

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

...

O.A. No.926 of 2013(Amended)

...

Ex. Gnr. Kulbir Singh

...Applicant

Versus

Union of India & others

...Respondent(s)

...

For the petitioner : Lt Col (Retd) SN Sharma, Advocate

For the Respondent(s) : Mr.VK Chaudhary, Sr.PC

...

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

...

**ORDER
26.05.2017**

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By means of this O.A., filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has prayed that the impugned order (Annexure A-8), vide which his request for condonation of shortfall in qualifying service for pension has been rejected by the respondents, may be quashed and set aside with a direction to the respondents to grant service pension to the applicant from the date of his dismissal/ discharge from service.

2. The facts giving rise to this case may be stated thus:-

- (a) The applicant, who was enrolled in the Army on 14.09.1985, proceeded on annual leave from 24.07.2000 to 04.09.2000. As pleaded, due to compelling circumstances at home, he could not join duty well on time and overstayed leave by 29 days. After joining duty on 03.10.2000 voluntarily, his trial by Summary Court Martial ('SCM' for short), was held and consequent thereupon, he was dismissed from service w.e.f. 14.10.2000. At that point of time, he had rendered 15 years and 31 days' of service,

including 55 days of non-qualifying service (NQS). Thus, his qualifying service for grant of service pension fell short by 25 days. As such, he was not granted service pension. Representation made by him in this regard was rejected. Then he preferred a mercy appeal, which was accepted by the GOC-in-C, Southern Command, and the following order(Annexure A-5) was passed on 14.09.2002:-

“Under the provisions of Rule 113(b) of Pension Regulations, Part I (1961) and Para 2 and 5 of Govt. of India, Min. of Defence letter No. 12(6)/95/D(Pen/Sers) dt. 09 Jun 1999, sanction is hereby accorded for grant of pension and gratuity to No.15104750X Gnr. (General Duty) Kulbir Singh of 196 Field Regiment, at a rate not exceeding that which would otherwise be admissible, had he not been dismissed on 14.10.2000 in a normal manner.”

- (b) The case of the applicant is that despite grant of sanction by the GOC-in-C, as aforesaid, no action was taken by the respondents to grant/ release the service pension to him for a decade and, ultimately, the mercy petition stands rejected vide letter, dated 20.11.2012 (Annexure A-8), on the plea **that there is a shortfall in the qualifying service for pension which is not permissible to be condoned in his case as he was dismissed from service.**
- (c) Left with no other efficacious remedy, the applicant has filed the present O.A.

3. The plea of the applicant in support of his claim is that once the GOC-in-C of the concerned Command, as a competent authority under the provisions of Regulation 113(a) of the Pension Regulations for the Army and Govt. of India, Min. of Defence letter No. 12(6)/95/D(Pen/Sers), dated 09 Jun 1999, accepted his mercy petition and ordered grant of service pension to him, it was totally illegal and arbitrary on the part of the respondents to sit over the matter for a long time and, ultimately, turn around to reject the claim. With acceptance of his mercy appeal, as aforesaid, the shortfall in service, just of 25 days stood condoned as per Regulation 9 of the Pension Regulations for the Army, 1961

(Part-I), under which for calculating the length of qualifying service, fraction of a year equal to 3 months and above but less than 6 months is required to be treated as one half year . Reliance is also placed upon judgments/ orders in the following cases:-

- (i) **L/ NK DSC Mani Ram vs. Union of India & others, Civil Writ Petition No.11769 of 2007**, decided by a Single Member Bench of the Punjab & Haryana High Court on **27.04.2009**;
 - (ii) **Om Parkash vs. Union of India & others, OA No.620 of 2010**, decided by the AFT, Chandigarh Regional Bench, on **01.10.2010**;
- and,
- (iii) **Ex Sep Jung Singh vs. Union of India & others, OA No.1611 of 2012**, decided by AFT, Chandigarh Bench on **05.07.2012**.

4. On the above submissions, it is prayed that the O.A. may be allowed and the relief prayed for may be granted in the interest of justice.

5. On notice, the respondents have filed a detailed reply to the Amended O.A. wherein it is submitted that as per Regulation 132 of the Pension Regulations for the Army, 1961(Part-I), minimum 15 years of service is required to earn service pension. The applicant having rendered 15 years and 31 days of service, including 55 days of non-qualifying service due to overstayal on leave, there is a shortfall in qualifying service. As condonation of shortfall in qualifying pensionable service is not permissible to be granted in dismissal cases, the shortfall could not be condoned, therefore, no service pension has been granted to the applicant. Moreover, during the span of 15 years and 31 days of service, the applicant earned two red-ink-entries and two black entries.

6. Further, the following submissions have been made by the respondents in Paras 7 & 8 of the 'Preliminary Submissions':-

"7. That as per para 113(a) of Pension Regulation Part I (1961) an individual who is dismissed under the provisions of Army Act, is ineligible for pension and gratuity in respect of all previous service. However, as per para 125 and 134 Pension

Regulation 1961 Part I and IHQ orf MoD (Army) PS-4(a) letter No.1744/AG/PS-4(a) dated 10.2.1976, deficiency in service upto 06 months and deficiency of service in a particular rank up to 03 months can be condoned by competent authority.

8. *That subsequently the ibid policy has been revised, vide IHQ of MoD (Army (PS-4) letter No.A/20037/MP-8 (IFR)(a) dated 18.06.2009. As per the ibid policy the power of condone deficiency in service up to 6 months have been delegated to OIC records and upto 12 months to service HQ vide Government of India Ministry of Def letter No.A/ 20455/ AG/PS4(b)/ 1753/A.D.(Pension/Services) dated 21.05.1986 and No.4684/DIR (Pen) 2001 dated 14.08.2001 respectively. The deficiency in service for eligibility to pension/ gratuity may be condoned up to 12 months in each case by competent authority except in the case of the following:-*

- (a) *An individual who is discharged at his own request.*
- (b) *An individual who is invalided with less than 15 years of service.*
- (c) *Who is eligible for special pension or gratuity under these Regulations.”*

7. Lastly, it is submitted that as per Para 113(a) of Pension Regulations for the Army, 1961 (Part I) an individual who is dismissed under the provisions of Army Act, is ineligible for pension and gratuity in respect of all previous service. ***The mercy petition submitted by the applicant was returned by the competent authority with the observation that the power delegated to the AG vide MoD letter No.4684/dir (Pen) 2001 for condonation of shortfall in qualifying service is not applicable in respect of dismissal cases.*** The rulings relied upon by the applicant are not applicable to his case.

8. On the above submissions, it is prayed that the O.A. may be dismissed with costs.

9. We have heard the Id. Counsel for the parties and have thoroughly perused the documents and the material available on record.

10. Undisputed facts of the case in nutshell are that there is a shortfall in service of the applicant of 25 days to earn pension. On rejection of his prayer to condone this shortfall, he made a mercy appeal and **in exercise of powers conferred under the provisions of Rule 113(b) of Pension Regulations, Part I (1961) and Para 2 and 5 of Govt. of India, Min. of Defence letter No.12(6)/95/D(Pen/Sers) dt. 09 Jun 1999, GOC-in-C, Southern Command accorded sanction for grant of pension and gratuity to the applicant.**

11. The sequence of events further shows that the order passed by the GOC-in-C, Southern Command, as aforesaid, was forwarded in original to the concerned Arty Records on 17.09.2002 (Annexure A-6) with copy to AG's Branch(DV-3), Army HQ and other concerned authorities for being acted upon. Still, on 21.11.2002, as per the document at page 80 of the paper book, the mercy petition of the applicant was forwarded by HQ, Southern Command, to ADG(DV-3), Army HQ. On 12.05.2003 ADG(DV-3) informed the applicant that his mercy petition had been forwarded to Artillery Directorate. **Then no action was taken to release the pensionary benefits to the applicant and rather strangely, the case remained hanging in the balance. So surprising that it took a decade for the respondents to say that shortfall cannot be condoned in dismissal cases and thereby to reject the mercy appeal of the applicant dated 28.08.2002, already decided by the GoC-in-C on 14.09.2002, by letter dated 06.11.2012 issued by the Directorate General of Artillery (Artillery-10) to Arty Records.** The contents of this letter are reproduced below :-

**“CONDONANTION OF SHORTFALL IN QUALIFYING
SERVICE FOR GRANT OF SERVICE PENSION IN R/O
NO.15104750 EX GNR (GD) KULBIR SINGH**

1. *The case was examined by the competent authority and taken up with have returned the case with observation that power delegated to the AG vide MoD 4684/Dir(Pen)/2001 dt 14 Aug 2001[copy not placed by respondents on record] for condonation of shortfall in qualifying service is not applicable in respect of dismissal cases. Hence, application dated 28 Aug 2002 by the Ex Gnr Kulbir Singh cannot be considered by MoD as a mercy petition in this regard a copy of Note 7 dt 26 Oct 12 recorded on this Dte letter*

No.A/10026/Petn/VIP/GS/Arty-10B is fwd herewith for info. Moreover, as per policy condonation i.e. dismissal and shortfall cannot be considered except when considered by AFT/Court.”

The contents of the note, referred to in the aforesaid letter dated 06.11.2012, are also reproduced below:-

*“A/10026/Petn/VIP/GS/Arty-10B
No.15104750 Ex Gnr (GD) Kulbir Singh*

1. *Reference preceding note.*
2. *The case for condonation of shortfall in qualifying service in respect of No.15104750 Ex Gnr(GD) Kulbir Singh taken up with MOD. The same is returned by MOD/(Fin/Pen) with the following observations:-*

(a) Minimum qualifying service prescribed for earning service pension as per 132 of PR Part I Army 1961 is 15 years. In the instant case Ex Gnr Kulbir Singh has rendered qualifying service of 14 years 11 months and 05 days only as such he is not qualified for grnt of service pension under para 113(a).

(b) The power delegated to AG vide MOD letter No.4684/Dir(Pen)/2001 dated 14 Aug 2001 for condonation of shortfall in qualifying service is not applicable in respect of dismissal cases.

(c) Application dated 28 Aug 2002 submitted by the Ex Gnr Kulbir Singh cannot be considered by MOD as a mercy petition.

5. *The case is returned herewith.”*

It is how the impugned order, dated 20.11.2012 (Annexure A-8), came to be passed.

12. In the interregnum, the applicant made repeated representations and requests to the respondents highlighting that he belongs to a poor family, unable to afford one square meal a day due to the extreme financial hardship. It was also brought to the notice of the respondents that he himself was not having

good health and required large amount of money for treatment and, thus, begged for grant of pension on humanitarian grounds, followed by the mercy appeal.

13. Having taken note of the sequence of events as aforesaid , the net result we find is that no succor has been provided to the applicant as the ultimate stand of the respondents is that the shortfall in service has not been condoned because the he was dismissed from service for overstaying leave on account of which 55 days of service has been declared as non-qualifying service for pension.

14. We have given a very serious thought and consideration to this case, particularly so as the pension by its very meaning is an allowance, annuity or subsidy as a fixed amount, other than wages, paid to a person or to his surviving dependents in consideration of past service, age, merit, poverty, injury or loss. It is not a bounty or a gratuitous payment rather a right to property earned and its importance needs no emphasis. Keeping this concept in mind, we once again advert to the facts of the present case and feel pained to observe that the claim of the applicant has not been considered in a right perspective and record the following findings.

15. The facts of this case make it abundantly clear that the mercy appeal of the applicant has been considered at two different levels as under:-

(A) **First level – GOC in C Command:**

At the level of GOC-in-C, Southern Command under the provisions of Rule 113(b) of Pension Regulations, Part I (1961) and in exercise of powers conferred under Paras 2 and 5 of Govt. of India, Min. of Defence letter No.`12(6)/95/D(Pen/Sers) dt. 09 Jun 1999, the relevant parts of which are reproduced below:-

*“No.12(6)/95/D(Pen/Sers)
Government of India
Ministry of Defence
New Delhi
The 9th June, 1999*

To

The Chief of the army Staff.

Subject: Amendment of Regulation 16 & 113 of Pension Regulations for the Army, 1961.

Sir,

I am directed to state that under the provision of Regulation 113(a) of Pension Regulations for the Army (Part-I), 1961, as amended vide CS No.80/IV/67 a PBOR who is dismissed under the provisions of the Army Act is ineligible for pension and gratuity in respect of all previous service though in exceptional cases, President may at his discretion, grant service pension or gratuity or both at a rate not exceeding that for which he would have otherwise qualified had he been discharged on the same date. Similar provisions in respect of commissioned officers do not exist vide Regulation 16 of PRA (Part-I), 1961. The disparity in the provisions has been engaging attention of the Government for some time past.

2. It has now been decided that all Indian Army personnel including commissioned officers who are cashiered/ dismissed under the provisions of Army Act, 1950 or removed under AR 14 i.e. as a measure of penalty, will be ineligible for pension or gratuity in respect of all previous service. In exceptional cases, however, the Competent Authority on submission of an appeal to that effect may at his discretion sanction pension/gratuity or both at a rate not exceeding that which would be otherwise admissible had the individual so cashiered/ dismissed/ removed been retired / discharged on the same date in the normal manner.

3. An individual who is compulsorily retired or removed on grounds other than misconduct or discharged under the provisions of Army Act, 1950 `... ..

4. All appeals to the Competent Authority in this regard will be preferred within two years of the date of cashiering/ dismissal/ removal.

5. The competent authority for the above provisions will be President in case of Commissioned Officers and GOC-in-C of command in whose jurisdiction the individual's record office fall in respect of JCOs/ Ors. Competent Authority for the purpose of Regn 3 of PRA(Pt-1) as mentioned in Regn 22 (Table VI) of PRA (Part.II) will also be the GOC-in-C.

6. Pension Regulations for the Army will be amended in respect of the above provisions in due course.

7. The provisions of this letter shall come into effect w.e.f. 1.1.1996. However, the cases decided between 1.1.96 till date of issue of this letter will not be re-opened.

Accordingly, under the provisions of the aforesaid policy letter of the GoI, sanction for payment of pension and gratuity to the applicant was accorded on 14.09.2002 by the GOC in C, Southern Command.

(B) **Second Level – MoD, GoI:**

At the level of MoD(Fin/Pen) who returned the case with observation that power delegated to the AG vide MoD 4684/Dir(Pen)/2001 dt 14 Aug 2001 for condonation of shortfall in qualifying service is not applicable in respect of dismissal cases, thus, not accepting the case with the observation that as per the policy, condonation of shortfall in service in dismissal cases cannot be considered except by AFT/Court.

16. In the above facts and circumstances, the question that arises for determination by this Tribunal is whether there could be two competent authorities in the case of grant of service pension to the applicant to take divergent view in the matter. Our answer would be an emphatic ‘No’. On careful consideration, we find that GOC-in-C, Southern Command considered the mercy appeal of the applicant in a bonafide manner under the provisions of Rule 113(b) of Pension Regulations, Part I (1961) and in exercise of powers conferred on him vide GoI, MoD letter dated 09.06.1999, reproduced in the preceding para, which needs no further elaboration. The said letter which became effective from 01.01.1996, is fully applicable in the case of the applicant as he was dismissed from service on 14.10.2000. We further find that the GOC-in-C of the concerned Command is fully empowered thereunder to pass a Presidential order by exercising discretion **in exceptional cases, on submission of an appeal to that effect, and sanction pension/gratuity or both at a rate not exceeding that which would otherwise be admissible had the individual so cashiered/ dismissed/ removed been retired / discharged on the same date in the normal manner**, which was so done in the case of the applicant herein. Accordingly, it is implied that the so-termed ‘*dismissal*’ gets converted into ‘*deemed discharge*’ for the limited purpose of grant of service pension or gratuity or both. The mercy appeal of the applicant have been decided by the competent authority and such powers having been exercised in the case of the applicant in the form of sanction of service pension and gratuity, we doubt if any

other authority, even at higher echelons, could consider it again. The only requirement was to implement the same and grant the requisite relief to the applicant which deplorably has not been done in the present case.

17. The respondents have made a reference to the powers delegated to the AG vide MoD letter dated 14 Aug 2001 for condonation of shortfall in qualifying service and thereby to say that condonation of shortfall in service is not applicable in dismissal cases. Firstly, the said instructions are not contemporary to the case of the applicant who was dismissed from service on 14.10.2000 and, secondly, not applicable at all once the competent authority i.e. GOC-in-C, Southern Command, had exercised its authority by which, as already observed, the so-termed 'dismissal' got automatically converted into 'deemed discharge' of the applicant for the limited purpose of grant of service pension and gratuity to the applicant. We, therefore, are of the considered opinion that the whole exercise, right onwards from sanction of service pension and gratuity to the applicant on 14.09.2002 is illegal, arbitrary and *ultra vires* the rules and the law, therefore, liable to be quashed and set aside. The plea of the respondents that during service the applicant had earned two red-ink-entries and two black entries, at this stage smacks of cynicism and, thus, carries no weight. We order accordingly and uphold the sanction accorded in favour of the applicant by the GOC-in-C, Southern Command with grant of service pension and gratuity.

18. As per the rule position brought out in this case, though as a general rule the army personnel including Commissioned Officers who are cashiered/ dismissed under the provisions of Army Act, 1950 or removed under AR 14 i.e. as a measure of penalty, are ineligible for pension or gratuity in respect of all previous service, yet, in exceptional cases powers have been conferred upon the authorities to grant the same. Still, a view for not accepting the claim of the applicant has been expressed in this case that as per the policy, condonation of shortfall in service in dismissal cases cannot be considered except by AFT/Court. If it be so, we have no hesitation to exercise such authority and powers in cases of miscarriage of justice, particularly so when the judgments in the cases *L/ NK DSC Mani Ram vs. Union of India & others*, *Om Parkash vs. Union of India & others* and *Ex Sep Jung Singh vs. Union of India & others (supra)* relied upon by the applicant are also supportive to the case of the applicant. In the facts and

circumstances of the present case we find that manifest injustice has resulted to the applicant who has remained deprived of service pension for more than a decade despite his repeated pleas to the respondents that he belongs to a poor family, unable to afford one square meal a day due to his extreme financial hardship, not keeping good health and requiring financial support for treatment and then later begging for grant of pension on humanitarian grounds through mercy appeal. The deplorable attitude and insensitive approach of the respondents has shocked our judicious conscience.

19. In view of the detailed discussion, given above, this O.A. is allowed with a direction to the respondents to act upon the sanction accorded by the GOI-in-C, Southern Command and, accordingly, release service pension and gratuity to the applicant with arrears within a period of three months from the date of receipt of certified copy of this order by the learned counsel for respondents. Non-compliance within the stipulated period shall entitle the applicant to interest @ 8% per annum from the due date i.e. 14.10.2000, till the date of actual payment.

20. Costs, quantified as Rs.20,000/-, are imposed upon the respondents for compelling the applicant to seek redressal through the process of the Court, which be paid to him along with the arrears, as ordered above.

(Sanjiv Chachra)
Member A

(Bansi Lal Bhat)
Member (J)

Chandigarh

Dated: 26.05.2017

`bss'

Whether the judgment for reference to be put on internet – Yes/ No