

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

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MA 1407 of 2016 and OA 1190 of 2015

**Dila Ram** ..... **Petitioner(s)**  
**Vs**

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

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For the Petitioner (s) : Mr Ravi Badyal, Advocate

For the Respondent(s) : Mrs Geeta Singhwal Sr PC

**CORAM:**

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

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

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**ORDER**  
**25.05.2017**

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1. Reply filed alongwith MA 1407 of 2016 are taken on record. MA stand disposed of.
2. Heard the learned counsel for the parties and perused the record.
3. 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 seven months in qualifying service is well within the rules and so be granted.
4. The factual details of the case are admitted and not contested by the opposite party. The petitioner was enrolled in the Army on 27.7.1965 and discharged on 31.7.1989 for which he is getting his pension. The petitioner was re-enrolled in the Defence Security Corps (DSC) on 20.2.1990 and discharged on 31.7.2004 after completion of 14 years and 5 months service under Army Rule 13(3) Item I (i) of Army Rules, 1954. Admittedly, he is not getting pension for this spell of service. The petitioner has been denied pension for the second spell of service on the ground that he has not completed the minimum required qualifying service of 15 years (A/4). In other words, there is a shortfall of 7 months for earning pension for the DSC service, condonation whereof has been denied by the respondents, thereby denying him the second pension.
5. In the above premises, the present petition has been filed seeking quashing of the impugned rejection order dated 5.10.2015 (A/4). He prays for grant of service pension for the spell of service rendered by the

petitioner in DSC by condoning the shortfall and *inter alia* grant of any other relief, the petitioner may be found entitled to in the facts and circumstances of the case.

6. The submission of the petitioner is that in terms of Regulation 125 read with Pension Regulation 266 of Pension Regulations 1961(Part –I) and the policy of the respondents, the petitioner 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.

7. The stand of the respondents in the impugned order 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. They have also taken the stand that the petitioner was discharged from DSC service on completion of his fixed and contractual terms of engagement of service on attaining the age of 55 years and not invalided out from service as averred and, therefore, not entitled to broad banding.

8. 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 ***OA No 1468 of 2014 titled Duni Chand vs Union of India & Ors*** decided by this Tribunal on 17.09.2015.

9. In **Duni Chand's case** (supra) reliance has been placed on the order dated 7.11.2013 passed by the Principal Bench of the Tribunal in OA No. 60 of 3013 (**Bhani Devi v. UOI and others**). Relevant portion of the order in **Duni Chand's case** (supra) i.e. paras 8 to 10, is reproduced below:

“ 8. In the case of **Bhani Devi's case** (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.”*

10. The Principal Bench also referred 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.

11. It was brought to our notice that the condonation of six months allowed by Regulation 125 has been extended to one year vide letter dated 14.8.2001.

12. In view of the above, it is held that the petitioner is entitled for condonation of shortfall in service, which is of 7 months, 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 rejection order dated 5.10.2015 (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. 1.8.2004.

13. On verification of the aforesaid factual facts from their record, the respondents shall calculate the arrears and release it to the petitioner, after getting the requisite government sanction followed by PPO within a period of three months from the date of receipt of certified copy of this order by the learned counsel for the respondents, failing which arrears shall carry interest @ 8% p.a . from the date they fell due.

14. Petition stands disposed of.

15. No order as to cost.

16. At this stage learned counsel for the respondents prays that permission be granted to file leave to appeal. As the orders passed are based on the celebrated judgements and the issue is no longer res-integra. Moreover, no question of law of general public importance is involved. Prayer for leave to appeal is declined.

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

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

25.05.2017  
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