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

+ **W.P.(C) 13665/2024**

UNION OF INDIA AND ORS

.....Petitioners

Through: Mr.Mukul Singh, CGSC with
Ms.Ira Singh, Mr.Utsav
Pokhriyal, Advs. for UOI.
Major Anish Muralidhar(Army)

Versus

NK DSC DAL BAHADUR THAPA

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

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27.09.2024

CM APPL. 57283/2024 (exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 13665/2024 & CM APPL. 57284/2024, CM APPL. 57285/2024

2. The present petition has been filed under Article 226 of the Constitution of India assailing the Order dated 21.04.2023 passed by the learned Armed Forces Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal'), whereby the learned Tribunal disposed of the petition filed by the respondent herein with the following directions:

"9. The instant OA is, therefore, allowed with the following directions:

(i) The shortfall of 64 days for qualifying service for second service pension for



the services rendered by the applicant in DSC is condoned. However, if the respondents, on verification of the records, find a different figure of number of days requiring to be condoned, then it is directed that they shall accord the required condonation as long as it is less than 12 months.

(ii) Subject to verification of the records, the respondents are directed to issue a corrigendum PPO to the applicant granting second service pension for the service rendered by him in DSC, from the date of his discharge.

(iii) The arrears shall be paid within four months from the date of receipt of a copy of this order. In default, the applicant will be entitled to interest @ 6% per annum till payment.”

3. It was the case of the respondent herein before the learned Tribunal that he was enrolled in the Indian Army on 26.07.1977 and discharged from service on 31.07.2001, after completing pensionable service. Thereafter, he was enrolled in the Defence Security Corps (in short, ‘DSC’) of the Army on 04.12.2001 and was discharged from service on 30.09.2006, after rendering 14 years 09 months and 28 days of service. As there was a shortfall of 64 days in completing 15 years of service to become eligible for the second service pension in the DSC, the same was denied to the respondent, forcing the respondent to approach the learned Tribunal in the form of the above petition under Section 14 of the Armed Forces Tribunal Act, 2007, praying for a direction to the petitioners herein to condone the above shortfall in service and to grant him service pension.

4. As noted hereinabove, the learned Tribunal allowed the petition



with the above-quoted directions. Feeling aggrieved, the petitioners have challenged the same *inter alia* contending that the learned Tribunal has exceeded its jurisdiction in condoning the shortfall of 64 days of the respondent, thereby completing the qualifying service of the petitioner for pension in the DSC.

5. The learned counsel for the petitioners further urges that the learned Tribunal has failed to consider the Policy Letter No.14(02)/2011/D/(Pen/Pol) dated 20.06.2017 issued by the Government of India through the Ministry of Defence (Department of Ex-Servicemen Welfare), which states that no condonation shall be allowed for grant of second service pension.

6. We have considered the submissions made by the learned counsel for the petitioners, however, we find no force in the same.

7. This Court, by a Judgment passed in ***Union of India & Ors. v. Ex/NK Chinna VEDIYAPPAN***, Neutral Citation 2024:DHC:6858-DB, has rejected a similar challenge by holding as under:

“22. It is also noteworthy that the scheme of the Regulations in itself provide for two independent service pensions, one for service in the Indian Army and the second for the service in the DSC. It is only because of the provision for two service pensions in the Regulations that the respondents, while joining the DSC, did not opt for including their past service in the Indian Army and have, therefore, been deprived of benefits which could have accrued to them had they sought inclusion of their past service with the Army. Merely because the claim of the respondents, if allowed, would entitle them to earn a second pension, which is envisaged in the Regulations itself, the petitioners cannot be permitted to raise a plea which is contrary to the specific



provisions of the Regulations.

*23. We have also considered the letters dated 23.04.2012 and 20.06.2017 issued by the Ministry of Defence, wherein it has been provided that no condonation for shortfall in qualifying service will be granted for second service pension with the DSC. Even though we find that these letters already stand quashed by the learned Tribunal in **Ex Mohanan T (supra)**, we have, at the insistence of the learned counsel for the petitioners, examined the same, but are of the view that once the pension Regulations do not create any bar for condonation of shortfall in qualifying service, contrary instructions could not have been issued by the Ministry of Defence. It is trite law that administrative instructions cannot override the statutory regulations and therefore, we are of the considered opinion that the petitioners, by way of these letters, could not deprive the respondents of the rights accruing to them under the specific provisions of the Pension Regulations.”*

8. In view of the above, we find no merit in the present petition. The same is dismissed. The pending applications also stand disposed of as infructuous.

9. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

SEPTEMBER 27, 2024

RN/ns

Click here to check corrigendum, if any