

**ARMED FORCES TRIBUNAL**  
**REGIONAL BENCH, KOLKATA**

**O. A.No. 88 /2018 with M. A. No - 65/2018**

**Naik Sushil Kumar Singh** ..... **APPLICANT**  
**Son of late Maheswar Prasad Singh**  
**Residing at Village & Post Office at**  
**Garh Barwari, PO. Lokha, Dist - Supaul (Bihar)**

**Versus**

**Union of India & Others** ..**RESPONDENTS**

**For the Applicant** : **Syed Arif Ahmed**

**For the Respondents** : **Mr. Arunava Ganguly**

**CORAM :**

**HON'BLE MS JUSTICE ANJANA MISHRA, MEMBER (J)**  
**HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)**

**O R D E R**

**05.05.2022**

**M . A. No. – 65/2018**

1. This Miscellaneous Application has been filed by the Applicant for Condonation of Delay in filing the O. A. Having considered the facts and circumstances mentioned in the Miscellaneous Application to be genuine and bone fide, delay of about six years in filing the O. A. is hereby condoned.

**O. A. No. - 88/2018**

2. This O. A. is filed by the Applicant under the provisions of Section 14 of the Armed Forces Tribunal Act, 2007, praying for quashing the Order No. 6381793/CC-2/Legal Cell dated 21.10.2010 passed by the Senior Record Officer, OIC Records, ASC Records (Supply ), Bangalore - 560007 refusing grant of benefit under Rule 125 of the Army Pension Regulations 1961.

3. Brief facts of the case as enunciated by the Applicant are that the Applicant was enrolled in the Indian Army on 06.06.1986. The Applicant was asked to report ASC Centre (HQ) Bangalore within 3 months. Thereafter, the Applicant while working for about one month there on 12.1.2001 received his

Discharge Order Book and Railway Warrant as discharged from Service. The Applicant received all his post-retirement benefits. The Applicant's waiting for regularization of pension wrote letter to Army Headquarters, ASC Centre (South) C/o 56 APO and the Headquarter forwarded the same to ASC Records (South) Bangalore on 31.7.2006. The ASC Records (South) vide letter dated 18.08.2006 intimated to the Applicant that minimum 15 years of service is required for grant of pension. The Applicant had completed 14 years and 147 days of service. The Applicant filed Mercy Petition to Hon'ble President of India through Sainik Board, Bangalore stating that his discharge from service is illegal. The Applicant got a letter from The President's Secretariat on 03.06.2008 stating that the same is forwarded to Govt. of India, Ministry of Defence, Department of Defence, New Delhi. The Applicant received a letter dated 10<sup>th</sup> October, 2008 from Senior Record Officer for OIC Records, Bangalore that the Applicant was legally discharged from service from 12.1.2001 for incurring four red ink entries and his ineligibility for getting pension for not completing 15 years of service. The Applicant having completed 14 years 147 days of service. The Applicant made another application on 27.6.2009 for grant of pension but the same was also rejected on the ground of ineligibility on the same ground. By the OIC Records on 21.07.2009. The Applicant filed a Writ Petition being C.W.J.C. No. 2078 of 2010 on 29.03.2010 before The Hon'ble Patna High Court, which was disposed of by Order dated 29.03.2010 by the Hon'ble Court setting aside the impugned Order dated 21.07.2009 with directions to the Respondent Authority for condoning the deficiency in length of service as per Rule 125 of the Army Pension Regulations, 1961 and the Govt. of India vide Order dated 21.07.2004 by applying the principle of equity of justice and fair play within a period of 2 months. The Applicant, thereafter, filed Contempt Petition bearing M.J.C. No. 1786 of 2012 and during the pendency of which the Respondent passed the impugned order contained in letter No. 6381792/CC-2/Legal<sup>r</sup> Cell dated 21.10.2010 refusing grant of benefit of pension on the earlier ground that the Applicant has not completed 15 years of qualifying service including non-

qualifying service in total 14 years and 147 days of service. The aforesaid M.J.C. No. 1786 of 2012 was disposed of by the Hon'ble High Court vide Order dated 25.06.2012 granting liberty to the Applicant to challenge the impugned order dated 21.12.2010. Hence, this O.A. has been filed praying for grant of pension.

4. The Respondents on the other hand filed a detailed Affidavit while not disputing the basic facts and has submitted that the Applicant was discharged from service on 12.01.2001 under Army Rule 13(2) (A) on completion of Army Service having four red ink entries. He had rendered 14 years 147 days of service and not 15 years of completed service to be eligible for pension.

5. Heard and considered the submissions of Learned Counsels for the parties and perused the material on record. The main issue for consideration is whether the Applicant is eligible for condonation of short fall in service to be eligible for Service Pension.

6. The Applicant entered into military service on 06.06.1986 and was discharged on 12.01.2001 after rendering 14 years 147 days of qualifying service. The Applicant has been denied pension on the ground that he has not completed the minimum required qualifying service of 15 years. There is a shortfall of 218 days earning pension for the DSC service, condonation whereof has been denied by the Respondents. *Ex*

7. In the above scenario, the present petition has been filed seeking quashing of the impugned Rejection Order dated 21.10.2010 and to grant Service Pension to the Applicant for the spell of service rendered by him in DSC *SK* by condoning the shortfall, inter alia, grant of any other relief, the Applicant is found to be entitled to in the facts and circumstances of the case.

8. The submission of the Applicant is that in terms of Regulation 9 of the Pension Regulations 1961 (Part-I) and policy of the Respondents, he 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, and therefore, not entitled for condonation of shortfall is unjustified.

9. The condonation of shortfall in service is no longer *res integra* and has been set at rest in favour of the Applicant in O. A. No. 1238/2016 with M. A. No. 923/2016 (**Smt. Shama Kaur Vs. Uol & Ors.**) decided by the Armed Forces Tribunal, Principal Bench, New Delhi on 14.10.2020 and in O. A. No. 83 of 2011 (**Amar Singh Vs Union of India and Ors**) decided by Armed Forces Tribunal, Regional Bench, Chandigarh .on 24.01.2011.

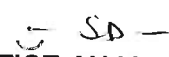
10. In view of the above, it is held that the Applicant is entitled to condonation of shortfall in service of upto 1 year for the purpose of pension and thus, is entitled to get pension ~~for the second spell of service in DSC as well in addition to the pension he is getting from the Army.~~ The impugned order dated 21.10.2010 is hereby quashed and set aside and Respondents are directed ~~to grant Second Service Pension to the Applicant from the due date i.e. 21.10.2001.~~ SK

11. The Respondents are further directed to work out the arrears admissible to the Applicant 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 date of this order, till actual payment thereof.

12. Accordingly, both the M. A. as well as O. A. stands disposed off.

13. No order as to costs.

  
(LT GEN BOBBY CHERIAN MATHEWS)  
MEMBER (A)

  
(JUSTICE ANJANA MISHRA)  
MEMBER (J)