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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3270/2005**

EX.GNR JAGDISH Petitioner
Through: **Mr.Prashant Sivarajan, Advocate**

versus

UOI & ORS. Respondents
Through: **Ms.Abha Malhotra, Advocate**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **27.08.2015**

1. Petitioner's grievance is with respect to the unjustified denial of pension on the ground that he did not fulfil the qualifying service criteria. The admitted facts are that the petitioner was enrolled in Army as Gunner on 28.01.1954 and was discharged on completion of term of engagement on 23.04.1969. In between on account of having been declared as deserter, during the 1965 war and after his rejoining army, disciplinary proceedings were initiated and he was made to undergo 28 days rigorous imprisonment (RI) under Army Regulations. The period of absence (desertion) does not qualify for grant of pension.

2. The Indian Army rejected the petitioner's request for pension citing his lack of qualifying service i.e. 15 years. Proceedings before the High Court were dismissed by an order dated 18.08.2008. However, the petitioner had preferred a review proceeding stating that an Office Memorandum dated 14.08.2001 conferring power upon the

concerned authority to condone period of shortfall in qualifying service for grant of pension in respect of PBOR beyond six months and upto 12 months was not taken into consideration.

3. The petitioner relies upon the judgment of the Supreme Court in *Union of India and Others vs. Surender Singh Parmar* (2015) 3 SCC 404 where too the very same Union Ministry of Defence instructions dated 30.10.1987 especially para 5 (5) which enables the authorities to aid period(s) of service so as to entitle retired personnel to pension was taken into account. So, the court had then directed in the circumstances of the case that the shortfall in service should be condoned by seeking recourse of para 5 (5) of the Circular dated 30.10.1987. Learned counsel for the respondents submits that even though the circular empowers the appropriate authorities too in a given case condone the shortfall, the fact remains that the power is only by way of discretion and such discretion has to be exercised having regard to all the facts and circumstances of a given case.

4. We have considered the submissions.

5. Though in *Surender Singh Parmar's* case (*supra*) the court did direct the naval authorities in that case to condone shortfall in service, we note that the personnel or litigant who approached the court had sought voluntary discharge from his services in that case. Here, however, a penalty had been imposed on the petitioner on account of desertion at a crucial time. In regard to these circumstances, this Court feels that it is not a proper case to mandate the respondents to condone the delay. Instead, the respondents are directed to consider the facts of the petitioner's case and having regard to the overall

record pass an appropriate order in term of para 5 (5) read with para A (5) of Circular dated 30.10.1987 read with the O.M. dated 14.08.2011 and all relevant regulations of Army Pension Regulations Act, 1965 within six weeks.

6. The writ petition is allowed in the above terms.

7. Order *dasti*.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 27, 2015

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