

FORM NO – 21

(See Rule 102 (1))

ARMED FORCES TRIBUNAL, KOLKATA BENCH

APPLICATION NO : O.A. 5 OF 2011

FRIDAY, THIS TWELFTH DAY OF OCTOBER, 2012

**CORAM : Hon'ble Mr. Justice Raghunath Ray, Member (Judicial)
Hon'ble Lt. Gen. K.P.D. Samanta, Member (Administrative)**

Ex. No. 7119555 MCFN
Shri Jagadish Chandra Mohanty @ Mahapatra
Son of Sundar Mohan Mohanty aged about 55
Years worked as Craftsman (CFN) at Light Repair
Workshop (LRW). Department of Electrical
Mechanical Engineer (EME).Army since removed
From Army Service, residing at Padmapur, P O
Saragan, Via. Sunhat, Dist. Balasore, State Orissa.

..... Petitioner

-VS -

1. Union of India, through Secretary Ministry
Of Defence South Block, New Delhi.-110001
2. Chief of the Army Staff, Army Head Quarters,
South Block, New Delhi 110001.
3. Principal Controller of Defence Accounts (P).
Allahabad , U P.
4. Officer Commanding LRW, 536 ASC Bat,C/0 56APO.
5. Officer- in- Charge , EME Records, Secunderabad,
21, APO , Andhra Pradesh.

..... Respondents

For the applicant : Mr. J.R.Das, Advocate

For the respondents : Mr. B.K.Das, Advocate
Mrs. Manika Roy, Advocate

O R D E R

Per Lt. Gen. K.P.D.Samanta, MEMBER (Administrative)

This case relates to an applicant, who was a soldier in the Indian Army but was not granted service pension on his discharge from the Army in the year 1987.

2. The applicant was enrolled in the Corps of EME on 30th March, 1973. After his initial training including the period spent in artificer training, he continued to serve in the Army and was finally discharged on 19.12.1987. As submitted by the applicant as well as by the respondents in their counter affidavit, this discharge was on **“own request of the applicant on extreme compassionate ground.”** This aspect has, however, been challenged by the Id. counsel for the applicant, both in the application and during his oral submission to the extent that the applicant was forced to sign on an application for voluntary discharge although he indeed was not willing to go on such discharge. Be that as it may, the applicant concedes that the period spent on artificer training was counted towards his pensionable service. Therefore, the applicant, in fact, had rendered 14 years 8 months and 18 days of service, which included 2 years of apprentice service whereas 15 years qualifying service is the mandatory requirement to earn service pension as per regulation 132 of Pension Regulations for the Army, 1961, Vol. I.

3. The applicant has prayed that the shortfall of only 3 months and 12 days be condoned as a special case since he actually was not a volunteer for discharge and such an application was forced upon him for signature at that point of time. During oral submission, Mr. J.R.Das, Id. advocate for the applicant has reiterated the points raised in the application and has very fervently prayed for condoning the shortfall of 3 months and 12 days for enabling the applicant to earn service pension. He brought to our notice that

provision exists in regulation 124 of the Pension Regulations for the Army, 1961 for the competent authority to condone such shortfall of such service in order to enable a soldier to earn pension. He prayed that this provision should be applied in the case of the applicant without considering the aspect of request for voluntary discharge. He, however, admits that as per documents on record it was indeed a case of voluntary discharge.

The respondents in their affidavit-in-opposition have admitted the facts with regard to the service and occurrences, as stated in the original application. They, however, in their counter affidavit have submitted that the applicant was discharged at his own request under Army Rule 13(3)(III)(iv), which denotes that the discharge was on compassionate ground on own request. They deny the allegation that the voluntary discharge of the applicant was obtained by force from the applicant since such a practice is never followed in the Indian Army. They have pointed out that the documents and averments, as contained in the original application, clearly indicate that he had indeed sought for voluntary premature discharge on extreme compassionate ground, which was granted. Therefore the fact remains that the applicant was enrolled on 30.3.73 and was discharged on 19.12.87, and thus he had not been able to complete 15 years of mandatory service to make him eligible for pension, as per regulation 132 of the Pension Regulations. It is also submitted by Mr. B.K.Das, Id. adv. for the respondents, besides the shortfall as above, the applicant had to his account 593 days of absence on account of overstaying of leave granted to him in the years 1984, 1985 and 1986. The details have been submitted by the respondents at para 5 (c) of their counter affidavit. This aspect has not been denied by the applicant in his rejoinder. Therefore, it is submitted by Mr. B.K.Das, Id. adv. for the applicant that such period of absence to the extent of 593 days also needs to be deducted

from the actual service of the applicant. Accordingly, as per Mr. Das, the applicant is not at all eligible for any pension being terribly short of mandatory 15 years of qualifying service to make him eligible for pension in accordance with rule 132 of Pension Regulations. He further submits that regulation 125 of Pension Regulations for the Army makes an exception for condonation of any shortfall in case a person proceeded on discharge on own request; and the present case falls in that category.

4. For the sake of convenience, we may quote the relevant provisions of regulations 124, 125 and 132 of Pension Regulations for the Army, 1961, Vol. I, as under :

124. Upon such conditions as it may think fit to impose, a competent authority may condone interruptions of service in the case of a person whose pension is sanctionable by an authority sub ordinate to the President as under :-

- (a) When proposed pension exceeds Rs.25/- p.m. interruption not exceeding a period of 12 months in all.
- (b) When proposed pension is s. 25/- per month or less – all interruptions whatever duration.

Condonation of deficiency in service for eligibility to service/reservist Pension.

125. Except in the case of –

- (a) an individual who is discharged at his own request.
- (b) An individual who is eligible for pension or gratuity under Regulation 164.

Or

- (a) An individual who is invalidate with less than 15 years service, Deficiency in service foe eligibility to service pension jkor

Reservist pension or gratuity in lieu may be condoned by a competent authority upto six months in each case.

132. Unless otherwise provided for, the minimum qualifying color service for earning a service pension is 15 years.

5. We have heard the learned counsel for both the sides in detail and considered their rival contentions. We have also perused the documents and averments placed on record by both the parties.

6. We find from annexure-R2 to the counter affidavit, which is a letter being No. 7119555/SP-3/Pen dated 29th July, 2009 from EME Records addressed to the applicant, it is clearly stated that the applicant had rendered 14 years 8 months and 18 days of service and there is no mention with regard to deduction of any service on account of overstayal of leave as pointed out in the affidavit-in-opposition referred to above. Therefore, we are of the view that the EME Records would have regularized such absence under the rules and regulations in vogue and thus, have calculated his total service as 14 years 8 months and 18 days. Notwithstanding above, the fact remains and is not denied by either party and is on record, that the applicant had indeed volunteered to proceed on premature discharge on extreme compassionate ground and on that account itself his early discharge was granted and executed on 19.12.87 by the authorities. By such action, the shortfall for 3 months and 12 days towards pensionable service arose. Consequently, the applicant was not able to complete 15 years of mandatory service to make him eligible for pension by his own action for which he is only to be blamed. The authorities cannot be blamed for such action and their action was in consonance with the rules.

7. We have no intention to interfere with the administrative decision taken bona fide in accordance with rules and regulations. We also take note of regulation 125 which is quoted above. The said regulation clearly stipulates that the provision of condonation of shortfall as provided in regulation 124, cannot be applied in case of individual who has

sought voluntary discharge on his own request. We may once again quote the said provision as under :

“Except in the case of –

(c) an individual who is discharged at his own request.”

8. In view of what has been discussed above, we do not find any merit in this original application which stands dismissed on contest but without cost.

9. Let plain copy of the order be handed over to both parties.

I agree.

(Lt. Gen. K.P.D.Samanta)
MEMBER(A)

12/10/12

(Justice Raghunath Ray)
MEMBER(J)