

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

MA No 93 of 2018 in O.A.No. 64 of 2018

Thursday, the 23rd January, 2020

CORAM

HON'BLE MR JUSTICE MOHAMMAD TAHIR, MEMBER (J)

AND

HON'BLE VICE ADMIRAL P. MURUGESAN, MEMBER (A)

P.A. Nandikesan **Applicant**
(By Advs. M/s. T.R.Jagadeesh & Ratheesh B)
Vs.

Union of India and Others **Respondents**
(By Sri. S.Prasanth, CGC)

ORDER

By means of this application the applicant prays for grant of service pension by condoning the deficiency of service of one year, two months and 25 days to complete 15 years of pensionable cerise with all consequential benefits and setting aside the impugned order.

2. The applicant was enrolled in the Army on 03 August, 1963 and was discharged from service on 10th May,1977 on compassionate grounds at his own request under item III (iv) of table annexed to Rule 13 (3) of Army Rules 1954 after rendering 13 years 09 months and 08 days of qualifying service. He was granted service gratuity at the time of discharge from service.

3. In reply, the respondents have come out with the case that the applicant has served for 13 years 09 months and 08 days in the Army and discharged from service at his own request, condonation of deficiency in service is not

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applicable in his case in terms of para 125 of Pension Regulations for the Army, 1961 (Part-I) and the same facts were also communicated to the applicant vide letter dated 20th December, 1977.

4. Heard the learned counsel for the parties and perused the record.
5. The submission of the applicant is that in terms of **Rule 125** and the policy of the respondents, he is entitled to condonation of shortfall in service. Moreover, this case is covered by decision of the Apex Court rendered in *Union of India & another vs. Surinder Singh Parmar, Civil Appeal No.9389 of 2014*, decided on *January 20, 2015 [2015] 3 SCC 404* wherein it has been held that such a benefit is admissible w.e.f. 14.8.2001 and not prior to the said date.
6. Therefore, in our opinion, the decision of the Apex Court in the case of **Union of India & another vs. Surinder Singh Parmar (supra)** wherein shortfall of service was more than one year and in that case individual was discharged from service at his own request after rendering service of 13 years, 10 months and 13 days. In the present case also, there is a shortfall of more than one year for completing the pensionable service of 15 years.
7. In view of the above, it is held that the applicant is entitled for condonation of shortfall in service, which is one year, two months and 25 days, for the purposes of pension and, thus, is entitled to get service pension. The

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impugned order dated 20th December, 2017 (Annexure A-3) is hereby set aside and the respondents are directed to grant service pension to the applicant. The arrears are restricted to three years preceding the date of filing of the present petition. The petition has been filed on 19th January, 2018.

8. In the result, the Original application is allowed and the respondents are directed to calculate the arrears accordingly and to pay the same to the applicant within three months from the date of receipt of a certified copy of this order by the respondents, failing which, the amount shall carry interest @ 8% per annum from the date of this order.

9. MA No 93 of 2018 stands disposed of accordingly.

10. No order as to costs.

Sd/-
(P. MURUGESAN)
MEMBER (A)

Sd/-
(MOHAMMAD TAHIR)
MEMBER (J)

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