

Smt Jainti Devi Wd/o Late Sep (DSC) Kashi Chand Vs Union of India & Ors

Court: Armed Forces Tribunal Principal Bench, New Delhi

Date of Decision: Dec. 8, 2021

Acts Referred: Armed Forces Tribunal Act, 2007 " Section 14

Army Act, 1950 " Section 3(vi)

Army Rules, 1954 " Rule 187(1)(r)

Pension Regulations For The Army 1961, " Regulation 125

Hon'ble Judges: Rajendra Menon, Chairperson, (J); P.M. Hariz, Member (A)

Bench: Division Bench

Advocate: Ved Prakash, Devendra Kumar, Jyotsna Kaushik

Final Decision: Allowed

Judgement

M.A. No. 2890 of 2021:

In view of the fact that the present OA is covered by the decision, rendered, by, the, Larger, Bench, of this, Tribunal, on 01.10.2019 in

the case of , Smt., Shama Kaur, Vs., Union of India & Ors [.O.A. No., 1238 of 2016], and can be disposed of accordingly, the,

application, for early hearing is allowed. , As such, OA is being taken up today.

MA stands disposed of.

M.A. No., 1463 of 2021:

Heard, learned, counsel, for the, parties, on, the, point, of delay. Delay of 7639 days in filing the OA has been explained by the

applicant. Keeping in view the averments made in the MA and finding the same to be bonafide and in the light of the decision in, Union of India

and others, Vs., Tarsem Singh [2008 (8) SCC 648], we allow the instant MA and condone the aforesaid delay in filing the OA.

MA stands disposed of accordingly.

M.A. No. 2698 of 2021:

Vide, this, application, respondents, seek condonation of delay in filing the Reply Statement. Delay is condoned. Reply Statement is taken on

record.

MA stands disposed of accordingly.

O.A. No. 1564 of 2021:

1. By means of the present OA, applicant has approached this Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007, praying for grant

of second service pension for the service rendered by her husband, since deceased, in Defence Security Corps (DSC), which was denied by the

respondents on the ground of not having completed the mandatory qualifying service of 15 years to make him eligible for the said pension, till

the date of his death, i.e. 17.11.2017, and for family pension after the death of her husband i.e. 18.11.2017.

2. Brief facts of the case are that the applicant's husband was enrolled in the Army on 13.10.1965 and discharged from that service on 31.01.1980

(31.10.1980 sic) after more than 15 years of service. Thereafter, the husband of the applicant was re-enrolled in the DSC of the Army on 29.01.1986

and was discharged from that service on 31.10.2001 after rendering 14 years and 10 months of service in DSC. Hence, there is a

shortfall of 02 months, to complete 15 years of service, to become eligible for second service pension in DSC.

3. With regard to prayer for grant of second service pension in DSC, it may be noticed that the applicant's husband has been denied pension

for the spell of service in DSC, on the ground that he has not completed the minimum required qualifying service of 15 years.

4. Learned counsel for the applicant relied on Rule 125 of Pension Regulation of the Army, as per which, shortfall in qualifying

service for the grant of pensionary benefits in respect of personnel below officer rank (PBOR), shortfall upto 12 months, can be

condoned by the competent authority to earn service pension. He further submitted that the same issue was also

decided by the Armed Forces Tribunal, Principal Bench, New Delhi in its judgment dated 07.11.2013 in O.A. No. 60 of 2013 in the matter

of Bhani Devi Vs. Union of India & Ors. as well as in its judgment dated 14.08.2014 of O.A. No. 80 of 2014.

5. Heard the submissions of the counsel for both the parties and also perused the documents placed on record.

6. Learned counsel for the respondents does not dispute the fact about the re-enrollment of the applicant in DSC on 29.01.1986 and discharge

from service on 31.10.2001 and the service rendered by him in DSC is 14 years and 10 months. Respondents have no objections in issuing

appropriate orders subject to verification of records.

7. The issue involved in this case is no longer res integra, as the same had already been settled by this Tribunal in the cases of Bhani Devi

(supra), Ex Nk Vijay Singh Vs. Union of India and others [O.A. No. 272 of 2018 decided on 14.10.2020] and the Kochi Bench of this

Tribunal in Ex Mc Mohanan T. Vs. Union of India and others [O.A. No. 131 of 2017 decided on 12.10.2017]. In Bhani Devi's case (supra), it

was held that the provisions for condonation of shortfall in service under Regulation 125 of Pension Regulations for the Army, 1961, (Part,

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 issue of, Government of India

(Ministry of Defence) 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. In E x Nk Vijay

Singh (supra), while referring to the Full Bench decision of this Tribunal in Smt. Shama Kaur Vs. Union of India & others etc. etc. (O.A.

No. 1238 of 2016 etc. etc.) passed on 01.10.2019, which dealt with the question as to whether there should be condonation of

deficiency of service for grant of second service 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, this Tribunal quoted Para 44 of judgment dated 01.10.2019 in the case of Shama Kaur

(supra), 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)(r) 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)J98D(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. L1VK 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

Ã, 12.10.2017). Ã, Ã, The Ã, Ã, letters purportedly amending the relevant provisions have also beenÃ, held contrary toÃ, law vide the above.Ã, In Ã, light ofÃ, this,

Ã, coupled with the merits of the matter discussed in the instant judgement, there can be no scope of any doubt that Ã, Ã, DSC Ã, personnel Ã, are fully Ã, entitled

Ã, to condonationÃ, of deficiency of service for their second spell of service at par with other Army personnel.Ã, In fact,Ã, asÃ, discussedÃ, inÃ, theÃ, main body

of thisÃ, judgement, Ã, DSC personnel Ã, re enrollingÃ, themselvesÃ, byÃ, optingÃ, notÃ, toÃ, 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 uptoÃ, oneÃ, yearÃ, isÃ,

possible,Ã, andÃ, once ConstitutionalÃ, Courts, including the highest CourtÃ, ofÃ, theÃ, land,Ã, haveÃ, upheldÃ, the proposition, itÃ, isÃ, beyond the scope

ofÃ, any benchÃ, of thisÃ, tribunalÃ, to holdÃ, orÃ, comment otherwise.Ã, WeÃ, hence answer this questionÃ, in the above terms.

8. 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 of Bhani Devi (supra)Ã, andÃ, ExÃ, NkÃ, VijayÃ, SinghÃ, (supra)Ã, and,Ã, therefore,Ã, the shortfallÃ, of 02 monthsÃ, toÃ,

complete 15Ã, yearsÃ, of qualifying service in DSCÃ, by the lateÃ, husbandÃ, of theÃ, applicant to get secondÃ, serviceÃ, pensionÃ, isÃ, liableÃ,

toÃ, beÃ, condonedÃ, andÃ, heÃ, is entitled toÃ, get secondÃ, pensionÃ, forÃ, DSCÃ, tillÃ, hisÃ, deathÃ, i.e. 17.11.2017 andÃ, thereafterÃ,

theÃ, applicantÃ, isÃ, entitledÃ, toÃ, get family pension w.e.f. 18.11.2017.

9. Ã, The instant OA is, therefore, allowed with the following directions :

(i) Ã, The shortfall of 02 months for qualifying service for second service pension for the services rendered by the applicant's husband, since deceased, in DSC is

condoned. However, Ã, Ã, if the Ã, Ã, respondents Ã, on, verification of the records, find a different figure of number of days requiring to be condoned, then it is

directed Ã, that Ã, they Ã, shall Ã, accord Ã, the Ã, required condonation asÃ, long asÃ, theÃ, periodÃ, of shortfallÃ, is less than 12 months.

Ã, (ii) Ã, Subject Ã, Ã, to Ã, Ã, verification Ã, Ã, of Ã, the Ã, Ã, records,Ã, the respondentsÃ, areÃ, directedÃ, toÃ, issueÃ, aÃ, corrigendum PPO granting second

service pension for the service rendered by late husband of the applicant in DSC, from the date of his discharge till the date of his death Ã, i.e. 17.11.2017 Ã, and

Ã, thereafter Ã, granting Family Pension to the applicant w.e.f. 18.11.2017. (iii) The arrears shall be paid within four months from Ã, theÃ, dateÃ, of receiptÃ, of aÃ,

copyÃ, of thisÃ, order.Ã, In default, the applicant will be entitled to interest @ 6% per annum till payment.

10. Ã, Ã, There is no order as to costs.