

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 3029/2026
CM No. 6677/2026

Union of India & Ors.

.....Applicant(s)/Petitioner(s)

Through :- Mr. Divyanshu Malhotra, Advocate
vice Mr. Suneel Malhotra, Advocate

v/s

Sham Lal

.....Respondent(s)

Through :-

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE**

**ORDER
22.09.2026**

- 01.** Learned counsel appearing for the petitioners fairly submits that issue raised in this petition is covered by the judgment of the Supreme Court in case titled "*Union of India & Ors. Vs. Balakrishnan Mullikote (Ex Hav. 256812 M)*" 2026 INSC 286, in which, it has been held by the Supreme Court that the short fall in qualifying service for grant of pension can be condoned, when the individual has not served for a requisite period of 15 years in Defence Service Corps (DSE) provided that the shortfall is one year or less Para-47 and 48 of the judgment which deal with the issue read thus:

" 47. This Court is of the view that Union of India through the Ministry of Defence shall determine the length of qualifying services in accordance with Paragraphs 9 and 18 of the Pension Regulations, of 1961 and 2008 respectively, as well as Note 5 appended to the letter dated 30th October 1987".

48. If, upon determination of the length of qualifying service, there remains a shortfall of one year or less, the Respondents shall be entitled to seek condonation of such deficiency for the purpose of pension eligibility, in accordance with Paragraph 125 of the Pension

Regulations, 1961 or Paragraph 44 of the Pension Regulations, 2008. This position has already been affirmed by this Court in *Surender Singh Parmar* (AIR Online 2015 SC 485). The relevant portion of the said judgment is reproduced hereinbelow:-

“3. The factual matrix of the case is as follows : the respondent joined the Indian Navy on 12-8-1971 and after rendering 13 years 10 months and 13 days' service sought his retirement on compassionate ground upon which he was released from service on 24-6-1985. The minimum qualifying period for pensionable service is 15 years. There is a provision in the Navy (Pension) Regulations, 1964 for condonation of shortfall in service, initially it was for six months and subsequently the condonation was made permissible for one year. The respondent claimed that he was entitled to the benefit under the said Regulations and the Government of India Instructions dated 30-10-1987. The appellant denied the said benefit to the respondent vide order dated 14-8-2001.

4. The respondent initially approached the High Court of Delhi by filing WP (C) No. 12507 of 2004. It was pointed out before the High Court that the Division Bench of the Bombay High Court titled *Gurmukh Singh v. Union of India* vide judgment dated 22-11-2006 declared the Navy (Pension) Regulation 82(a) as null and void being ultra vires to Article 14 of the Constitution of India. Regulation 82(a) provided that the benefit of condonation of shortfall in pensionable service shall not be applicable to the case in which a sailor got the discharge from the service at his own request. It was also brought to the notice of the High Court that similar finding was given by the Delhi High Court in the case of the respondent in *Surender Singh Parmar v. Union of India* vide order dated 6- 11-2007 and that the appellant Union of India was directed to consider the case of the respondent for the purpose of condoning the deficiency in service and pass appropriate orders within three months.

5. The appellant opposed the said prayer on the ground that the respondent has not completed the requisite service of 14 years upon which only one can get the benefit of condonation of shortfall of service up to one year. Therefore, according to the appellant, the respondent was not eligible candidate for condonation of the shortfall in pensionable service of one year. Before the High Court the respondent contested the statement made by the appellant that the respondent served for 13 years 8 months and 13 days and brought to the notice of the High Court that actually he served 13 years 10 months and 13 days which was not disputed. The respondent claimed benefit by rounding off the period of service in terms of the Government of India Instructions dated 30-10-1987. The Division Bench of the Delhi High Court after considering the rival submissions and taking note of the Instructions dated 30- 10-1987 by the order dated 6-11-2007 [WP (C) No. 12507 of 2004, decided on 6-11-2007 (Del)] set aside the appellant's earlier rejection order dated 14-8-2001 and directed the appellant to reconsider the case of the respondent.

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10. The note below Para 5 of the Government of India, Ministry of Defence Instructions dated 30-10-1987 at Clause 5 provides that in calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year for reckoning qualifying service. The said provision reads as follows:

“5. Qualifying service.—

(a)-(b)*

Notes.—(1) to (4)*

(5) In calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be

treated as a completed one half year and reckoned as qualifying service.”

11. In view of the aforesaid provisions the respondent is entitled to claim total period of service as 14 years for the purpose of calculation of pension. By the Government of India, Ministry of Defence Order dated 14-8-2001 administrative power has been delegated to the competent authority. Under clause (a)(v) the competent authority has been empowered to condone shortfall in qualifying service for grant of pension beyond six months and up to 12 months. The said provision reads as follows:

“(a)(v) Condonation of shortfall in qualifying service for grant of pension in respect of PBOR beyond six months and up to 12 months.”

12. In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months and up to 12 months. If the aforesaid power has not been exercised by the competent authority in proper case then it was within the jurisdiction of the High Court or Tribunal to pass appropriate order directing the authority to condone the shortfall and to grant pension to the eligible person, which has been done in the present case and we find no ground to interfere with the substantive finding of the Tribunal. However as we find that the respondent was allowed to retire from service on 24-6-1985 when the Instruction dated 14-8-2001 was not in existence, we hold that the respondent is entitled for such benefit from such date on which the said Instruction came into effect. The Tribunal failed to notice the aforesaid fact but rightly declared that the respondent's shortfall in service stands condoned.”

(emphasis supplied)

02. In view of the aforesaid settled legal position, we find no merit in this petition, for, the shortfall, to be met in the instant case, is one month and twenty days which is far less than a year.
03. For the foregoing reasons, we find no merit in this petition, and the same is, accordingly, **dismissed**.

(Shahzad Azeem)
Judge

(Sanjeev Kumar)
Judge