



CWP-26268-2024

[1]

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP-26268-2024

Reserved on: 26.11.2024

Pronounced on: 29.11.2024

UNION OF INDIA AND ORS.

.....PETITIONERS

VERSUS

NO 3975140 EX NK RAM PARKASH AND ANOTHER

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. Ashish Chaudhary, Advocate
for the petitioners.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners herein-Union of India, prays for the setting aside of the order dated 26.11.2019 (Annexure P-1), as passed by the learned Armed Forces Tribunal concerned, whereby the claim of respondent No.1 for the grant of service element of the disability pension for the service rendered by him in Defence Security Corps (DSC) has been allowed, by condoning the shortfall of 01 year and 42 days from the requisite 15 years of qualifying service for earning service pension in the DSC.

Factual Background

2. Respondent No. 1 was enrolled in the Indian Army(The Regiment of DOGRA) on 19.10.1976 and was discharged therefrom on 31.07.1997. Respondent No.1 was granted retiring pension, as admissible to him as per the Pension Regulations. Thereafter, respondent No. 1 was re-enrolled into Defence Security Corps (DSC service) on 13.12.2001. According to the prevalent policy, upon attaining the age of superannuation, respondent No.1 was discharged



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from service in the DSC on 31.11.2015 after rendering a service of 13 years and 323 days, which was short by 01 year and 42 days, so as to make the soldier enabled to complete the qualifying term of 15 years, for the purpose of grant of service pension, thus for the second service rendered by him in the DSC.

3. Respondent No.1 was denied service pension by the competent authority for his not completing the requisite qualifying period for earning service pension in the DSC.

4. Feeling aggrieved, respondent No.1 filed O.A., before the learned Armed Forces Tribunal concerned, wherebys he cast a challenge to the afore said rejection order. The said O.A., became allowed vide order dated 26.11.2019. The operative part of the said order is extracted hereinafter:-

XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX XXXX

*“ Learned counsel for both the parties have agreed that this matter is covered by the judgment of the **Larger Bench of Armed Forces Tribunal, Principal Bench, New Delhi in the case of O.A. No.1238 of 2016 with MA No.923 of 2016 titled Smt. Shama Kaur Vs. Union of India and others decided on 01.10.2019.** Therefore, the respondents are directed to decide the case in terms of the aforesaid judgment of the Larger Bench within a period of four months from the date of receipt of certified copy of this order by the learned counsel for the respondents/OIC Legal Cell.....”*

5. Feeling aggrieved from the aforesaid order as passed upon the O.A. (supra), by the learned Armed Forces Tribunal concerned, the petitioner-Union of India has filed thereagainst the instant writ petition before this Court.



Submissions of the learned counsel for the petitioners.

6. The learned counsel for the petitioners submits, that the learned Tribunal has failed to consider that in terms of Regulation No.125 of the Pension Regulations for the Army, 1961 and Regulation No.44 of the Pension Regulations for the Army, 2008, thus only the Competent Authority was empowered to condone the deficiency in the rendition of qualifying service, thus by the soldier for his becoming entitled to seek the endowment of pension to him. The said Regulations are extracted hereinafter.

(PENSION REGULATIONS FOR ARMY, 1961)

125. Except in the case of

(a) an individual who is discharged at his own request, or

(b) an individual who is eligible for special pension or gratuity under Regulation 164, or

(c) an individual who is invalided with less than 15 years service, deficiency in service for eligibility to service pension or reservist pension or gratuity in lieu may be condoned by a competent authority upto six months in each case.”

(PENSION REGULATIONS FOR ARMY, 2008)

44. The deficiency in service for eligibility to pension/gratuity may be condoned upto 12 months in each case by competent authority except in the case of :-

(i) an individual who is discharged at his own request ;

(ii) an individual who is invalided with less than 15 years of service.

(iii) who is eligible for special pension or gratuity under these Regulations.”

7. Moreover, the Ministry of Defence vide Policy letter No.14 (02)/2011/D/(Pen/Pol) dated 20.06.2017, inserted clause (iv) in the



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Regulation No. 44 of the Pension Regulation for the Army, 2008. The relevant part whereof, is extracted hereinafter.

(iv) an individual who is eligible for 2nd service pension for the service rendered by individual in respect of DSC”

8. A perusal of the afore amendment would make it clear that relief qua condonation of deficiency in rendition of the apposite qualifying service, is to be accorded on merit, so as to ensure that an army personnel is eligible for at least one service pension. ***Therefore, the condonation of deficiency in service would not be allowed for grant of second service pension.***

9. The learned counsel for the petitioners further submits, that the judgment of the learned Armed Forces Tribunal, Principal Bench, New Delhi, rendered in case titled as ***Smt. Shama Kaur Vs. Union of India and Others*** was not correct rather was contrary to law and facts, therefore, no reliance ought to have been placed on the said judgment. The relevant paragraphs, as occur in the verdict (supra) are extracted hereinafter.

2. The final questions to be answered by the Full Bench on the reference, as framed in this matter on 24.04.2018, are enumerated as under:

(a) Whether there should be condonation of deficiency of service for grant of second pension of DSC service as like Regular Army personnel in terms of GoI, MoD letter dated 14.08.2001 and Para 44 of Army Pension Regulations or be dealt in terms of GoI MoD letter dated 20.06.2017?

b) Should the application for condonation of deficiency of service ought to be made by the official during his lifetime, if not, within how much time it should be made?



c) *Can such an application be filed by the widow of the employee, if so, within how much time it must be done?*

d) *Does the judgement of Bhani Devi Vs, UOI and others– O.A No. 60 of 2013 dated 07.11.2013 decided by AFT lay down the correct legal proposition of law?*

e) *Can the AFT interfere with policies issued by GoI (MoD) of individual services?*

xxxx xxxx

48. *Although in our detailed discussion referred to hereinabove on the background of the matter, the merits of the issue and the consideration of the points of reference to this Larger Bench, we can now, for convenience sake, sum up with the following conclusions:*

(i) *In reference to Question No. (a), the issue of condonation of shortfall upto one year (twelve months) in qualifying service for grant of pension to members of the Defence Security Corps who have 14 years or more service stands fully settled as per law declared by Constitutional Courts and interpretation rendered by this Tribunal, amongst others in Chattar Pal by the Hon'ble Supreme Court wherein the Respondents themselves have accepted the applicability of condonation upto one year for personnel of Defence Security Corps, by the Hon'ble High Courts of Delhi and Punjab & Haryana in Madan Singh and Mani Ram respectively and also by this tribunal in Bhani Devi and Mohanan.T (supra). **The general applicability of condonation of shortfall upto one year by judicial intervention has also been settled by the Hon'ble Supreme Court in Surender Singh Parmar's (supra). Therefore, condonation of shortfall in qualifying service upto 'one year' for grant of pension shall also be available to the personnel of the Defence Security Corps (DSC).***

(ii) *Clubbing point of reference (b) and (c), it is held that widows of defence personnel have the right to approach this Tribunal to claim pension or family pension in consequence to the claim of pension qua deceased employees which falls within the definition of “service matter” under the Act and this right is provided by Section*



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*applicability of limitation in continuing wrongs and recurring causes of action, the arrears of pension, in the specific cases of condonation of shortfall, would however have to be restricted from 14.08.2001 as already directed in Paragraph 12 of Surender Singh Parmar(supra) which is binding on us. **Further, the claims of dual family pension (in addition to the first family pension) would have to be restricted from 24.09.2012, as already provided by Ministry of Defence letter dated 17.01.2013 (supra).***

(iii) In reference to Point (d), it is held that the law being fully settled, including by Constitutional Courts, there is no scope or occasion to doubt the correctness of the earlier decision of this Tribunal in Bhani Devi's case. It thus lays down the correct legal proposition of law. (iv) Question No. (e) stands answered in Para 47 herein above.

Inferences of this Court.

10. Since the expostulations made in paragraphs No.9 to 12 of the judgment rendered by the Hon'ble Apex Court in case titled as **Union of India and Another Vs. Surender Singh Parmar**, reported in **(2015) 3 Supreme Court Cases 404**, paragraph whereof becomes extracted hereinafter, overcomes the disabling effects, if any, of supra exception No.(iv), as became inserted vide policy/letter dated 20.06.2017, thus, intended to work as an obstacle rather against the soldier claiming relief of condonation in the requisite shortfall of service.

“9. It is not in dispute that the respondent has completed 13 years, 10 months and 13 days of service under the appellant. In view of declaration of Regulation 82(a) ultra vires, the prayer of the respondent for considering his case for condonation cannot be rejected on the ground that he voluntarily sought permission to leave the service. The aforesaid submission was also accepted by the High Court in the earlier writ petition preferred by the respondent.



10. The note below paragraph 5 of the Government of India, Ministry of Defence instructions dated 30th October, 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)xx xx xx (b)xx xx xx
Notes: (1) to (4) xx xx xx (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 Government of India, Ministry of Defence order dated 14th August, 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 upto 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 upto 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 upto 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 24th June, 1985 when the instruction dated 14th August, 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.

11. Therefore, the judicial verdict (supra), does render negated



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empowerment to condone the requisite shortfall, becomes solitarily vested in the Competent Authority, especially when the hereinabove underlined paragraphs, as occur in the verdict made in **Surender Singh Parmar's case**, alluded to in the verdict made in Shama Kaur's case, do invest jurisdiction in the Writ Court, to through judicial intervention, thus make the espoused condonation.

12. Consequently, the cumulative effect of the authoritative judicial pronouncement as carried in the above extracted paragraph, made in **Surender Singh Parmar's case (supra)**, thus completely countervails both the supra arguments raised before this Court, by the counsel for the petitioners, thus for denying to the respondent, the benefit of the service pension for his serving in the DSC, merely on the ground that he has not completed the qualifying period of service, besides on the further flimsy ground, that only the competent authority is authorized to condone the said shortfall.

13. Nonetheless, in terms of the declaration made in the hereinabove underlined para, as carried in the verdict (supra), the claims of dual family pension in addition to the first family pension, if required, would be restricted from 24.09.2012, as envisaged by the Ministry of Defence Letter dated 17.01.2013.

Final Order of this Court.

14. In aftermath, this Court finds no merit in the writ petition and with observations above, the same is dismissed.

15. The impugned order, as passed by the learned Tribunal concerned, is maintained and affirmed.



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16. Disposed of alongwith all pending application(s), if any.

(SURESHWAR THAKUR)
JUDGE

29.11.2024
Anjal

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No