

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

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OA 1375 of 2017

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| <b>Balwant Singh</b>             | ..... | <b>Applicant(s)</b>  |
| <b>Vs</b>                        |       |                      |
| <b>Union of India and others</b> | ..... | <b>Respondent(s)</b> |

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| For the Applicant (s) : | Mr Navdeep Singh, Advocate |
| For the Respondent(s) : | Mr KK Bheniwala, Sr. PC    |

**CORAM:**

**HON'BLE MR JUSTICE BANSI LAL BHAT, MEMBER (J)**  
**HON'BLE LT GEN DS SIDHU, MEMBER (A)**

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**ORDER**  
**02.06.2017**

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1. This is a case for condonation of shortfall in second spell of service (DSC). The applicant had served 14 years 08 months and 30 days and was denied service pension on the grounds, that he had not completed 15 years of qualifying service in DSC vide letter dated 23.03.2016 (Annexure A/7). There was a shortfall of 99 days

2. Learned counsel for respondents put forth, that vide letter issued by Govt of India, MoD, dated 23.04.2012 (Annexure A/6), the matter regarding condonation of shortfall in qualifying service towards second pension in the DSC had been examined and it was conveyed *“that the intention behind grant of condonation of shortfall in service for grant of service pension is that the individual must not left high and dry but should be made eligible for at least one pension. On the principle that no dual benefit shall be allowed at this stage. It is clarified that no condonation shall be allowed for grant of second service pension.”*

3. Learned counsel for the applicant, argued that Regulation 125 of Pension Regulations for the Army 1961 (Part-I), is the relevant Rule under which condonation in shortfall of service upto six months can be granted (increased to one year vide letter dated 14.08.2001(Annexure A/4). He brought to our notice, that in a similar case decided by the Principal Bench on 07.11.2013 in *OA 60/2013 with MA 83/2013 Bhani Devi vs Union of*

**India & Others**, it has been held, that this order dated 23.04.2012 nowhere conveys the modification of Rule 125 of Pension Regulation for the Army 1961 Part 1. Relevant portion is re-produced as under :-

*“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.”*

4. Further, the learned counsel for the applicant brought to our notice the Division Bench Judgment of the Punjab & Haryana High Court in **LPA No 755 of 2010, Union of India Vs Mani Ram**, decided on 05.07.2010. wherein a similar letter dated 26.11.1962 (Annexure A/5) was considered. The relevant portion of the judgement is re-produced below :-

*“Having heard learned counsel we are of the considered view that the letter dated 26.11.1962 would not come to the rescue of the appellant-Union of India because firstly the letter written by the Adjutant General cannot make any amendment in the Pension Regulations framed by the statutory authorities. The adjutant General is a persona non grata and not competent to alter Regulation 125 of the Pension Regulations.” Moreover, a strict interpretation of the communication dated 26.11.1962 would show that the benefit of Regulation 125 is not to be extended for enhancement of pension. There is no question of any enhancement in the present case but the question pertains to earning of pension for the service rendered by the petitioner-respondent from 28.05.1984 to 31.07.1999 ( a period of 94 days was not considered as qualifying period as he had over-stayed the leave). Consequently, we are of the view that there is no merit in the appeal.”*

5. It is rather strange, that the MoD introduced in 2012 in a back handed manner, what the Courts disallowed in 2010. The only difference is that, '*enhancement of pension*' has now been replaced by the plea of '*second pension*'. The judgement of the Hon'ble High Court of Punjab & Haryana, makes it clear, that the core issue is that of, '*earning of pension for the service rendered*'. It is immaterial, whether it is second service, but what is germane is, that, pension is due for the service rendered. The respondents should take note of this. In future if they continue to quote letters which are non-est in support of their case, we may have to resort to awarding exemplary cost to the applicant.

6. We have considered the submissions of both the learned counsel for the parties and are of the view that once the Principal Bench vide its judgement dated 07.11.2013 has ruled that the communication dated 23.04.2012 being contrary to Rule 125 of Pension Regulations for the Army, cannot be given effect to, the respondents stand, to deny the benefits on the basis of a letter which has been declared non-est is illegal and cannot be accepted.

7. Rule 125 of the Pension Regulations for the Army 1961 allows condonation of shortfall in qualifying service for 6 months. However, vide MoD letter dated 14.08.2001 (Annexure A/4) sanction was accorded for condonation of shortfall in qualifying service in grant of pension beyond six months and upto 12 months.

8. In view of the above discussion, we hold that this case is covered by the existing rules and the judgment of *Bhani Devi (Supra)*. The condonation of shortfall of qualifying service of the applicant is less than one year (99 days) and is allowed. The impugned order 23.03.2016 (Annexure A/7) stands quashed.

9. The respondents are directed to calculate the arrears and make payment to the petitioner within a period of three months from the date of receipt of certified copy of this order by learned counsel for the respondents, failing which, the amount shall carry interest at the rate of 8% per annum from the date of this order.

10. Maj Williamjeet Singh, OIC AFT Legal Cell, representative of the respondents made an oral plea for Leave to Appeal. We find that in a similar case in **OA 562 of 2017 Ram Bahadur Gurang vs Union of India and others** decided on 22.05.2017, the respondents had made a request for Leave to Appeal, which was declined. In this case too, no question of law of general public importance is involved, hence prayer for Leave to Appeal is declined.

**(DS Sidhu)**  
**Member (A)**  
02.06.2017  
\*DP

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