cannot be given effect to.”

10. We may, with advantage, also refer to the decision of the Apex Court in a case pertaining to Navy, titled **Union of India & another vs. Surinder Singh Parmar, Civil Appeal No.9389 of 2014**, decided on **January 20, 2015 [2015] 3 SCC 404** wherein it has been held that such a benefit is admissible w.e.f. 14.8.2001 and not prior to the said date.

11. The learned counsel for the respondents submits that DSC service is not a service in the Army in view of Section 3 (vi) which

contained definition of corps and the other provisions of the Army Act. We are not at all impressed by the said argument of the respondents as DSC is one of the Corps of the Army. The argument of the learned counsel for the petitioner that Regulation 125 is not applicable to an individual during DSC service, cannot be accepted. Chapter 4 of Pension Regulations for the Army deals with DSC service. Regulations 265 and 266 would show that grant of Pensionary Awards to personnel of Defence Security Corps shall be covered by the same usual rules as are applicable to combatant of the Army except where they are inconsistent with the provisions of the Regulations for the Army. Regulation 125 which deals with condonation of shortfall in service cannot be said to be inconsistent with any provision as contained in Chapter 4 of the Pension Regulations for the Army. Regulations 226 and 175 may stand together as there being no inconsistencies.

12. In view of the above, it is held that the petitioner is entitled for condonation of shortfall in service, which is less than one year, for the purposes of pension and, thus, is entitled to get pension for the DSC service as well, in addition to the pension which he is getting from the Army. The impugned rejection orders (Annexure A-3 and A-6) are hereby quashed and set aside. The short fall in DSC service in the present case is condoned and the petitioner is treated to have qualified 15 years service for the purpose of pension and the respondents are directed to grant second spell of pension from the date of discharge.

The arrears are restricted to three years preceding the date of filing the present petition. The present petition has been filed on 20th January, 2015.

13. The respondents are further directed to work out the arrears admissible to the petitioner by virtue of the present order and pay the same to him within a period of three months from the date of receipt of a certified copy of this order, failing which, the amount shall carry interest @ 8% per annum from the date of this order, till actual payment thereof.

14. The petition is allowed accordingly. No order as to costs.

(Justice Prakash Krishna)

(Lt Gen DS Sidhu (Retd))

02.02.2016

raghav

Whether the judgment for reference is to be put on internet? Yes / No.