

**ARMED FORCES TRIBUNAL
REGIONAL BENCH
JABALPUR**

CORAM :

**HON'BLE MR JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN GOPAL R, MEMBER (A)**

OA 76/2019

No. 14548420W Hav Ashok Singh (Retd)

S/o Late Shri Sadhu Singh,

R/o Village & Post Akoda,

District Bhind (M.P)

.....Applicant

Versus

1. Union of India,
Through the Secretary,
Ministry of Defence,
Government of India, New Delhi.

2. COAS,
IHQ of MoD (Army),
DHQ PO, New Delhi.

3. OIC,
DSC Records,
Cannanore (Kerala)

4. OIC,
EME Records,
Secunderabad (A.P)

5. PCDA (P),
Draupadi Ghat, Allahabad (UP)

.....Respondents

For Applicant : Mr KC Ghildiyal, Sr Advocate with
Mr HC Singh, and Mr Pradeep Dwivedi,
Advocates

For Respondents : Mr Aakash Malpani holding brief of
Mr HS Ruprah, CGSC

ORDER

1. The applicant was enrolled in EME on 30.10.1982 and on compassionate grounds discharged on 28.02.1999 after 16 years, 4 months and 01 day qualifying service in the Army. For his Army service, the individual had been granted Service Pension. The individual re-enrolled in DSC for the second spell of service on 15.11.2002 and on completion of his initial terms of engagement of 10 years and 16 days, was discharged on 30.11.2012 as he was unwilling to continue. The individual had elected not to count his former service in Army while enrolling in DSC.

2. The OA has been filed to count DSC service with the first spell of service in Army, thereafter fix pension, gratuity and other benefits as the applicant was not aware that the service rendered with DSC can be counted towards qualifying service for pension and gratuity, due to his poor educational background.

3. Heard both the parties and perused documents placed on record.

4. The Government of India, Ministry of Defence vide letter No A/00592/DSC-2/54-C/D (GS-IV) dated 03.03.1983 had introduced the option of either choosing to draw Service Pension with retention of retiral benefits or to opt for counting of former Service with DSC service, with the stoppage of service pension and refund of Gratuity, including DCRG. This was effective from 25.01.1983. The provisions of Rule 267 (d) and Rule 126 of the Pension Regulations for the Army 1961 (Part 1) had been quoted by the Counsel for the Applicant in support of his claim of counting former service in Army. We find that the provisions of Rule 267 (d) of the Pension Regulations stand superseded consequent to the issue of Government of India letter dated 03.03.183 (supra).

5. Furthermore, we find that the individual had exercised an option on 30.11.2002 as per GOI letter dated 03.03.1983 (Supra) wherein he had chosen not to count his former service with Army for pensionary benefits. (Annexure R/1). By exercising the same, the individual was getting increased benefits of pay

from DSC as well as his Service Pension from the Army. On expiry of his initial terms of engagement of 10 years, we find that the individual was unwilling for extension of service in DSC, which if exercised would have enabled him to serve further, so as to reach the qualifying service for pension. (Annexure R/2) The Rule 126 of the Pension Regulations for the Army 1961 (Part-1) is for regulating the eligibility criteria for counting the former Service towards DSC, applicable only to those who had opted for the same. In the *ibid* case, the individual had not opted for it.

6. The reasons advanced by the Counsel for the Applicant that the individual was not aware of such an option wherein he could have opted for counting his former Army Service with DSC Service for pension is not a valid or logical argument since he in his individual capacity as far back as on 30.11.2002 had exercised the option of not counting Army Service towards DSC.

7. The issue also stands settled in similar case in AFT, RB Chandigarh in OA 2406/2018 decided on 30.07.2018 wherein a similar claim had been dismissed on the ground that ***“the very fact that he is getting service pension in respect of his previous service goes to show that he did not opt for his previous service to be counted. That being so, the OA is without any merit and is dismissed in limine.”***

8. In view of the above, we do not find any merit in the OA and same is dismissed.

9. No order as to costs.

Pronounced in Open Court on 18th July 2023

(JUSTICE RAJENDRA MENON)
CHAIRPERSON

(LT GEN GOPAL R)
MEMBER (A)