

(2022) 07 AFT CK 0013

Armed Forces Tribunal Principal Bench, New Delhi

Case No: OA 1517 Of 2022 With MA 1986 Of 2022

Ex Nk (DSC) Bahadur Singh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision: July 21, 2022

Acts Referred:

- Army Act, 1950 - Section 3(vi)
- Army Rules, 1954 - Rule 187(1)(r)

Hon'ble Judges: Anjana Mishra, Member (J); P.M. Hariz, Member (A)

Bench: Division Bench

Advocate: Ved Prakash, Devendra Kumar, Arvind Patel

Final Decision: Allowed

Judgement

MA 1986/2022

1. Keeping in view the averments made in the application and in the light of the decision in Union of India and others Vs. Tarsem Singh (2009(1)

AISLJ 371), the delay in filing the OA is condoned.Â MA stands disposed of.

OA 1517/2022

2. In this OA, the applicant is seeking a direction to the respondents to grant him second service pension for the service rendered in Defence Security

Corps (DSC) by condoning the deficiency in qualifying service.

3. ItÂ isÂ theÂ concededÂ positionÂ thatÂ theÂ applicantÂ was enrolled Â into Â DSC Â service Â onth 5 September, 2001 and discharged

on 31st October, 2015 and there is a shortfall of 308 days of service against the mandatory 15 years of Â qualifying service, which made him ineligible

for the second service pension for the service rendered with DSC.

4. We have heard the learned counsel for the parties and perused the documents available on record.

5. 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 TÂ Vs. Union of India and Or.s (OA No.131 of 2017 dated 12.10.2017).

In BhaniÂ DeviÂ (supra),Â itÂ wasÂ heldÂ thatÂ theÂ provisionsÂ 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.Â 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 Honâ€™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.Â 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 Or s(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 RegularÂ

ArmyÂ personnelÂ inÂ termsÂ ofÂ GovernmentÂ ofÂ India (Ministry of Defence) letter dated 14.08.2001 and Para 44 of theÂ ArmyÂ

PensionÂ RegulationsÂ orÂ beÂ dealtÂ withÂ inÂ terms of Government of India (Ministry of Defence) letter dated 20.06.2017, quoted para 44

of that judgment which reads as under:

(a) TheÂ aspectÂ hasÂ beenÂ discussedÂ inÂ fullÂ detailÂ inÂ 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.Â 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

Mohan 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 judgement, 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.

6. 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 (308 days) to

complete 15 years of qualifying service in DSC by the applicant to get second service pension is liable to be condoned.

7. The instant O.A is, therefore, allowed with the following directions:

(i) The shortfall of less than one year (308 days) of qualifying service for second service pension is condoned;

(ii) Subject to verification of records, the respondents are directed to issue a corrigendum PPO to the applicant granting second service pension for the service rendered by him in DSC, from the date of his discharge; and

(iii) The arrears shall be paid within four months from the date of receipt of a copy of this order. In default, the applicant will be entitled to interest @ 6% per annum till payment.

8. No order as to costs.