

ARMED FORCES TRIBUNAL, REGIONAL BENCH, JAIPUR

(Through Video Conferencing)

01.

OA No 86/2011

Smt Phul Pati W/o Ex Nb Sub Jaipal Singh

.... Applicant

Versus

Union of India & Ors

.... Respondents

For Applicant : Shri Jai Singh, Advocate

For Respondents : Shri Brij Bihari Sharma, Advocate

19.

OA No 14/2020 with MA No 203/2019

Ex L/Nk Arjun Ram

.... Applicant

Versus

Union of India & Ors

.... Respondents

For Applicant : Shri DS Rathore, Advocate

For Respondents : Shri Veer Aditya Singh, Advocate, Proxy for
Dr. Yuvraj Singh, Advocate

CORAM :

HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON

HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

COMMON ORDER

19.07.2022

1. The above mentioned OAs have been clubbed together being congruent in nature. The Applicants have earlier rendered their Services in the Army for which they have been granted Service Pension for life. Thereafter, these Applicants re-joined DSC Service voluntarily and opted not to count former Service of Army in the DSC Service for pension and continued to get Service Pension for the former Service rendered in the Army. These Applicants have

been Discharged/Released from DSC Service on completion of Terms of Engagement of DSC Service and have prayed for grant of Disability Pension along with the benefit of Rounding Off.

(a) **OA No 86/2011.** During pendency of the OA, the Original Applicant, Ex Nb Sub Jaipal Singh expired on 07.07.2020 and Smt Phul Pati, legally wedded wife of the Original Applicant was substituted as the Applicant in the OA. The Original Applicant was enrolled in DSC on 09.05.1995 for a period of 10 years. While in DSC Service, he suffered from Disabilities, viz., (i) "Primary Hypertension" and (ii) "Dyslipidaemia". The Applicant was downgraded to Low Medical Category and was not granted further extension of Service and after rendering 10 years and 23 days of Qualifying Service, he was Discharged from DSC Service on 31.05.2005 on completion of terms of engagement. His Composite Disability was assessed at 20%, initially for five years and thereafter for life in the subsequent Medical Board. The Original Applicant has been granted Disability Element of Pension, however Service Element of Disability Pension has not been granted.

(b) **OA No 14/2020.** Applicant was enrolled in DSC on 14.03.2005 for a period of 10 years. While in DSC Service, he suffered from Disability "Primary Hypertension". The Applicant was downgraded to Low Medical Category and was not granted further extension of Service and after rendering 10 years and 18 days of Qualifying Service, he was Discharged from DSC Service on 31.03.2015 on completion of terms of engagement. His Composite Disability was assessed at 30% for life and considered as NANA. The Applicant has been granted Disability Element of Pension, however Service Element of Disability Pension has not been granted.

2. The common submissions made on behalf of the Applicants are that they were enrolled in the DSC after following due process of enrolment and that there was nothing medically adverse detected during medical examination and were

declared fit in all respects. No note of any ailment/disability was made by the medical authorities examining them at the time of enrolment. They have relied upon the judgments of the Hon'ble Apex Court in the case of **Dharamvir Singh Vs UOI & Others** reported in (2013) 7 SCC 316 and **UOI & Ors Vs Rajbir Singh**, reported in JT 2015 (2) SC 392, and have contended that the disability occurred while they were serving with DSC due to conditions of service and hence any disability which occurred while in service is Attributable to or Aggravated by Military Service. Hence, denial of Disability Pension for DSC Service is illegal, arbitrary and unjust.

3. The Respondents, on the other hand, filed a detailed reply statement and the Learned Counsels appearing for the Respondents have submitted that the Applicants are in receipt of Service Pension for the former Services rendered in the Army, hence they are not eligible for grant of Service Element of Pension in terms of Regulation 280 of Pension Regulations for the Army, 1961. The Disability of the Original Applicant in OA No 86/2011 was considered as Aggravated by Military Service, hence he was granted Disability Element of Pension @ 20% for life. However, the Disability of the Applicant in OA No 14/2020 was considered as NANA, hence he is not entitled for Disability Element of Pension. However, Service Gratuity and DCRG, as applicable have been paid to the Applicants. In view of the above averments, the Respondents have reiterated that the OAs lacks merit and deserves to be dismissed with costs.

4. During the course of the hearing, Learned Counsel for the Applicants cited judgments of Hon'ble Supreme Court and AFT (RB) Chandigarh. The Learned Counsel was directed to place these Orders for perusal of the Tribunal. Details are as under:-

- (a) Hon'ble Supreme Court Order dt 27.08.2021 passed in Diary No 9346/2021 in the case of UOI & Ors Vs Om Prakash Guleria.

(b) AFT (RB) Chandigarh Order dt 05.07.2018 passed in OA No 60/2011 in the case of Ram Lal Vs UOI & Ors.

(c) AFT (RB) Chandigarh Order dt 10.10.2018 passed in OA No 324/2016 in the case of Om Prakash Guleria Vs UOI & Ors.

5. Also relevant to this issue is the recent Orders passed by this Regional Bench disallowing relief on similar issues, listed as under:-

(a) Ex Sep Kundan Singh Vs UOI & Ors in OA No 635/2012 decided on 15.03.2022.

(b) Ex L/Nk Ghisa Ram Vs UOI & Ors in OA No 77/2016 decided on 09.12.2021.

6. Issues germane to this case are elaborated as under:-

(a) Pension Regulations for the Army, 1961 (Part-1) deals with regulations governing pensions of Commissioned Officers in Chapter 2, Junior Commissioned Officers, Other Ranks and Non-Combatants (Enrolled) of the Regular Army in Chapter 3, Defence Security Corps (DSC) in Chapter 4 and Territorial Army (TA) in Chapter 5 separately since the rules of enrolment and terms of engagement are entirely different and cannot be dealt under one set of Regulations.

(b) Regulation 266 applicable to only DSC Personnel clearly stipulates that general rules as are applicable to combatants of the Army will also apply to DSC Personnel except when they are inconsistent with provisions of Regulations given in Chapter 4. Extract of Regulation 266 is as under:-

"266. The grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same general rules as are applicable to combatants of the Army, except where they are inconsistent with the provisions of the regulations in this Chapter."

(c) Regulation 280 clearly authorises the eligibility criteria for earning Service Element of Disability Pension. The same is extracted as under:-

"280. The disability pension consists of two elements viz. service element and disability element which shall be assessed as under:-

(1) **Service Element.**

(a) Where the individual has rendered sufficient service to earn a service pension i.e. actual service is 15 years or more (20 years or more in the case of NCs (E).	(i)	Equal to normal service pension relevant to the length of qualifying service actually rendered, plus a weightage of 5 years as given in Regulation 271 (b)
(b) Where the individual has not rendered sufficient service to qualify for a service pension	(i)	If the disability was sustained while on flying or parachute jumping duty in an aircraft or while being carried on duty in an aircraft under proper authority : The minimum service pension appropriate to his rank (see regulation 271) and group, if any.
	(ii)	In all other cases: Equal to the service pension as determined as per Regulation 271 (b), but it shall in no case, be less than 2/3 rd of the minimum service pension admissible to the rank/ pay Group. It shall be further subject to a minimum of Rs. 375/- p.m.

(2) **Disability Element.** x x x x

*Note:- In the case of a **re-employed pensioner**, who was in receipt of pension in addition to pay and allowances under regulation 120 and **clause (b) of regulation 121 only disability element will be admissible (emphasis added)** in addition to the service pension already in issue."*

(d) Note to Pension Regulation 280 clearly spells out that in case of a re-employed pensioner who is in receipt of Service Pension under Regulation 120 and 121 (b) will only be eligible for Disability Element in addition to the Service Pension already granted.

7. In view of the above, it is clear that there is no ambiguity in the eligibility criteria for Service Element of Disability Pension for DSC Personnel who have not rendered minimum pensionable service and Regulation 179 of Pension Regulation cannot be uniformly applied to personnel of DSC as Regulation 280 is clearly inconsistent with it keeping in view the fact that the individuals are already in receipt of a Service Pension for the former Service rendered in the Army.
8. It is also pertinent to highlight that the Applicants have fulfilled the contractual period of 10 years and further extension of service is regulated by numerous eligibility criteria in which medical category is only one of them. It is clear that the Applicants were discharged from Second Service after completing their mandated terms of engagement and cannot by any stretch of imagination, be deemed to be medically boarded out of Service.
9. In view of the myriad issues involved in this case, it is considered appropriate that the case be heard by a Larger Bench of the Principal Bench of AFT for a suitable and appropriate decision.
10. The Applications be decided based on the decision of the Larger Bench of the Principal Bench of Armed Forces Tribunal.
11. The Registrar is directed to transmit the records of these cases forthwith to the Principal Registrar AFT (PB), New Delhi for further necessary action.

(BOBBY CHERIAN MATHEWS)
MEMBER (A)

(RAJENDRA MENON)
CHAIRPERSON

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