

SEE RULE 102 (1)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOLKATA

T.A. NO. – 06/2014

{ARISING OUT OF O.J.C. NO. 5402/1995 FROM THE
HON'BLE HIGH COURT, ORISSA}

DATED : THURSDAY, THE 05TH OF APRIL, 2018

CORAM

HON'BLE DR. (MRS.) JUSTICE INDIRA SHAH, MEMBER (JUDICIAL)

HON'BLE LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

APPLICANT (S) : Smt. Bishnupriya Tripathy,
w/o No. 604201 Late Cpl Kishore Chandra Tripathy
resident of P.O. – Biranarasinghpur, Dist – Puri
Odisha (Pin-752 012)

Versus

RESPONDENT (S) : (1) The Union of India, service through
The Defence Secretary, Ministry of Defence
South Block, New Delhi – 110 011

(2) Chief of the Air Staff
Air Headquarters
Vayu Bhawan, Rafi Marg, New Delhi – 110 011

(3) The Principal Controller of Defence Accounts
(Pensions), Drapaudi Ghat,
Allahabad (UP) – 211 014

(4) The Officer-in-Charge
Air Force Records Office, Subroto Park
New Delhi – 110 010

Counsel for the applicant (s) : Ms. Rekha Misra

Counsel for the Respondent (s) : Mr. Ashish Kumar Chatterjee

ORDER

PER LT GEN GAUTAM MOORTHY, MEMBER (ADMINISTRATIVE)

1. This is an application under section 14 of the Armed Forces Tribunal Act, 2007 praying for grant of Family Pension to the W/O No. 604201 (Late) Corporal Kishore Chadra Tripathy. The case was initially filed in the Hon'ble High Court of Orissa being No. O.J.C. 5402/1995 dt. 14.08.1995; received on Transfer and accordingly re-numbered as T.A. - 04/2014.

2. The husband of the applicant was enrolled in the Indian Air Force on 12.06.1971 and was discharged from the service on 31.07.1986 with a reserve liability for two years. The deceased Air Warrior had served in the Indian Air Force for 17 years and 206 days including the two years reserve liability period. At the time of discharge, the applicant's husband was receiving only Disability Element of Pension @ 30 % but was not granted Service Element of the Pension although he had completed total service of 15 years and 20 days. His qualifying service, however, was 13 years and 318 days as he was Absent Without Leave (AWL) from 19.08.1984 to 26.07.1985; a total of 342 days. He was awarded 84 days confinement and close arrest by a District Court Martial (DCM). Moreover, as per the respondents, the total non qualifying period amounts to 432 days.

3. The above facts have not been controverted by the respondents. The husband of the applicant passed away on 30.11.2007 and ultimately the applicant (wife of the deceased Air Warrior) filed the substitution application which was accepted.

4. The Respondents while not controverting the facts, have stated that the applicant's husband was not entitled to Service Element of Pension as he had not completed the stipulated 15 years of service which is a sine qua non for earning the Service Element of Pension. In view of the non qualifying period of 432 days being the period of unauthorized absence from duty and the period of detention, service element of pension was not granted to the applicant's husband. Therefore, the applicant was not eligible for the Service Element of Family Pension. Since, the air warrior was not eligible for service pension hence, the wife of the air warrior was not also eligible and therefore, she was not granted the ordinary family pension.

5. The provision for grant of Service Element of Pension for qualifying service had been laid down in Para 114 of the Pension Regulations for the Air Force. Subsequently, these Regulations have been amended vide Govt. of India, Ministry of Defence letter No. 4684/DIR/(PN)/2001 dt. 14.08.2001 for condonation of short fall for a maximum period of 12 months which can be condoned *for service and reservist pension in respect of the personnel who are discharged from service except for those who are discharged at their own request are eligible for service pension and gratuity under Para 114 of the Regulations having less than 15 years of service.*

6. Ld. Counsel for the applicant produced a Judgement of the Hon’ble Supreme Court in C.A. No. 9389/2014 - Union of India and Anr. Vs Surrender Singh Parmar dt. 20.01.2015.

7. In this Judgement (supra) the period of shortfall has been condoned for grant of service element of pension. The relevant portion of the order is reproduced below :-

“7. The note below paragraph 5 of the Government of India, Ministry of Defence instructions dated 30th October, 2987 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 :-

(a)	xxx	xxxx	xxxxxxx	xxxxx
(b)	xx	xxxx	xxxxxxx	xxxxx

Notes :

(1) To (4)	xxxx	xxxxxxx	xxxxx
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(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.”

8. *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 read 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.

9. *In view of the aforesaid provisions, 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. In the facts of the case, we are of the view that it should have been made clear that the respondent shall be entitled to benefit w.e.f. 14th August, 2001 and not prior to the said date. The order passed by the Tribunal stands modified to the extent above. The appeal stands disposed of with aforesaid observations."*

8. By using the same ratio applicable, the husband of the applicant was indeed entitled to the benefit of service element of pension by rounding off the shortfall in service since, the deceased was having non qualifying service of 432 days. The Air Warrior had rendered 13 years and 318 days of regular service which should, in the light of the Hon'ble Supreme Court Judgement lead to rounding off to 14 years of qualifying service for grant of service element pension.

9. Therefore, the applicant is entitled for condonation of the shortfall of one year service for purposes of service element of pension from 14.08.2001 to 13.11.2007.
10. The following directions are issued : -
- (a) The petitioner is granted the service element of family pension for her late husband Cpl Kishore Chandra Tripathy from 14.08.2001 (the date of applicability of this provision) upto 13.11.2007 (the date the Air Warrior expired).
 - (b) Family Pension at ordinary rates is granted w.e.f. 14.11.2007.
 - (c) In so far as the matter of rounding off the Disability Element of Pension is concerned, the issue is no longer resintegra. Accordingly 30% of the Disability Element of Pension that the late husband of the applicant was receiving is to be rounded off from 01.01.1996 to 30.11.2007 (the date of demise of her husband).
 - (d) The order is to be implemented within the period of 4 months from the date of receiving this Judgement; failing which interest at 6% per annum will be also be added to the arrears.
11. The application is allowed with the directions as above.
12. No order as to costs.
13. A plain copy of this order, duly countersigned by the Tribunal Officer, be furnished to both the sides after observance of all usual formalities.

(LT GEN GAUTAM MOORTHY)
MEMBER (ADMINISTRATIVE)

(JUSTICE INDIRA SHAH)
MEMBER (JUDICIAL)