

FROM NO. 21

(SEE RULE 102(1))

ARMED FORCES TRIBUNAL , KOLKATA BENCH

APPLICATION NO : TA NO.15 OF 2012

ON THIS 5<sup>th</sup> DAY OF FEBRUARY, 2013

CORAM

HON'BLE JUSTICE RAGHUNATH RAY , MEMBER (JUDICIAL )

HON'BLE LT GEN KPD SAMANTA, MEMBER (ADMINISTRATIVE)

Shri Ramesh Chandra Mahapatra ,  
At/PO – Govindprasad, Via - Bhapur,  
Dist. Denkanal.

.....Appellant

-VS-

1. Union of India through  
The Additional Director General Territorial Army,  
Ministry of Defence,  
L Block,  
Army Headquarters,  
New Delhi – 110 001.
2. The Deputy Director General Territorial Army,  
General Staff Branch  
Army Headquarters,  
L Block, Church Road,  
New Delhi – 110 001.
3. Records Bihar Regiment,  
Danapur Cantt. – 801 503
4. Commanding Officer,  
Inf. B.N. Territorial Army,  
Kalinga Enclave,  
Bhubaneswar,  
Dist. Khurda.

..... Respondents

For the petitioner : Mr. Bisikesan Pradhan, Advocate

For the respondents : Mr. Tapas Kumar Hazra, Advocate .

**O R D E R**

**Per HON'BLE LT GEN K.P.D. SAMANTA, MEMBER (ADMINISTRATIVE)**

This matter was originally filed in the Hon'ble Orissa High Court as a writ petition {WP(C) No. 10172 of 2011} which was later transferred to this Tribunal on 19.04.2012 and re-numbered as T.A.No. 15/2012.

2. Briefly the case relates to the applicant who is a retired junior commissioned officer of Territorial Army (TA). The applicant was serving in 120 TA Battalion (BN) having been enrolled there on 23.11.1976. Although he was discharged on 10.06.1996, which is after approximately 20 years of service, a total period of embodied service, as is calculated for all TA personnel to be recognized as reckonable service for pension, works out to 14 years 198 days (annex. 2 to the application). However, the authorities, in their calculation, have submitted that the total embodied service in his case was actually 14 years and 155 days as explained in their counter affidavit (para 12). They have further explained that the applicant had 43 days of non-reckonable service since that period was leave without pay which was availed by him as per special provision available in TA service rules. As per the discharge book of the applicant (annex. 1 to the application) we however find that the total embodied service as mentioned is 14 years and 198 days and not as 14 years and 155 days as claimed by the respondents in their counter affidavit. It was pointed out that the discharge book is a Government documents signed by the Commanding Officer of 120 Infantry BN, TA. Even in annexure 2 to the application which is an official document dated 15.04.1998 signed by an Officer of 120 Inf. BN (TA) it has been clearly endorsed that the applicant had an embodied service of 14 years and 198 days.

3. Under any circumstances, the applicant falls short of the mandatory 15 years of embodied service which would make him eligible to earn pension as per the Regulations. The applicant applied to the authorities to condone this shortfall of 167 or 210 days under the powers vested upon the Additional Director General Territorial Army at Army HQ, New Delhi on 27.06.2007 and again on 20.06.2009. Besides these petitions the applicant did obtain an order dated 02.12.2010 from the Hon'ble Orissa High Court in response to WP( C ) No. 1378 of 2010 (Annex. 6 to the application), wherein the Hon'ble High Court had ordered the respondent No. 1 to reconsider and dispose of the representation within the rules.

4. Subsequent to the ibid court order and representation, the Additional Director General Territorial Army (respondent No. 1) issued a speaking order (annex. 7 to the application). As per the above speaking order dated 16.08.2011, the respondent No. 1 did not condone the short fall of 210 days as calculated by them under the plea that "in terms of Rule 125(a) of Pension Regulation Part I, 1961, condonation of shortfall in service is not permissible if an individual is discharged from TA service at his own request".

5. The sum and substance of the matter is – do the authorities have the power to condone any shortfall of reckonable service for pension from the mandatory 15 years, which is required to make him eligible for pension ?

6. In the counter affidavit as filed by the respondents, they have also submitted their inability to condone any shortfall of service for pension since condonation of deficiency in service for eligibility of pension is possible only if an individual was not discharged at his own request. The respondents have further submitted that the applicant was discharged from service under TA Rule 14/C read in conjunction of Army Rule 13 "at his own request". This aspect is also found endorsed in the discharge book of the applicant (annex. 1) (para 12 of the A/O).

7. The applicant had also drawn our attention to a few other NCOs in whose case certain amount of shortfall in service for pension was condoned. The respondents however in para 16 of their A/O have clearly submitted that the case of other NCO who was Hav. Surinder Singh was different since he was discharged after completion of his terms of engagement and not at his own request. Therefore, the matters are not comparable.

8. While making his own submission, Mr. Pradhan, the learned counsel for the applicant admitted that his client had indeed sought for discharge on compassionate ground but was not aware that he had not completed his eligible service (embodied service for TA) for pension which was 15 years. He emphasized on the point mentioned in para 13 of his writ petition to the extent "that the authorities ought to have explained the disadvantages of early discharge of the employee from the service on an extreme compassionate ground, but in the instant case no such step has been taken by the authority while the petitioner applied for early discharge from the service." This aspect has not been contested by the respondents either through affidavits or during oral submission.

9. The second point that Mr. Pradhan brought out is regarding the undue hurry in which the applicant's discharge application was processed and sanctioned. To this extent he brings to our notice para 3 of annex. 4 wherein the applicant has clearly mentioned that he applied for discharge from service on 10.06.1996. Mr. Pradhan at that point brought to our attention with regard to the date of discharge of the applicant which also happens to be 10.06.1996. Therefore, as summarized by him, the authorities were looking for an opportunity to discharge the applicant under some plea or other and such an application to go on compassionate ground was obtained from him prematurely. The respondents contested during oral submission but have made no other submission in their affidavits to explain such undue hurry of granting discharge within the same day when the applicant had made a request.

Mr. Pradhan emphasized on these two points that have been mentioned above to make an issue that a departure be made in his case to condone his shortfall in service since the discharge was indeed not on own request in terms of the spirit and in the manner that was to be executed. Mr. Pradhan concluded his argument.

10. Mr. Tapas Kumar Hazra during his oral argument relied upon the facts and materials as have been submitted through affidavits. But on the two points with regard to the facts on not explaining repercussions of compassionate ground discharge and the undue hurry in executing the said compassionate ground discharge, Mr. Hazra could not throw any further light than what has been submitted in their A/O. He however brought to our notice the contents of para 125 of the Pension Regulation 1961 which does not allow the authorities to exercise any discretion to condone any shortfall in service for pension, if the applicant had sought discharge at his own request.

11. We have heard the learned counsel for both sides in detail and also have considered all the affidavits and annexures that have been submitted. We are of the view that in this matter there are three issues that need application of our judicial mind.

12. Firstly, was the shortfall 167 days or 210 days ? In this case we are of the view that it is immaterial what the shortfall is but the fact remains that the shortfall of even upto 210 days can be condoned by the authorities, if permitted under the rules. Further, 43 days of shortfall on account of leave without pay is an aspect which has no relationship with the "discharge at own request". Therefore, nothing debars from condoning those 43 days. As regards the balance 167 days are concerned, that period is well under the purview of respondent No. 1 to condone, if permitted under rule.

13. Secondly, Regulation 125(2) does not permit any condonation of shortfall for condonation if discharged at his own request. We need to analyse this issue in its totality for which we reproduce Regulation 124 and 125 of Pension Regulations for Army, 1961 (as amended) :-

*“ Condonation of an interruption of service*

*124. Upon such condition as it may think fit to impose, a competent authority may condone interruption of service in the case of a person whose pension is sanctionable by an authority subordinate 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 Rs. 25/- per month or less – all interruption 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 of service, deficiency in service for eligibility to service pension or reservist pension or gratuity in lieu may be condoned by a competent authority upto six months in each case.*

14. There is no doubt that the authorities have acted well within the rules for denying themselves the discretion to condone any shortfall in service for pension because in this case the authorities have held that the discharge was at his own request. But this spirit of the rule must be seen in its entirety; the aspect which we have gone into. The aspect of “discharge at his own request” however needs further analysis which is the third point of issue.

15. The third issue therefore is borne out of two points that have been undisputedly raised by the applicant which are ;

(a) Why was the applicant not advised , when he requested for discharge on compassionate ground, to serve a few more months to make him eligible for pension ?

(b) Why was the application processed in express speed within the same day i.e. on 10.06.1996 which is indeed surprising. More so without any proper response from the respondents, a doubt arises whether it was a case of discharge at his own request or such an application was obtained from him for different purpose. That notwithstanding, the applicant is a TA employee and he has to his credit 5 years and 3 days of dis-embodied service, which of course is not counted as reckonable pensionable service. Under such circumstances, the applicant, to our mind needs special dispensation so that the benefit of doubt would tilt to his advantage.

16. We are of the view that the applicant cannot strictly be considered as one who voluntarily asked for discharge at his own request, but perhaps his application for seeking discharge on compassionate ground was obtained from him under circumstances which are rather hazy and create suspicion in our mind whether the discharge was on the basis of genuine voluntary request or he was coerced to submit such an application. As per the standard procedure in the Army, the applicant should have been explained of the repercussions of seeking a voluntary discharge before completion of pensionable service of 15 years. The process of executing a discharge application itself takes a month or more. In the instant case, in a matter of few hours of applying for the so called "voluntary discharge", his discharge was sanctioned and the applicant was discharged the same day i.e. on 10.6.1996. Therefore, considering the spirit of the Rule i.e. the Pension Rule 125 we are inclined not to consider the applicant as strictly one who sought his discharge on a voluntary basis, but perhaps coerced into a situation to seek for discharge.

17. In a normal routine case, where a soldier seeks retirement on a voluntary basis due to some pressing domestic or personal compulsions, the Commanding Officer at the first place, would explain the applicant the disadvantages of quitting service just few months prior to being eligible for pension. After such counseling, normally the applicant would have been given a week or ten days to reconsider his request. In case he still insisted for a voluntary discharge, then the application would normally take at least one month time for it to be processed which would include finalization of all the accounts and completion of all documentation. In the instant case, however, we find that no such activities or efforts by the Commanding Officer or any other competent authority has been taken. It appears, as if, the applicant was pushed to



leave on the ground of 'discharge on compassionate ground' just prior to few months of completing his mandatory 15 years of qualifying service which would have earned him defence pension. The entire situation does not appear very natural and cogent. We are thus not inclined to consider this discharge of the applicant as a "voluntary discharge at own request".

18. In view of the matters discussed above, we allow the application with the following directions.

(a) The authorities shall condone the shortfall of service of 210 days or 198 days as worked out to make him eligible for pension by treating him as not a case who volunteered for discharge at his own request.

(b) Having condoned such shortfall on the basis of this Order and making him eligible for pension, his pension shall be fixed and he shall be paid with effect from this day of the order without any arrears.

(c) The matter is thus disposed of without any cost.

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

(LT GEN K.P.D. SAMANTA)  
MEMBER (ADMINISTRATIVE)

(JUSTICE RAGHUNATH RAY)  
MEMBER (JUDICIAL)