

ARMED FORCES TRIBUNAL, REGIONAL BENCH, CHENNAI
(Through Video Conferencing)

OA No. 52 of 2020

Tuesday, the 21st day of September 2021

31.

CORAM :

HON'BLE MR.JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

Ex Nk R N Ganguly, aged 54 years
S.No.14572169-K
S/o late Rateneswar Ganguly
654 DSC Plt (CVRDE)
Avadi, Chennai 600 054

.. Applicant

By Legal Practitioner : M/s B Balamurali & L Gopi, Advocates

Vs

1. Union of India rep by Secretary
Government of India, Ministry of Defence
New Delhi 110 001

2. The Chief of Army Staff,
Integrated Headquarters of MoD Army
DHQ Post, New Delhi 110 001

3. OS DSC
DSC 654 Plt (CVRDE)
Chennai 600 054

4. The Officer-in-Charge
Defence Security Corps Records
Record Office
Cannanore, PIN 901 277
C/o 56 APO

.. Respondents

By : Shri V Balasubramanian, SPC

ORDER**O.A No. 52 of 2020**

1. In this O.A, the Applicant is seeking a direction to the Respondents to reinstate the Applicant in service with back wages w.e.f. 1.12.2019 to 09.02.2021 or in alternate grant him Second Service Pension for the service rendered in Defence Security Corps (DSC) by condoning the deficiency of 6 months and 19 days of service to complete the mandated 15 years pensionable service and be granted Second Service DSC Pension.

2. After discharge from Army, the Applicant was re-enrolled in the Defence Security Corps (DSC) on 20.06.2005 and was discharged on 30.11.2019 after rendering 14 years 5 months and 11 days and there is a shortfall of 199 days against the mandatory 15 years of Qualifying Service, which made him ineligible for the Second Service Pension for the service rendered with DSC.

3. Having heard the Learned Counsel for the parties and perused the documents available on record, we are of the view that the question involved in this case is no longer *res integra*, as the same had already been settled by the Principal Bench of this Tribunal in the case of *Bhani Devi v. Union of India and others* (O.A. No. 60 of 2013 decided on 07.11.2013), *Ex Nk Vijay Singh v. Union of India and others* (O.A No.272 of 2018 decided on 14.10.2020) and the Kochi Bench of this Tribunal in *Mohanan T v. Union of India and others* (OA No.131 of 2017 decided on 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. The Principal Bench of this Tribunal in *Ex Nk Vijay Singh* (supra), while referring to its Full Bench decision in *Smt Shama Kaur v. Union of India and others* (O.A No.1238 of 2016 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)(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)J98-

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 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.

4. 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 199 days to complete 15 years of Qualifying Service in DSC by the Applicant to get Second Service Pension is liable to be condoned.

5. In-fine, the instant O.A is therefore, **allowed** with the following directions:

(i) The Deficiency/shortfall of Qualifying Service of less than one year of the Applicant till completion of 15 years 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.

(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 @ 8% per annum till payment is effected.

6. No order as to costs.

Sd/-

**LT GEN BOBBY CHERIAN MATHEWS
MEMBER (A)**

Sd/-

**RAJENDRAMENON
CHAIRPERSON**

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