



HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Service Bench No. 349 of 2024

18 June, 2026

Union Of India & others

--Petitioner

Versus

Naik Raghu Nandan Singh

--Respondent

With

Writ Petition Service Bench No.350 of 2024

Writ Petition Service Bench No.351 of 2024

Writ Petition Service Bench No.354 of 2024

Writ Petition Service Bench No.355 of 2024

Writ Petition Service Bench No.356 of 2024

Presence:-

Mr. Rajesh Sharma, learned counsel for the petitioners

Mr. C.S. Rawat, learned counsel, Mr. Vishesh Srivastava, learned counsel holding brief of Mr. Vikram Singh Dhapola, learned counsel for the respondent(s).

Coram :Hon'ble Manoj Kumar Tiwari, J.

Hon'ble Pankaj Purohit, J.

Hon'ble Manoj Kumar Tiwari, J. (Oral)

Since common questions of law and facts are involved in these writ petitions, they are being heard together and decided by this common judgment. However, for the sake of brevity, facts of WPSB No. 349 of 2024 alone are being considered.

2. Union of India has challenged the judgment and order dated 07.09.2022 passed by Armed Forces Tribunal, Regional Bench, Lucknow (Circuit Bench at Nainital) in Original Application No.158 of 2022. Operative portion of the said judgment is reproduced



below:-

“8. Accordingly, Original Application No.158 of 2022 is allowed. The shortfall of 241 days in minimum qualifying service of the applicant in getting second service pension is condoned. Applicant is held entitled to get second service pension in DSC as well in addition to pension which he is already getting from the Army.

9 The respondents are directed to grant second service pension to the applicant from the date of discharge. The respondents are directed to pay arrears of second service pension from the date of notionally completion of 15 years of service. They are further directed to implement this order within a period of four months from the date of receipt of certified copy of this order. Delay shall carry interest @ 8% per annum till actual payment.”

3. Learned counsel for the petitioner relied upon Office Memorandum dated 20.06.2017 issued by Under Secretary to the Government of India, Ministry of Defence, which is on record as annexure-7 to the writ petition. By referring to that Office Memorandum, it is submitted that Government of India has decided that condonation of deficiency in qualifying service for grant of second service pension in respect of Defence Security Corps (DSC) personnel has no merit.

4. Learned counsel for the petitioner submits that since respondent served in the Indian Army for more than 17 years, he is getting service pension for the services rendered by him in the Indian Army. He further points out that upon retirement from Indian Army, respondent was enrolled in the Defence Security Corps (DSC) on 28.10.2000 and served in DSC till 28.02.2015. Thus, total service rendered by him in DSC falls short of 15 years, which is the qualifying service for pension qua the service rendered in DSC. By relying upon Office Memorandum dated 20.06.2017, it is contended that since respondent is in receipt of service pension for Army service, therefore, as per decision taken by Government



of India, he is not entitled to condonation of shortfall in the qualifying service rendered in DSC. Thus, according to him, judgment rendered by learned Tribunal is unsustainable.

5. Per contra, learned counsel appearing for respondent submits that Hon'ble Supreme Court, in the case of **Union of India and others vs. BalaKrishnan Mullikote**, reported in **2026 INSC 286**, has held that Office Memorandum dated 20.06.2017, being contrary to the Pension Regulations, cannot have any effect. Paragraphs 41 and 42 of the said judgment are reproduced below:-

41. Accordingly, this Court holds that the Respondents are entitled to condonation of shortfall in qualifying service up to one (1) year, in accordance with Paragraph 125 of the Pension Regulations, 1961 and Paragraph 44 of the Pension Regulations, 2008 after determining 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.

GOVERNMENT CANNOT AMEND REGULATIONS BY WAY OF LETTERS

42. This Court is of the considered opinion that once the Pension Regulations specifically provide for condonation of shortfall in minimum DSC service, it is not open to the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare (MoD/DESW), to stipulate an exception by way of executive letters. While the Government may issue beneficial circulars/letters or clarifications where ambiguity exists, it cannot, by administrative fiat, amend or override clear and categorical provisions of the Regulations. As long as the Regulation remains valid and on the 'statute-book', it cannot be deemed to have been amended by letters such as those dated 20th June 2017 and 22nd March 2022."

6. Learned counsel appearing for respondent also refers to the judgment dated 05.05.2026 rendered by a Co-ordinate Bench of this Court in Writ Petition (S/B) No. 270 of 2025. He submits that a similar controversy was decided by Co-ordinate Bench of this Court by relying upon judgment rendered by Hon'ble Supreme Court in



the case of *BalaKrishnan Mullikote (Supra)*.

7. We find substance in the submissions made by the learned counsel for the respondent. Law is well settled that executive instructions cannot override statutory provisions. Pension Regulations are statutory in nature, therefore, stipulation made in Office Memorandum dated 20.06.2017 that condonation of shortfall in qualifying service would not be available to personnel who are already in receipt of one service pension can have no application to the facts of the present case. Hon'ble Supreme Court has also so held in the case of *BalaKrishnan Mullikote (Supra)*.

8. Thus, we do not find any reason to interfere with the impugned judgment and order rendered by Armed Forces Tribunal. All writ petitions fail and are dismissed.

(Pankaj Purohit, J.) (Manoj Kumar Tiwari, J.)
18.06.2026

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