

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

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MA 3929 of 2016 and OA 1089 of 2016

**Om Parkash** ..... **Petitioner(s)**  
**Vs**

**Union of India and others** ..... **Respondent(s)**

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For the Petitioner (s) : Mr Surinder Sheoran, Advocate

For the Respondent(s) : Ms Sonia Sharma CGC

**CORAM:**

**HON'BLE MR JUSTICE BANSI LAL BHAT, MEMBER (J)**

**HON'BLE LT GEN SANJIV CHACHRA, MEMBER (A)**

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**ORDER**

**11.07.2017**

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1. Reply already filed is taken on record. MA 3929 of 2016 stands disposed of.
2. Rejoinder is not intended to be filed.
3. Heard the learned counsel for the parties and perused the record.
4. The learned counsel for the applicant argues that the prayer of the applicant for grant of service pension for second spell of service in DSC by condoning the shortfall of 423 days in qualifying service is well within the rules and so be granted.
5. The factual details of the case are admitted and not contested by the opposite party. The petitioner was enrolled in the Army(Regiment of Artillery) on 02.02.1974 and discharged on 28.02.1998 on completion of his term of engagement. Admittedly, he is getting pension for this spell of service.
6. The petitioner was re-enrolled in Defence Security Corps('DSC' for short) on 31.03.1998 and was discharged therefrom on 31.01.2012 after rendering 13 years and 307 days. The petitioner has been denied pension for this spell of service on the ground that he has not completed the minimum required qualifying service of 15 years. In other words,

there is a shortfall of 423 days(01 year 02 months and 03 days) for earning pension for the DSC service, condonation whereof has been denied by the respondents, thereby denying him the second pension.

7. In the above premises, the present petition has been filed seeking quashing of the impugned rejection order (Annexure A-4) and to grant service pension to the petitioner for the spell of service rendered by the petitioner in DSC by condoning the shortfall *inter alia* grant of any other relief, the petitioner may be found entitled to in the facts and circumstances of the case.

8. The submission of the petitioner is that in terms of Regulation 9 of Pension Regulations 1961(Part –I) 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 already getting pension from the Army, therefore, not entitled for condonation of shortfall in the second spell of service with DSC, is unjustified.

9. The stand of the respondents in the impugned order(Annexure A-4) is that the petitioner is not eligible for the grant of another service pension as he is already in receipt of Service Pension earned from Army Service. 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 and 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 of the Pension Regulations for the Army(Part-I), minimum 15 years qualifying service is mandatory to earn 2<sup>nd</sup> service pension. In other words, this Rule will not apply to individuals who have already earned a pension.

10. 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 ***OA No 83 of 2011 titled Amar Singh vs Union of India & Ors*** decided by this

Bench on 24.01.2011. Relevant portion of the ibid order passed this Tribunal in this O.A is as under:-

**“Regulation 9**

*However, how the period of qualifying service is to be computed, in the present circumstances, is a matter, which is governed by Regulation 9 of the Pension Regulations for the Army, 1961, which reads as under:-*

*9. In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service.*

*A bare reading of this provision makes it clear that fraction of a year equal to three months or above, but less than six months, is to be treated as completed half year. Accordingly the period of 308 days exceeds three months beyond six months and therefore, he is required to be treated to have completed a year of service, and if that is so then it is clear that the petitioner has completed 15 years of service”*

11. Further, the issue has been set at rest in favour of the applicants in the following cases:-

- (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**;
- (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**; and,
- (iii) **OA No.1468 of 2014**, titled **Duni Chand vs. Union of India & others**, decided by AFT, Chandigarh Regional Bench on **17.09.2015**.

With advantage, the reasoning given in *Duni Chand's case* (supra) is reproduced below:-

“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 23<sup>rd</sup> 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 2<sup>nd</sup> 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 9<sup>th</sup> 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 2<sup>nd</sup> 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, more 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.

10. 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."

11. 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** in which it has been held that such a benefit is admissible w.e.f. 14.8.2001 and not prior to the said date."

12. In view of the above, it is held that the petitioner is entitled for condonation of shortfall in service, i.e. 423 days, for the purpose of pension and , thus, is entitled to get pension for the second spell of service in DSC as well, in addition to the pension which he is getting from the Army. The impugned rejection order (Annexure A-4) is hereby quashed and set aside and the respondents are directed to grant service pension to the petitioner from the due date, i.e. 01.02.2012.

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. No order as to costs.

15. Oral request made by the learned counsel for the respondents for grant of leave to appeal in the Hon'ble Supreme Court is declined as no substantial question of law of general public importance is involved.

**(Sanjiv Chachra)**  
**Member (A)**

**(Bansi Lal Bhat)**  
**Member (J)**

11.07.2017  
**Sks/raghav**