

FORM NO. 21
(SEE RULE 102(1))
ARMED FORCES TRIBUNAL, KOLKATA BENCH

OA No.75/2016.

THE 13TH DAY OF MARCH, 2024.

No.5446004X Ex Nk Haricharan Guchhayat.

... Applicant.

-Vs-

Union of India and others. Respondents.

Advocates present:

For the applicant,

Ms Manika Roy.

For the respondents,

Mr Ajay Chaubey, Sr.PC.

CORAM:

HON'BLE MR. JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

HON'BLE LT GEN SHASHANK SHEKHAR MISHRA, MEMBER (ADMINISTRATIVE).

O R D E R(ORAL)

JUSTICE DHARAM CHAND CHAUDHARY, MEMBER(JUDICIAL).

Heard.

- (2) In this application following reliefs have been sought to be granted:
- (a) A direction to the respondents to grant the second service pension to the applicant for the services rendered by him in the Defence Service Corps (DSC) from the date of discharge there from together with interest; and

(b) Any other or further order as deemed fit and proper in the given facts and circumstances of the case may also be passed in favour of the applicant.

(3) Learned counsel representing the applicant submits that this application has to be considered and disposed of in the light of the order passed by this Bench in a similar matter, OA No.82/2020 titled Ex Nk Dibyendu Bandopadhyay vs. Union of India and others. The said order is stated to have attained finality with the dismissal of the appeal by the Hon'ble Supreme Court.

(4) In that case the shortfall in qualifying service was of 26 days like the present one where it is of 49 days. A coordinate Bench has allowed the said OA with the following observations:

"The question involved in this case is no longer res integra, as the same had already been settled by this Tribunal in the case of Bhani Devi Vs. Union of India and others (O.A.No.60 of 2013 decided on 07.11.2013), Ex Nk Vijay Singh Vs. Union of India and Ors. (OA No.272 of 2018 decided on 14.10.2020) and the Kochi Bench of this Tribunal in Mohanan T Vs. Union of India and Ors. (OA No.131 of 2017 dated 12.10.2017. In Bhani Devi (supra), it was held that the provisions for condonation of shortfall in service under Regulation 125 of the Pension Regulations for the Army 1961 (Part I) are equally applicable to Armed Forces personnel serving in DSC making them eligible for grant of second service pension. Against the order in Ex Nk Mohanan T (supra), granting condonation of shortfall of DSC service, subsequent to the issue of GoI(MoD) letter dated 20.06.2017, the respondents had approached the Hon'ble Supreme Court by filing Civil Appeal(Diary) No.27100 of 2018, which was dismissed vide order dated 27.08.2018 and thus the matter has attained finality. This Tribunal in Ex Nk Vijay Singh(supra), while referring to the Full Bench decision of this Tribunal in Smt Shama Kaur Vs. Union of India and Ors (OA No.1238 of 2016 decided on 01.10.2019), which dealt with the question whether there should be

condonation of deficiency of service for grant of second pension of DSC like Regular Army personnel in terms of Government of India (Ministry of Defence) letter dated 14.08.2001 and Para 44 of the Army Pension Regulations or be dealt with in terms of Government of India (Ministry of Defence) letter dated 20.06.2017, quoted para 44 of that judgment which reads as under:

(a) *The aspect has been discussed in full detail in our discussion above on merits. It needs no further emphasis that the DSC is a part of the Army and is also treated as a "Corps" under Rule 187(1) of the Army Rules, 1954, read with Section 3(vi) of the Army Act, 1950. Further the same pensionary provisions as applicable to the three defence services are applicable to the DSC and all such personnel taken together are referred as "Armed Forces Personnel" as becomes clear from the opening paragraphs of Letter No.1(5)87/D(Pension/Services) dated 30.10.1987, Letter No.1(6)/98-D(Pension/Services) dated 03.02.1998, Letter No.17(4)/2008(2)/D(Pen/Pol) dated 12.11.2008 and Para 3.1 of Letter No.17(02)/2016-D(Pen/Pol) dated 04.09.2017 issued by the Ministry of Defence after the 4th, 5th, 6th and 7th Central Pay Commissions respectively.*

(b) *The matter has already been decided by Constitutional Courts and this Tribunal and implemented by the Respondents, especially in the decision of the Hon'ble Punjab & Haryana High Court in Union of India v.LNK DSC Mani Ram(LPA No.755 of 2010 decided on 05.07.2010), the Hon'ble Delhi High Court in Ex Sep Madan Singh v.Union of India (W.P(C) No.9593 of 2003), this Bench in Bhani Devi V.Union of India and others(O.A No.60 of 2013 decided on 07.11.2013) and the Kochi Bench in Mohanan T v. Union of India(O.A No.131 of 2017 decided on 12.10.2017). The letters purportedly amending the relevant provisions have also been held contrary to law vide the above. In light of this, coupled with the merits of the matter discussed in the instant judgment, there can be no scope of any doubt that DSC personnel are fully entitled to condonation of deficiency of service for their second spell of service at par with other Army personnel. In fact, as discussed in the main body of this judgement, DSC personnel re enrolling themselves by opting not to count their past military service have no connection at all with their past service as far as pension is concerned and their service in DSC is fresh service delinked from their past service.*

(c) *Further, the Respondents have themselves stated before the Hon'ble Supreme Court in Chattar Pal(supra) that condonation upto one year is possible, and once Constitutional Courts, including the highest Court of the land, have upheld the proposition, it is beyond the scope of any bench of this tribunal to hold or comment otherwise. We hence answer this question in the above terms.*

Taking into account the aforesaid factual and legal aspects, we are of the considered view that the facts of this case are also squarely covered by the decisions in Bhani Devi and Ex Nk Vijay Singh (supra) and, therefore, the shortfall of less than one year(26 days) to complete 15 years of qualifying service in DSC by the applicant to get second service pension is liable to be condoned.”

(5) It is seen that in the order referred to above, an order passed by Kochi Bench of this Tribunal in OA No.131/2017 titled Mohanan T vs. Union of India and others decided on 12.10.2017 has been relied on. In that case, the shortfall in qualifying service was of 3 months and 4 days. Since Ex Naik Mohanan T had completed 14 years, 8 months and 26 days' qualifying service in the DSC, the OA filed by him was allowed and the shortfall ordered to be condoned. This order assailed by the Union of India before the Hon'ble Supreme Court by filing Civil Appeal(Diary) No.27100/2018 has been upheld vide order dated 27.08.2018 while dismissing the appeal.

(6) Not only this but Kolkata Bench has also condoned the shortfall of 26 days occurred in qualifying service vide order dated 06.05.2022 passed in OA No.82/2020 titled Ex Nk Dibyendu Bandopadhyay vs. Union of India and others cited supra.

(7) The law as such is no longer res integra. Therefore, when the applicant herein has completed 14 years and 316 days' qualifying service in the DSC and the shortfall is only of 49 days, we fail to understand as to why it could not have been condoned! The respondents no doubt have filed affidavit-in-reply, however, in sundry as nothing tangible has been brought on record to justify that the shortfall of 49 days cannot be condoned.

(8) Learned Sr. PC has also failed to bring to our notice anything contrary as to why the order passed by this Bench in OA No.82/2020 is not applicable in this case.

(9) The application as such is allowed. Consequently there shall be a direction to the respondents to condone the shortfall of 49 days in qualifying service in the DSC rendered by the applicant and grant the second service pension to him. Arrears up to date be calculated and released to him within three months from the date of receipt of certified copy of this order to be supplied by learned Sr.PC/OIC Legal Cell failing which together with interest @ 8% per annum till the entire amount is realised.

(10) The application is accordingly disposed of. Miscellaneous application(s) if any pending will also stand disposed of accordingly. No order as to costs.

LT GEN SHASHANK SHEKHAR MISHRA

HON'BLE MEMBER(A)

JUSTICE DHARAM CHAND CHAUDHARY

HON'BLE MEMBER(J)

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