

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

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MA 4290 of 2016 and OA 725 of 2016

Kulbir Singh	Petitioner(s)
Vs		
Union of India and others	Respondent(s)

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For the Petitioner (s) :	Mr Vivek S Dadwal, Advocate
For the Respondent(s) :	Mr Randhir Bawa, CGC

CORAM:

HON'BLE MR JUSTICE BANSI LAL BHAT, MEMBER (J)
HON'BLE LT GEN SANJIV CHACHRA, MEMBER (A)

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ORDER
23.03.2017

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MA No.4290 of 2016:

Written statement, already filed, is taken on record.

The MA stands disposed of.

2. No rejoinder is intended to be filed. Pleadings are, thus, complete.
3. Heard the learned counsel for the parties and perused the record.
4. By means of the present O.A., the applicant has prayed for a direction to the respondents to grant service pension to him for the second spell of service rendered in the Defence Security Corps(DSC), by condoning the deficiency/ shortfall in the qualifying service of 15 years under Para 125 of the Pension Regulations for the Army, 1961 (Part-1).
5. The applicant was enrolled in the Army on 05.05.1978 and discharged from the Army service on 01.06.2000, and, thereafter, for the second spell got re-enrolled in DSC on 03.12.2001 and discharged on 29.02.2016, after rendering 14 years and 89 days of service. Thus, there is a shortfall of 227 days against the requirement of 15 years under the Pension Regulations.
6. The issue involved in this case is no longer *res integra* and is squarely covered by the judgement of the Hon'ble Supreme Court in

Union of India & another vs. Surinder Singh Parmar, Civil Appeal No.9389 of 2014, decided on **January 20, 2015**, following which, a catena of decisions have been given by this Tribunal allowing such claims. The reasoning given in one such case i.e. **OA No.99 of 2015**, titled **Parkash Chand vs. Union of India & another**, decided on **09.09.2015**, is reproduced below:-

“7. In the above connection, we take note of the fact that as per Regulation 125 of Pension Regulations for the Army, 1961, OIC Records is competent to condone the deficiency in service to be eligible to earn service pension with minimum 15 years of qualifying service upto six months, and IHQ of Ministry of Defence (Army), upto 12 months. Even otherwise, the said issue is no longer *res Integra* and already stands settled by 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 that case respondent retired voluntarily from Naval service on 24.06.1985 when instructions dated 14.08.2001, providing condonation of shortfall in qualifying service beyond 6 months and up to 12 months, were not in existence and the Navy (Pension) Regulations provided that the benefit of condonation of shortfall in pensionable service was not applicable to persons seeking voluntary discharge from service. The Apex Court, while holding the latter provision as *ultra vires*, further held that *where the competent authority fails to exercise its power for condoning shortfall in qualifying service, court would be within its jurisdiction to pass appropriate order directing the authority to do the needful*. The relevant paras 11 to 14 of the judgment are reproduced below for ready reference:-

“11. In view of the aforesaid provisions the respondent is entitled to claim total period of service as 14 years for the purpose of calculation of pension. By the Government of India, Ministry of Defence Order dated 14.08.2001 administrative power has been delegated to the competent authority. Under clause (a)(v) the competent authority has been empowered to condone shortfall

in qualifying service for grant of pension beyond six months and up to 12 months. The said provision reads as follows:

“(a)(v) Condonation of shortfall in qualifying service for grant of pension in respect of PBOR beyond six months and up to 12 months.”

12. In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months upto 12 months. If the aforesaid power has not been exercised by the competent authority in proper case then it was within the jurisdiction of the High Court or Tribunal to pass appropriate order directing the authority to condone the shortfall and to grant pension to the eligible person, which has been done in the present case and we find no ground to interfere with the substantive finding of the Tribunal. However as we find that the respondent was allowed to retire from service on 24.-6-1985 when the Instruction dated 14-8-2001 was not in existence, we hold that the respondent is entitled for such benefit from such date on which the said Instruction came into effect. The Tribunal failed to notice the aforesaid fact but rightly declared that the respondent's shortfall stands condoned.

13. In the facts of the case, we are of the view that it should have been made clear that the respondent shall be entitled to the benefit w.e.f. 14.8.2001 and not prior to the said date. The order passed by the Tribunal stands modified to the extent above. The appeal stands disposed of with the aforesaid observations.”

Thus that OA was allowed with appropriate directions to the respondents.

7. On the same analogy, in the present case we are of the considered opinion that the shortfall of 227 days of service, is condonable and is hereby condoned with a direction to the respondents to grant service pension to the applicant qua the DSC service rendered by him, from the due date i.e. w.e.f. 01.03.2016.

8. A further direction is also issued to the respondents 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 due date i.e. 01.03.2016, till actual payment thereof.

10. No other point is urged before us. The O.A. is allowed and disposed of.

11. No order as to costs.

(Sanjiv Chachra)
Member (A)

(Bansi Lal Bhat)
Member (J)

23.03.2017

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