

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case: WP(C) No. 2094/2024

1. **Union of India Th. its Secretary to Government of India, Ministry of Defence, South Block, New Delhi-110011.**
2. **Additional Director General personnel Services, Adjutant General's Branch, Integrated HQ of Ministry of Defence (army), DHQ PO, New Delhi-110001.**
3. **Principal Controller of Defence Accounts (Pensions), Draupadi Ghat, Allahabad, Uttar Pradesh-211014**
4. **OIC Records, DSC Records, PIN-901277, C/O 56 APO.**

....Petitioner/Appellant(s)

Through:- Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC
Mr. Karan Sharma, CGSC

V/s

No 9087750A Ex Sep Joginder Ram
S/O Gura Ram
R/O Village: Kairanwali, Post Office: Ramgarh,
District: Sambha

..... Respondents

Through:- Mr. Amit Singh, Advocate

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

ORDER
18.05.2026

1. This petition by the Union of India, filed under Article 226 of Constitution of India, is directed against an order and judgment dated 14.07.2022 passed by the Armed Forces Tribunal, Regional Bench, Srinagar at Jammu, ["the Tribunal"] in OA No.12/2021 titled "*Joginder Ram vs. Union of India & Ors*",

whereby the Tribunal has allowed the OA and held the respondent entitled to the service element of disability pension.

2. The relevant facts for disposal of this petition are that respondent was initially enrolled in the Army on 18.02.1985 in a fit condition and discharged there from w.e.f.28.02.2009 on completion of his normal tenure of service. He was re-enrolled in the Defence Security Corps (DSC) on 09.09.2009 in a fit state of health and was discharged from service on 30.09.2019 after rendering about 10 years and 22 days qualifying service after being placed in Low Medical Category. The same was assessed @ 20% for life. Though he was being paid the disability element of disability pension along with the benefits of rounding off but denied the benefit of service element of disability pension. The respondent was entitled to disability pension consisting of service element and disability element both w.e.f 01.10.2019. Since the respondent was denied the service element of pension, as such, he brought his grievance before the Tribunal by way of OA No. 12/2021.

3. The O.A. was contested by the petitioners on the ground that the respondent had been engaged in the DSC on fixed and contractual terms for a period of 10 years and was discharged from DSC service on 30.09.2019 upon completion of the said tenure. It was further contended that he was neither invalided out of service nor discharged on medical grounds. Additionally, since the respondent was already drawing service pension for

the service rendered by him in the Army, he was not entitled to the service element of disability pension.

4. The Tribunal, having considered the rival contentions of the parties, came to the conclusion that as it is clear that Regulation 179, is fully applicable to the DSC service, the respondent having been discharged in low medical category was entitled to both elements of the pension i.e., service element and the disability element. The Tribunal, thus, allowed the OA and granted the reliefs prayed for.

5. The impugned judgment is called in question by the petitioners on the ground that the Tribunal has not appreciated that the respondent was not entitled to service element of pension, because he had admittedly, not put in mandatory qualifying service of 15 years. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of "**Bhola Singh Vs. Union of India and others**" (Civil Appeal No. 4486 of 2002 on 10.08.2010).

6. Heard learned counsel for the parties and perused the material on record.

7. Admittedly, the respondent, having been re-enrolled in DSC on 9th September, 2009 was discharged on 30th September, 2019 due to low medical category. He was, thus, denied further extension in service due to aforesaid reason and, thus, could not complete the qualifying service of 15 years. If the respondent had not been placed in a low medical category due to disability, he

would have been eligible for further extension of service and could have continued in service and would have accumulated qualifying service exceeding 15 years. However, owing to his disability and consequent low medical category status, the respondent was denied extension of service, which prevented him from completing the mandatory qualifying service of 15 years.

8. In view of the aforesaid circumstances, the respondent was not allowed to complete the mandatory qualifying service of 15 years, as such, the Tribunal has rightly held that as per Regulation No. 266, the personnel of DSC are also governed by the same general rules of pension, as are applicable to the combatants of the Army, except where these are inconsistent with the provisions of the Regulations of the Army 1961. In such a situation, the Regulation 179 would be attracted and shall be applicable to DSC service as well.

9. In the instant case the respondent was discharged from DSC service on 30th September, 2019 and, therefore, his case was covered by the Pension Regulations for the Army, 2008 (Part- I). Regulation 81, reads as under:-

“81. (a) Service personnel who is invalided from service on account of a disability which is attributable to or aggravated by such service may, be granted a disability pension consisting of service element and disability element in accordance with the Regulations in this section.

Explanation: -

There shall be no condition of minimum qualifying service for earning service element.

(b) The question whether disability is attributable to or aggravated by military service shall be determined

under the Entitlement Rules For Casualty Pensionary award, 1982 as laid down in APPENDIX-IV of these Regulations.”

14. A plain reading of Regulation 81, along with the explanation appended thereto, clearly indicates that a service personnel, including a member of the DSC, who is invalided out of service due to a disability attributable to or aggravated by military service, is entitled to disability pension comprising both the service element and the disability element. It further clarifies that no minimum qualifying service is required for the grant of the service element in such cases.

15. Regulation 95 Pension (Regulations for the Army, 2008 (Part- I) deals with individuals, who are discharged being permanently in low medical category, the same reads as under:-

“**95.** Individual who is placed in a low medical category (other than ‘E’) permanently and who is discharged because no alternative employment in his own trade/category suitable to his low medical category could be provided or who is unwilling to accept the alternative employment or who having been retained in alternative appointment is discharged before completion of the engagement, shall be deemed to have been invalided out of service under the Entitlement Rules for Casualty Pensionary Awards, 1982 as laid down in APPENDIX-IV to these Regulations. This provision shall also apply to individual who is placed in a low medical category while on extended service and is discharged on that account before completion of the period of his extension.”

16. A reading of Regulation 95 makes it manifest that an individual, including a DSC personnel, who is permanently placed in a low medical category and is discharged from service prior to the completion of his term of engagement shall be deemed to have been invalided out of service in terms of the

Entitlement Rules for Casualty Pensionary Awards, 1982. The Regulation further provides that where an individual, while serving on an extended tenure, is placed in a low medical category and is discharged on that account before completion of the extended period of service, he shall also be treated as having been invalided out of service.

17. From the foregoing discussion, it is evident that if the respondent had not been denied extension in service on account of his permanent low medical category, he would have been granted such extension and would have completed the requisite qualifying service of 15 years. The respondent was prevented from doing, so solely due to the disability suffered during service and, therefore, he cannot be deprived of the service element of pension on that ground.

18. In view of the above, this Court finds no illegality or perversity in the impugned order passed by the Tribunal warranting interference in exercise of jurisdiction under Article 226 of the Constitution of India.

19. Accordingly, order dated 14.07.2022 passed by the Tribunal is upheld and the instant petition is dismissed, being devoid of merit.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

Jammu:
18.05.2026
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