COURT NO. 1
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A Nos. 1238 of 2016 with M.A No. 923 of 2016
&
O.A No. 272 of 2018 with M.A No. 1066 of 2018

O.A No. 1238/2016 with M.A No. 923/2016

Smt. Shama Kaur ... Applicant
Versus
Union of India and others ... Respondents

For Applicant : Mr. Rajiv Manglik, Mr. A.K. Trivedi, Mr. V.S. Kadian and Mr. J.P. Sharma, Advocates

For Respondents : Mr. Ashok Chaitanya, Advocate

WITH

O.A No. 272/2018 with M.A No. 1066/2018

Ex Nk Vijay Singh ... Applicant
Versus
Union of India and others ... Respondents

For Applicant : Mr. Rajiv Manglik, Mr. A.K. Trivedi, Mr. V.S. Kadian and Mr. J.P. Sharma, Advocates

For Respondents : Ms. Barkha Babbar, Advocate

CORAM:

HON'BLE MR. JUSTICE VIRENDER SINGH, CHAIRPERSON
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT GEN PHILIP CAMPOSE, MEMBER (A)

J U D G M E N T

This matter has reached the Full Bench in view of thedoubts expressed by a Division Bench of thisTribunal inits order

dated 08.02.2018, in O.A No. 1238 of 2016 *Smt. Shama Kaur Vs.Union of Indiaand others*,over the correctness of the proposition laid down by another Division Bench of thisTribunal in O.A No. 60 of 2013 *Bhani Devi Vs Union of India and others* decided on 07-11-2013on the subject of condonation of shortfall in qualifying serviceupto one year for grant of pension that is available to defence personnel under various pensionary provisions of the Government, to the extent as to whether the same condonation would also be available to personnel of the Defence Security Corps (DSC) and their widows, and other ancillary questions. Order dated 08.02.2018 reads:

> ***1. ……. The relief which was claimed by the applicant Smt. Shama Kaur was with regard to condonation of deficiency of service of less than one year in getting pension from the DSC. It is not in dispute that the husband of the applicant was getting one service pension from the respondents and this application is filed for getting second pension after the unfortunate death of the husband of the applicant in the year 2010. The husband of the applicant had demitted service from DSC in the year 1998 and died in the year 2010. During this period, he did not apply to the respondents for condonation of deficiency of service even after the death of the husband of the applicant. The present O.A has been filed after expiry of almost seven years of the death of the soldier and 19 years after his release from DSC seeking condonation of deficiency in service. Therefore, the question which arises for consideration is as to whether the deficiency in service in getting the second pension can be accorded by the respondents in terms of various pension Rules and Regulations even after the original beneficiary has not raked up the issue during his life time. Even after his unfortunate demise, the widow remained silent for almost 6/7 years. This aspect of the matter has not been considered by the judgment of this Tribunal in O.A 60/2013 titled Bhani Devi Vs UoI & Ors., therefore, in our considered opinion, we feel that the matter deserves to be reconsidered by a Larger Bench and for this purpose, let the matter be placed before***

Hon'ble the Chairperson on 22.02.2018 for appropriate orders as may be deemed fit.

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?***

3. Though we find that the matter under consideration has already been consistentlydecided by constitutional courts and also by various benches of this Tribunal and there apparentlyappears to be no conflict between any two or more benches, still, it would be our responsibility to answer this reference since the questions of reference stand framed.

4. Before proceeding with answering the reference, we deem it appropriate to take stock of seminal facts as the said factual background would make it easier to understand the implication of the issue that arises for consideration. We, thus, avert to the facts of O.A No. 1238 of 2016 titled *Smt. Shama Kaur Vs. Union of India and others*.

5. Husband of the applicant (Ex Nk Harke Ram), who died on 15.01.2010, was initially enrolled in the Pioneer Corps on 23.10.1961 and he was subsequently discharged from there with effect from 31.01.1976 (AN) under Rule 13(3)(III)(i) of the Army Rules, 1954 (Army Rules, in short), after rendering 15 years and 09 days of service, for which he was granted service pension. Thereafter, on 11.01.1984, the husband of the applicant was re-enrolled in the Defence Security Corps (DSC) service as a Sepoy for a fixed initial term of 10 years. His former service was not counted towards DSC service as per the option exercised by the husband of the applicant and he continued to draw his former service pension separately throughout, in addition to the pay and allowances for the DSC service. On completion of his initial term of engagement with DSC, he was granted extension of service from 11.01.1994 to 22.10.1998 i.e. up to the age of superannuation (55 years). Accordingly, he was discharged from DSC service with effect from 31.10.1998 under Rule 13(3)(III)(i) of the Army Rules, after rendering 14 years and 294

days of service. For the service rendered by the husband of the applicant in DSC, he was paid Service Gratuity and Retirement Gratuity to the tune of Rs.61,860/- and Rs.37,116/- respectively at the time of his discharge from DSC Service. Since the husband of the applicant was short of 71 days to complete the qualifying service for service pension in respect of the service rendered in the DSC, he was not granted the second service pension.After retirement from DSC service till his death (15.01.2010), the husband of the applicant never sought or agitated the issue of grant of second service pension. The applicant was granted ordinary family pension qua service pension which the husband of the applicant was in receipt for the first service rendered in Army.This is how the OA came to be filed by the wife of deceased of Ex Nk Harke Ram.

6. So far as the other case is concerned, the facts are somewhat different from O.A No. 1238 of 2016, but virtually the relief asked for in both these cases is the same, which became the issue of debate before the Coordinate Bench for referring the matter to the Larger Bench observing that certain aspects of the matter have not been considered by the order of this Tribunal in case of *Bhani Devi (supra)*.

7. Mr. Manglik, appearing in the lead case, submitted that the action of the respondents in denying service pension in DSC to the husband of the applicant with effect from the date of his discharge

from DSC till his death i.e. 15.01.2010 and thereafter family pension to the applicant from 16.01.2010 is illegal, unconstitutional and violative of the principles under Article 14 of the Constitution of India. He submitted that Para 266 of the Pension Regulations for the Army 1961, (hereinafter referred to as Regulations of 1961, for brevity), which states that grant of pensionary awards to personnel of DSC must 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, is applicable to DSC personnel. Further, Para 125 of the Pension Regulations for the Army 1961 specifically states that an individual who is invalided with less than 15 years of service, deficiency in service for eligibility pension or reservist pension or gratuity in lieu may be condoned by the competent authority up to six months in each case, which has been enhanced up to one year, as is clear from Annexure A4 dated 14.08.2001.

8. Learned counsel then drew our attention to Chapter VIII of the Pension Regulations for the Army 2008 (Part I) (Regulations of 2008, in short), which states that "*grant of pensionary awards to personnel of DSC shall be governed by the same Regulations as are applicable to Personnel Below Officer Rank (PBOR) of the Army except where they are inconsistent with the provisions of the Regulations in this Chapter*". Furthermore, as per Para 44 of the

2008 Regulations, the deficiency in service for eligibility to pension/gratuity may be condoned up to 171 days in each case by the 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; and

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

9. Learned counsel submitted that it is evident from the discharge book issued to deceased (Ex Nk Harke Ram), husband of the applicant and also from the impugned letter that he had completed 14 years and 294 days of service and on the basis of the Regulations of 1961 and 2008, the shortfall in service is to be condoned by service HQ to make the husband of the applicant eligible for service pension to complete 15 years.

10. Mr. Kadian, adopting the arguments advanced by Mr. Manglik, also relied upon the following decisions:

(i) *Union of India and another v. Surender Singh Parmar* (C.A No. 9389 of 2014 dated 20.01.2015, Supreme Court);

(ii) *Union of India and others v. Tarsem Singh* (2008) 8 SCC 648

(ii) *Bhani Devi v. Union of India and others* (O.A No. 60 of 2013 dated 07.11.2013, Principal Bench, AFT);

(iii) *Hoshiar Singh v. Union of India and others* (T.A No. 377 of 2009 (W.P (C) No. 6678 of 2008 dated 18.01.2010);

(iv) *Ex Nk Virendra Singh v. Union of India and others* (O.A No. 643 of 2016 dated 05.07.2016); and

(v) *Ex Nk Ghurahu Ram v. Union of India and others* (O.A No. 659 of 2016 dated 08.07.2016).

11. Placing reliance on the judgment of the Hon'ble Supreme Court in *Surender Singh Parmar* (supra), learned counsel for the applicants submitted that the applicants are entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months and up to 12 months and where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury, as such, delay in the matter could be condoned restricting the arrears to three years preceding the date of filing of the instant cases as is being done normally wherever the Tribunal gives condonation of delay in filing the claims.

12. Per contra, Mr. Chaitanya, learned counsel for the respondents in O.A. No. 1238 of 2016, submitted that the husband of the applicant was in receipt of one service pension. Para 132 of the Pension Regulations for the Army, 1951 (Part I), (Pension Regulations, for brevity), which deals with the minimum qualifying

service for pension, states that the minimum period of qualifying service (without weightage) actually rendered and required for earning service pension should be 15 years. The husband of the applicant had rendered only 14 years and 294 days qualifying service in DSC, which made him ineligible for grant of second service pension for the service rendered in DSC. Further, since the applicant had exercised an option not to count his former service in Pioneer Corps of Indian Army, the same was not counted. Furthermore, in terms of IHQ of MoD (Army) letter dated 07.12.1962, the request for condonation of shortfall in qualifying service for the second service pension cannot be considered. It stipulates that Regulation 125 of the Pension Regulations will not be allowed for enhancement of pension. In other words, this Rule will not apply to individuals who have already earned a pension.

13. Mr. Chaithanya, learned counsel for the respondents then drew our attention to the Pension Regulations for the Army, 1961 (Part I), hereinafter referred to as 'PRA'). He stated that Para 132 of the 'PRA' provides that the minimum qualifying service (without weightage) actually rendered andrequired for earning service pension shall be 15 years. He also brought to our noticePara 126 (a) of the PRA, which relates to counting of former service for pension and gratuity and provides that 'Combatants and enrolled non-combatants who have former service to their credit may be

allowedby a competent authority to reckon their former service towardspension and gratuity to the extent specified therein, subject to the fulfilment of the conditions stated in column 5 thereofand provided that they were not dismissed from former service. Conditions 1, 2 and 3 referred to in Column 5 of the Table reads as under:

Condition 1	At the time of re-employment/re-enrolment, the Individual shall have declared his former service and cause of discharge there from and elected to count that service towards pension or gratuity and retirement/death gratuity. The election once made shall be final.
Condition 2	After re-employment/re-enrolment the individual shall have completed any consecutive period of three years' service without two red ink entries or a court martial conviction. In the case of combatants re-enrolled as such and transferred to the reserve before completing three years' colour service since re-enrolment, the period of three years for the purposes of this condition may be either wholly or partly with the reserve.
Condition 3	The individual shall have refunded any gratuity, other than war gratuity, received-in, respect of his former service within a period of three years from the date of his reemployment/re-enrolment in not more than 36 monthly instalments from his pay. The first instalment shall be payable within three months from the date of re-employment / re-enrolment.

(c) In individual cases, a competent authority may relax at its discretion condition 2 and 3.

The learned counsel thereafter drew our attention to the Para 267(a) of the PRA, which deals with 'counting of former service'. It reads:

267. (a) An individual who has rendered previous service in theArmy/Navy/Air Force and/or the Defence Security Corps is

eligible to count such former service for pension/gratuity to the extent andsubject to the conditions laid down in regulation l26.

(b) Obsolete

(c) Obsolete

(d) An individual, including one who is re-employed in the Defence Security Corps as a Junior Commissioned Officer (except an Ex-EICO or Hony. Commissioned Officer accepting re-employment in the Defence Security Corps in the status of Junior Commissioned Officer) who is in receipt of pension in respect of his former service, shall be held in abeyance during his service, in the Corps. The re-employed service shall count for enhancement of pension under the regulations applicable to personnel of the Defence Security Corps. On release from the Corps either the pension which was held inabeyance, or any higher pension earned, shall become payable."

14. Further, in response to the issues framed by this Tribunal, vide order dated 30.08.2019, the learned counsel submitted as follows:

> **Question No. (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 CoI, MoD letter dated 14.08.2001 and para 44 of Army Pension Regulations 2008 or be dealt in terms of GoI, MoD letter dated 20.06.2017.

In response to our aforesaid question, learned counsel for the respondents answered that there should not be condonation of deficiency of service for grant of second pension in DSC service like regular Army personnel because of the following reasons:

> (1) The individual is not eligible for grant of second service pension as he was already in receipt of Service Pension. The intention for grant of condonation of

deficiency of service for grant ofservice pension is that the individual must not be lefthigh anddry and should be made eligible for at least one pension whichthe applicant is already in receipt of. It is submitted that as per the provisions contained in Para 132 and 271(a) of the Pension Regulations for the Army 1961 (Part-1), minimum 15 years qualifying service is mandatory to earn 2nd service pension and as per GoI, Ministry of Defence/Department of Ex-Servicemen Welfare Letter No.1(20/2011/D(Pen/Pol) dated 23.04.2012 the condonation of deficiency in qualifying serviceis not applicable for the grant of second service pension.

(2) As per the Regulation 126 (a) and 267 (a) of the Pension Regulations, 1961 the DSC personnel at the time ofjoining the DSC service are given an option as to whether the individual would like his previous service to be counted towards the service rendered with the DSC for the purpose of grant of pensionable benefits. (In the present case, the Applicant had opted not to count his previous service with the DSC service for the pensionary benefits). After exercising this option, theindividual would be estopped from backtracking from whathe had opted as the doctrine of election would be applicable on him.

(3) Since, the individual, at the time of demitting the office of DSC, had been granted and paid Service Gratuity to the tune of Rs. 61,860/- and Retirement Gratuity (DCRG) to the tune of Rs. 37,116/-,the individual continued to enjoy the aforesaid benefit till his death and by necessary implication, the same has been enjoyed even by the Applicant. If at all the individual felt that he ought to have got pension and not the two amounts which have been

mentioned hereinabove by way of service gratuity and DCRG, he ought not to have retained the aforesaid two amounts. The natural conduct on the part of the individual should have been that he should have returned the aforesaid two amounts while making representation and claimingpension. However, in the present case, the individual nevermade any representation seeking condonation of short fall inhis service for pensionary benefits, during his lifetime.

(4) Since the applicant superannuated before 15 years of service in DSC, there was no left out service of the individual and if the individual's shortfall in pensionable service is condoned, the same may amount to extension of service beyond the age of superannuation. Shortfall in pensionable service can be allowed only in the cases where there is left out service, which the Army/ DSCpersonnel could not complete because of any reason.

(5) It is submitted that vide GoI, MoD letter No. 14(02)/2011D(Pen/Pol) dated 20.06.2017, Regulation 44 of the Pension Regulations for the Army, 2008 has been amended and thereby, in addition to existing three clauses, 4thclause has been inserted as item (iv), which reads as 'an individual who is eligible for 2ndservice pension for the service rendered by individual in respect of DSC' and thus, based on the amended Regulation 44, the shortfall in qualifying service for grant of second service pension from DSC cannot be condoned. It is further submitted that though sub-regulation (iv) inserted under Regulation 44 of the Pension Regulations for the Army, 2008 has been quashed by the Hon'ble RB-Kochi of AFT vide judgment passed in O.A No. 131/2017 titled as *Mohanan T. (Ex Nk)*

Vs. UOI and others, the UoI thereafter, assailed the said order before the Hon'ble Apex Court vide Civil Appeal Diary No. 27100 of 2018 and the Hon'ble Supreme Court vide order 27.08.2018 was pleased to grant leave to appeal to the UOI but refused to interfere with the said order passed by Hon'ble AFT RB Kochi and accordingly the appeal was ordered to be dismissed **keeping the question of law open**. Thus, it is ostensibly clear that the said order of Hon'ble RB Kochi of AFT is applicable only in that particular case and the question of law involved therein have been left open. In other words, the legality of sub-regulation (iv) inserted in Regulation 44 is stillsubsisting. It is humbly submitted that this Tribunal does not have jurisdiction to examine the legality of policy framed by the executive as the same has been categorically excluded and have been allowed to remain vested with Hon'ble High Court under Article 226 of the Constitution of India, as mandated under Section 14 of the Armed Forces Tribunal Act, 2007.

Question No. (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 itshould be made? and

Question No. (c):

Can such an application be filed by the widow of the employee, if so, withinhow much time it must be done?

In response to our aforesaid questions, learned counsel for the respondents answered thus:

(a). It is humbly submitted that the right to make the application seeking condonation of shortfall in service for

pensionary benefits is available only with the concerned individual and not with his next of kin etc. It becomes even more significant as the individual only gets the right to exercise option under the provision of Pension Regulations whether to count his former service with that of the DSC service for pensionary benefits or otherwise. Also, the said right to exercise option has the direct bearing on the consequential pensionary rightsof the individual. As in the present case, the individual of his own volition exercised option at the time of joining the DSC service for not counting his former service with that of this DSC service and he continued to receive service pension for his former service. At this point of time, the individual was well aware that at the time of his superannuation he would be falling short of the service for pensionarybenefits, yet he chose to not count his former service with the DSCservice and in lieu thereof he received service gratuity and DCRG and kept enjoying the same till his entire life time. Thus, the doctrine of election is attracted in the present case. In the present case, the individual remained alive for fairly good number of years, i.e. for about 12 years from the date of his retirement from DSC service and he consciously chose not to move any application seeking condonation of shortfall in service for 2ndservice pension from DSC. Further, the individual kept enjoying the amount of service gratuity and DCRG and he never returned the same to the Government. It is further submitted that since, the individual himself consciously elected/ chose not to move any application seeking condonation of said shortfall as such, the applicant being his widow would

not have any right or *locus standi* to claim the condonation for said short fall in service of her deceased husband. It is further submitted that there is no provision made either in Pension Regulations or through any policy formulated by respondents entitling the widow to claim the shortfall in service of her deceased husband for pensionary benefits. It is settled law that once a statue prescribes to do a particular thing in a particular manner, the same shall not be done in any other manner than prescribed under law. The Applicant has not shown any provision or authority which enables/ entitles the widow to claim the said condonation in shortfall of service for pensionary benefits. It is further submitted that since, the individual himself was not in receipt of service pension for DSC service, as such, there would not be anyright flowing to the widow for family pension.

(b). It may not be out of place to mention here that earlier, the dual family pension was not permissible and the said policy was changed vide GoI, MoD letter no. 01 (05)/2010-D (Pen/Policy) dated 17.01.2013 whereby the dual family pension has been allowed to be granted, effective from 24.09.2012. In the present case, the individual, i.e. the husband of the applicant, died on 15.01.2010, i.e. when the dual family pension was not permissible. Thus, even otherwise, the applicant being widow in the present case is not entitled for moving application seeking condonation of shortfall in service for pensionary benefits.

Question No. (d) Does the judgment of *Bhani Devi v.Union of India and others* (O.A No. 60/2013 dated

07.11.2013) decided by AFT lay down the correct legalProposition of law?

Learned counsel for the respondents reiterated that the above submissionshave been answered pursuant to Question Nos. (b) and (c)as well. Further, in answer to Question No. (e), learned counsel for the respondents submitted that the scheme of the AFT Act, 2007 demonstrates the distribution of powers, jurisdiction and authority of AFT. Section 14 of the AFT Act, 2007 explicitly excludes the exercise of jurisdiction, powers and authority to entertain those service matters which are amenable to the jurisdiction and powers of Hon'ble Supreme Court or High Court exercising jurisdiction under Articles 226 and 227 of the Constitution of India. Thus, this Tribunal does not havejurisdiction to decide whether any Government policy is valid or not. The remedy open to the applicant is only to challenge those impugned policies before the appropriate forum, as held by the AFT, Regional Bench, Chennai in *Maj Genl E.J Kochekkan v. Union of India and others*(O.A No. 24/2010 decided on 21.01.2011).

13. Ms. Barkha Babbar, learned counsel for the respondents in O.A. No. 272 of 2018, virtually towed the arguments advanced by Mr. Chaitanya.

14. We will now enter into a detailed discussion to answer all the questions individually formulated by the Bench.

15. The DSC is an organisation comprising former personnel of the three defence services which plays a very important role in providing security and protection to defence assets and installations. It is an integral part of the Army and personnel of the DSC are also amenable to the Army Act, 1950. In fact, Rule 187(1)(r) of the Army Rules, 1954, read with Section 3(vi) of the Army Act, 1950, makes it clear that the DSC is a "Corps" of the Indian Army.

16. The members of the DSC are governed by the same general pensionary rules as the Combatants of the Regular Army except when there is any specific inconsistent provision (See Regulation 266 of the Pension Regulations for the Army, 1961). Further, all Government letters issued after acceptance by the Union Cabinet of various Pay Commission recommendations specifically state that the provisions are equally applicable to members of the DSC. To take a few examples, the same is clear from the opening paragraphs of Letter No.1(5)87/D(Pension/Services) dated 30.10.1987, Letter No. 1(6)/98D(Pension/Services) dated 03.02.1998, Letter No. 17(4)/2008(2)/D(Pen/Pol) dated 12.11.2008 and Para 3.1 of Letter

No. 17(02)/2016-D(Pen/Pol) dated 04.09.2017 issued by the Ministry of Defence after the 4th, 5th, 6th and 7th Central Pay Commissions respectively on the subject of pension. All of the above letters state that personnel of the DSC, together with other defence personnel, are collectively known as "Armed Forces personnel".

17. When a person joins the DSC, he has two options and such personnel fall in two categories depending on the option exercised. The first category of DSC personnel is where a member of DSC gets his former service counted towards his subsequent service in DSC and takes one single pension finally for the combined years of the two service spells, and the second category is wherein he can simply opt for continuance of his former pension (if any) and then earn separate retiral benefits from the DSC without counting his former service, in which case the subsequent service in DSC has no connection with, and is totally divorced from his former service and he is eligible for separate retiral benefits and regular pension from DSC in case he fulfils the minimum requirements of qualifying service to earn a service pension, that admittedly is 15 years in normal circumstances. It may be important to point out here that we are only dealing with cases of the second category and that too dealing just with service pension (and ordinary family pension consequently) and not with any other kind of pension such as

disability, invalid, special pension etc. for which there might be no or lesser minimum service prescribed.

18. As observed above, various Government letters and provisions of the Pension Regulations provide for 15 years of qualifying service for grant of normal service pension. However, Regulation 125 of the Pension Regulations, 1961, provided for condonation of deficiency upto 6 months by the Respondents, meaning thereby that a person with 14 years and 6 months of service could be granted pension by condoning the shortfall for 6 months. This condonation was exercisable by the respective Record Offices. Further, Government of India, Ministry of Defence, vide Letter No4684/DIR(PEN)/2001dated 14.08.2001, enhanced the condonable period upto one year (12 months) by providing the following:

> Sanctioned is hereby accorded in pursuance of MOD ID No. 34(3)/2001/D(O&M)n dated 3.8.2001 for delegation of administrative powers with the approval of Raksha Mantri to the Service HQrs in respect of the subjects indicated below:-
>
> (a) * * *
>
> (v) **Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months**.(Emphasis supplied)

19. Hence, as things stand as on date, condonation of shortfall is available upto one year (12 months), meaning thereby, that a person can be granted service pension even if his service is 14 years, by condoning the shortfall upto the abovesaid period.

20. Very importantly, the provisions for condonation of shortfall are quite precious for members of the DSC. We say so since unlike personnel of the regular Army, members of the DSC are recruited in the organisation after they are released from the regular forces and at a much higher age bracket, and hence many a time they retire from DSC just at the cusp of 15 years of service with some shortfall, thereby losing the chance to earn pension by a very short period.The Respondents maintain that condonation of shortfall in qualifying service is not available for the second service spell in the DSC, meaning thereby that those with service between 14 and 15 years in the DSC are to be denied pension as per the interpretation of the Respondents.

21. One very important aspect of the issue that must not be lost sight of in the instant matter is that in case an ex-serviceman opts to join a central government service on the civil side, he becomes entitled to service pension from the civil department in just 10 years of service under the CCS (Pension) Rules, 1972 (except for voluntary retirement cases).The position remains the same even for post-2004 recruited civil employees who are now amenable to the contributory pension provisions under the New Pension Scheme (NPS). Whereas, an ex-serviceman, who rather opts to join the DSC within the military set-up under the Army Act, 1950, to continue serving the organisation, is placed at a sharp disadvantage when compared to

his peers joining the civil departments since what to talk of pensionary benefits after 10 years of service, he is even denied pension at 14 years by refusing the condonation of shortfall in qualifying service by one year.

22. The stand of the Respondents over the last few years has been that condonation of shortfall is meant to enable a person tide over financial difficulties and make him eligible for pension if he is falling short by 12 months and, since most DSC personnel are already pensioners, they should not be allowed the condonation in the second spell. This argument, firstly, is an afterthought, which seems to be invented after various judicial pronouncements, as we would explain in the later part of our opinion, and secondly, also seems to overlook the fact that the past service in the Army has no connection whatsoever with the fresh service in DSC for those DSC personnel who opt not to count their past service. The second spell is fresh service for all intents and purposes and a person has taken no advantage of his past service in his subsequent DSC service and hence the condonation also is only linked with his subsequent service and the pension too is earned separately by the person's dint of hardwork wherein he has opted to continue to serve the motherland in a military capacity without taking any benefit or addition of past service. Admittedly, the service in DSC is "re-enrolment" and not the continuance of past military service. If the

logic of the Respondents was to be accepted, then it would lead to the absurd conclusion thatsince pension is a means to tide over financial difficulties, military personnel who retire at young ages from the defence services should be debarred from any kind of pension in their post-release employment since they have already earned a military pension, even though they have not taken the benefit of adding the past service in the subsequent service. Needless to state, as emphasized by the Hon'ble Supreme Court and reiterated time and again, pension is not a bounty granted at the sweet-will of an employer but is a right akin to property.

23. As noted in the beginning, Constitutional Courts have already dealt with the matter in great detail, making the task somewhat easier for us. Interestingly also, while the stand of the Respondents has been consistently struck down or read down by judicial intervention, they continue to maintain the same and have been issuing prohibitory letters on the same subject again and again as if a struck down or read down provision can be revalidated or brought back to life by the mere issuance of a similar letter again.

24. Though there are many decisions on the issue by the Hon'ble Supreme Court, the Hon'ble High Courts and this Tribunal, we would only touch upon the main ones.

25. The first letter stating that that condonation of shortfall would not be extended to second pension cases was issued in the year

1962. No serious note was however taken of the same by Courts and DSC personnel continued to be granted condonation on judicial intervention. However, when this letter was specifically and vehemently pressed into service by the Respondents, this letter was read down by a Division Bench of the Hon'ble Punjab & Haryana High Court in*Union of India v. LNK DSC Mani Ram*(L.P.A No. 755 of 2010decided on 05.07.2010), wherein the Court stated that once there existed a provision for condonation in the Regulations, the same could not be fettered by way of a letter issued by the Respondents.

26. A few years earlier than *Mani Ram(supra),* a Division Bench of the Hon'ble Delhi High Court also had the occasion to adjudicate the same issue in *Ex-Sep Madan Singh Vs Union of India*(W.P (C) No. 9593 of 2003 decided on 31-08-2006), wherein the same point of condonation not being available in the second spell of DSC was raised and decided against the Respondents by the Hon'ble High Court. The following extract from the decision clinches the issue:

> *6. It also cannot be disputed in face of Regulation 266 that grant of pensionary awards to personnel of the DSC shall be governed by the same general rules as are applicable to combatants of the army except where they are inconsistent. On the strength of the above provisions, it can safely be stated that condonation of deficiency in required service can be made good particularly where it is less than six months. The letter categorically says that the regulations are non restrictive in nature and can be exercised freely. The purpose of issuing the above letter has itself been stated at the end of the letter where it was stressed on all*

concerned that they should use their powers widely and benefit maximum number of servicemen. It is obviously a beneficial legislation and has to be given liberal construction. The objects sought to be achieved by these regulations and particularly the letter issued by the Army HQs is to grant benefit rather than not to exercise a power rightfully vested in the authorities. In the impugned order, no reference has been made as to why the request of the petitioner for condonation cannot be entertained or was not maintainable. Admittedly, the petitioner has put in 14 years 10 months and 28 days service which falls short by less than six months of the required period of service of 15 years. It was obligatory on the part of the authorities to deal with the request of the petitioner and make appropriate directions in that regard. The impugned order suffers from the defect of non-application of mind and refusing to exercise a power lawfully vested in the said authorities..."

27. Thedecisions of the Hon'ble High Courts, including the above, were followed by the benches of this tribunal and condonation was allowed without any controversy. In fact, in the year 2011, Letter No. 46453K1Misc/AG/PS-4(L)/BC dated 14.07.2011 was issued by the Adjutant General's Branch of the Army HQ, instructing Government Counsel to concede such cases and withdraw from litigation in cases of those DSC personnel who had 14 years of more of service, subject to certain exceptions such as dismissal cases etc.

28. The above it seems was only short lived since despite the settled proposition of law, the Respondents issued another letter in the year 2012 on the same lines as issued in 1962 and stated that condonation shall not be given in the second spell of service with the

DSC. This letter was also held to be contrary to law by this Tribunal in*Bhani Devi v. Union of India and others* (O.A No. 60 of 2013 decided on 07.11.2013) and the said decision of the tribunal was implemented. The referring bench, of course, however, has doubted the correctness of the said decision.

29. Yet again, the Respondents then issued another letter on similar lines in the year 2017 denying condonation of shortfall which was again held to be contrary to law by the Kochi Bench of this Tribunal in *Mohanan T v. Union of India*(O.A No. 131 of 2017 decided on 12.10.2017).

30. Needless to state, a dead provision or a logic declared illegal or arbitrary or adversely commented upon by judicial fora, cannot be revived or brought back to the rule-book simply by issuing it again and again. In this case, it is clear that the intention of the rule makers was never to prohibit condonation of shortfall in the second independent spell of service which has no link with past military service.Had it been so, it would have been specified or hinted in the Regulations itself in the first go, or there would have been a specifically worded Regulation for the DSC prohibiting the same.The issuance of letters to the said effect or an attempt to insert the same in the Regulations later, all efforts which have already been declared contrary to law, would show that this was an after-thought to attempt to outsmart the judicial pronouncements in this regard or

super-impose such a thought-process, and interestingly, some of the decisions on the subject have taken note of such attempts. Even otherwise, we have examined in the preceding paragraphs as to how denial of condonation of shortfall in DSC service which is independent, fresh and delinked service from the past spell, is bad on merits and logic as well as law wherein such personnel are left at a great disadvantage. In fact, the Hon'ble Supreme Court has gone to the extent of saying that any arbitrariness corrected or interpretation rendered by Courts cannot even be altered by legislative action, let alone executive letters (see *Medical Council of India v. State of Kerala*(W.P (C) No. 231 of 2018 decided on 12.09.2018) by the Hon'ble Supreme Court and Constitution Bench decision in *Janapada Sabha Chhindwara v. The Central Provinces Syndicate and another*(1970) 1 SCC 509.Further, in *S.R. Bhagwat and others v. State of Mysore* (1995) 6 SCC 16*,* which was a service matter, the provisions of Karnataka State Civil Services (Regulations of Promotion, Pay & Pension) Act, 1973 as judicially interpreted were sought to be changed to be brought back to the line of thought of the Government by amending the rules, but the same was deprecated by the Hon'ble Supreme Court.

31. Hence, as can be seen from above, the position of law interpreted by way of judicial intervention has been tacitly sought to

be nullified by the Respondents by issuing the same prohibitory stipulations repeatedly, which would be clearly improper.

32. However, irrespective of the above, the issue of condonation has been fully dealt with by the Hon'ble Supreme Court in two cases which leave no manner of doubt in the correct interpretation or application of law on the various aspects of the controversy.

33. In *Union of India v. Surender Singh Parmar*(2015) 3 SCC 404, this Tribunal, in the order under challenge before the Hon'ble Supreme Court, had held a person who retired in the year 1985 with 13 years 10 months and 13 days of service to be eligible for condonation by first treating the 10 months and 13 days as a completed year of service (based upon the provision which provides that a 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) thereby taking the service to be 14 years and then applying the principles of condonation of shortfall upto one year and thereby holding him eligible for pension. The Hon'ble Supreme Court, while dealing with the matter, held, that even a voluntary retiree would be eligible for such condonation and further held that Courts and Tribunals were fully competent to direct the grant of such condonation. The following extract from the ibid decision merits reproduction:

> *...The respondent joined the Indian Navy on 12th August, 1971 and after rendering 13 years, 10 months and 13 days*

service sought his retirement on compassionate ground upon which he was released from service on 24th June, 1985. The minimum qualifying period for pensionable service is 15 years. There is a provision in the Navy (Pension) Regulations 1964 for condonation of shortfall in service, initially it was for six months and subsequently the condonation was made permissible for one year. The respondent claimed that he was entitled to the benefit under the said Regulations and the Government of India Instructions dated 30th October, 1987. The appellant denied the said benefit to the respondent vide order dated 14th August, 2001...'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.' 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...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...(Emphasis supplied)

34. The above decision makes it clear that the Hon'ble Supreme Court has heldthat a service of a fraction of three months or more

shall be counted as complete half year of qualifying service and that shortfall upto one year can be condoned by a Court or a Tribunal. It is important to note that the person concerned was discharged in the year 1985 while the Tribunal had rendered its decision on an Original Application filed in the year 2013 in the said case.

35. An even more important, and a very recent decision, is that of the Hon'ble Supreme Court in *ExSep Chattar Pal v. Union of India*(C.A (Diary) No. 17785 of 2015) decided on 22-08-2019). In the said decision, the affected litigant was short of 14 years of service in the DSC by 79 days and the Hon'ble Supreme Court came to the conclusion that he was entitled to condonation of shortfall for one year but he could not be granted condonation more than one year since unlike *Surender Singh Parmar's* case (supra), the individual had been discharged due to indiscipline based upon 6 red-ink entries. It also seems from the facts recorded that perhaps the service of the individual was forfeited as per Regulation 123 since it is mentioned in the judgement that "It was found that the appellant had not completed three years' consecutive period with exemplary remarks in DSC". Such an eventuality would only arise in cases of forfeiture of service under Regulation 123 and not in normal cases since a person needs to serve for three years with exemplary conduct and without any red-ink entry to offset forfeiture of service.

36. However, what the *Chattar Pal's* decision *(supra)* lays down is that there would be no controversy regarding condonation for shortfall in DSC by one year since the stand of the Respondents themselves in the said case was that condonation could only be granted for a maximum period of one year, that is, if a person has 14 years of service, and since he was falling short of 14 years, he could not be granted the benefit of treating his service as complete 14 years due to the fact that he had been discharged on the grounds of indiscipline and had not completed three consequent years of service with exemplary remarks.

37. The controversy of condonation of shortfall by one year thus stands fully decided in *Chattar Pal's* case.

38. Another aspect that has been brought to our attention, though it may not be of immediate effect, is that the Hon'ble Supreme Court has recorded the following text of Regulation 9 of the Pension Regulations, 1961, in the judgement:

> *"9. If the total period of qualifying service of an individual exceeds completed years by six months (180 days) or more, the amount of his pension/gratuity will be increased by half the difference between the pension/gratuity admissible for the completed years of his qualifying service and the one admissible for the next consecutive number of complete years."*

39. The above original provision of the 1961 regulations was however amended vide Ministry of Defence Letter No

B/38076/AG/PS 4(a)/2190/A (Pen/Ser) dated 06-08-1984, which was perhaps not pointed out, to the following effect:

> *I am directed to say that the President is pleased to decide that* ***in calculating the length of qualifying service for the purpose of pension / gratuity, a fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service*** *for determining the amount of pension and Service / DCRG"* (emphasis supplied)

40. The above provision has already been interpreted in *Surender Singh Parmar's* case and *pari materia* and analogous provisions on the civil side have also been interpreted earlier by Courts. In *State of Punjabv. Sucha Singh Rana* (C.A No. 2530 of 2008 decided on 19-02-2014), the Hon'ble Supreme Court held that a service of 9 years and 9 months would be read as 10 years thereby entitling the employee to pension. The following was observed while interpreting the same provision:

> *...Mr. Kuldip Singh, learned counsel for the appellant submitted that this rule as well as the clarification contemplates only calculation of the amount and not calculation of the period of service put in by an employee. In our view, this submission cannot beaccepted. The rule and particularly the clarification issued thereafter, are very clear. Clarification in terms speaks about thequalifying service and as to how it is to be calculated. Itspecifically says that for the purpose of pension, a fraction of a year equal to three months and above shall be treated as a completed one half year and shall be reckoned as qualifying service for determining the quantum of pension. That being so the respondent willhave to be held as having completed 10 years of service which would entitle him to receive pension...*

41. Thus, as the above would show, the rule position as it stands today and as interpreted by Courts, is that the service of 14 years

and 9 months and above would anyway have to be treated and rounded off as 15 completed years thereby not even requiring any condonation. Further, even a service of 13 years and 9 months and above would need to be treated as 14 years which could further be condoned by one year, but then in such cases, the nature of discharge in the sense as to whether any service has been forfeited due to indiscipline etc would have to be seen as held by the Apex Court in *Chattar Pal*(supra). However, the above is not of much concern to us at present and all such matters, especially those with 13 years and 9 months & above but less than 14 yearsof service, would have to be seen on a ***case to case*** basis, individually, as they come up for hearing in due course before regular benches.

42. It has also been brought to our notice that the issue about condonation of service for grant of pension in case of DSC was discussed by the *Raksha Mantri's* Committee of Expertsalso, in the year 2015. After taking note of judicial pronouncements and the repeated contravention of the same by time and again insisting on a stand that had been set to naught by Courts, the Committee had recorded the following:

> *(a) The Committee notes with concern that such a stand denying condonation of service for second pension is not only obdurate but also contemptuous since once an issue is decided by a Constitutional Court and accepted as such for many personnel and also the impugned letter read down or struck down by judicial interpretation, the DESW could not have issued another similar letter in 2012 with similar contentions*

to revalidate or negatively resuscitate a judicially settled issue. If such a stand were to be accepted, then even after impugned letters or provisions are read down, interpreted or struck down, various departments of the Government would simply issue them again with a different date to revalidate their actions, something which is not acceptable in a democracy which has the rule of law as its hallmark.

(b) Even otherwise the reasons to deny such condonation cannot be invented when no such prohibition or reasons exist in the master regulations or letters of the Government, moreover when the second service by those DSC personnel who have not opted to add their former service in their DSC service is totally separate and divorced from their earlier service with no connection whatsoever with their former service or financial situation. Defence personnel who are joining the DSC cannot be placed at a disadvantage than their peers joining civil Government organisations who become eligible for pension after 10 years.

(c) All appeals filed on the subject or in the pipeline may be withdrawn. The fresh letter issued by the DESW in the year 2012 merely reiterating the earlier letter of 1962 hence also needs to be withdrawn or directed to be ignored and status quo ante as accepted by judgements (supra) needs to be accepted since now it is the law of the land. Matters be conceded on a case to case basis, as was the practice earlier.

43. Though we need not dwell on the above more since the law has in any case been well settled by way of judicial pronouncements but it would have been worthwhile if the Respondents had themselves taken steps to resolve the already settled issue without forcing judicial intervention on multiple impediments put on the same subject.

44. Having discussed and deliberated the matter in its entirety, the case law and also the merits of the issue, we shall now proceed to answer the reference.

Re: (i) 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?

(a) The aspect has been discussed in full detail in our discussion above on merits. It needs no further emphasis that the DSC is a part of the Army and is also treated as a "Corps" under Rule 187(1)(r) of the Army Rules, 1954, read with Section 3(vi) of the Army Act, 1950. Further the same pensionary provisions as applicable to the three defence services are applicable to the DSC and all such personnel taken together are referred as "Armed Forces Personnel" as becomes clear from the opening paragraphs of Letter No. 1(5)87/D(Pension/Services) dated 30.10.1987, Letter No. 1(6)/98D(Pension/Services) dated 03.02.1998, Letter No. 17(4)/2008(2)/D(Pen/Pol) dated 12.11.2008 and Para 3.1 of Letter No. 17(02)/2016-D(Pen/Pol) dated 04.09.2017 issued by the

Ministry of Defence after the 4th, 5th, 6th and 7th Central Pay Commissions respectively.

(b) The matter has already been decided by Constitutional Courts and this Tribunal and implemented by the Respondents, especially in the decision of the Hon'ble Punjab & Haryana High Court in *Union of India v. LNK DSC Mani Ram*(LPA No. 755 of 2010decided on 05.07.2010), the Hon'ble Delhi High Court in *ExSep Madan Singh v. Union of India*(W.P(C) No. 9593 of 2003)**,** this Bench in *Bhani Devi v. Union of India and others*(O.A No. 60 of 2013 decided on 07.11.2013) and theKochi Bench in *Mohanan T v. Union of India*(O.A No. 131 of 2017 decided on 12.10.2017). The letters purportedly amending the relevant provisionshave also been held contrary to law vide the above. In light of this, coupled with the merits of the matter discussed in the instant judgement, there can be no scope of any doubt that DSC personnel are fully entitled to condonation of deficiency of service for their second spell of service at par with other Army personnel. In fact, as discussed in the main body of this judgement, DSC personnel re-enrolling themselves by opting not to count their past military service have no connection at all with their past

service as far as pension is concerned and their service in DSC is fresh service delinked from their past service.

(c) Further, the Respondents have themselves stated before the Hon'ble Supreme Court in *Chattar Pal* (supra) that condonation upto one year is possible, and once Constitutional Courts, including the highest Court of the land, have upheld the proposition, it is beyond the scope of any bench of this tribunal to hold or comment otherwise. We hence answer this question in the above terms.

45. **Re: (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? and**

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

The above two questions being interlinked have been being considered together.

(a) In fact, the complete answer to these questions is provided by the Armed Forces Tribunal Act, 2007 itself. Section 2 of the Act reads as under:

2. Applicability of the Act.

> *(1) The provisions of this Act shall apply to all persons subject to the Army Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957) and the Air Force Act, 1950 (45 of 1950).*
>
> *(2) This Act shall also apply to retired personnel subject to the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or the Air Force Act, 1950 (45 of 1950),* ***including their dependants, heirs and successors, in so far as it relates to their service matters****.*(Emphasis supplied)

(b) As can be discerned from Section 2(2) of the Act, widows of defence personnel have full right to approach the Armed Forces Tribunal in the capacity of being dependant, heir or successor in so far it relates to service matters of deceased personnel, which term, of course,includes pension as per Section 3(o)(i) of the Act. The pension (and consequently family pension)falls under "service matters" and being an affected party a widow has full unfettered rights available to her by virtue of the Act which provides a right to heirs, dependants and successors toagitate before this tribunal the service matters of deceased employees, by simple stepping into their shoes, which right cannot be put under question. In fact, a perusal of the Section would reveal that even in case a particular dependant, heir or successor is not entitled to family pension, still he or she has a right to agitate any service matter of a deceased employee.

(c) Even otherwise, when the grant of family pension based upon the past service of the deceased employee is in controversy, the Hon'ble Courts have held such a right to be unshackled to technical objections. The *locus classicus* in this regard is the decision of the Hon'ble Supreme Court in *SK Mastan Bee v. General Manager, South Central Railway*(2003) 1 SCC 183 wherein the employee had died in the year 1969 while the widow had staked claim to family pension in the year 1991 and the Hon'ble Supreme Court held her entitled to pension without any restriction. A reference can also be made to the decision of the Hon'ble Delhi High Court in *Ganga Devi v. Union of India*(R.P No. 291 of 2009 in WP(C) No. 7716 of 2009 decided on 23.07.2010)wherein a similar proposition was considered. Pension in any case has been held to be property by the Hon'ble Supreme Court (see Constitution Bench decision in *Deokinandan Prasad v. State of Bihar and others*(1971) 2 SCC 330and*U.P. Raghavendra Acharya and others v. State of Karnataka and others*(2006) 9 SCC 630). Specifically, in the case of condonation of shortfall in deficiency in service in *Surender Singh Parmar*, the litigant had retired way back in 1985, but still the Hon'ble Supreme Court granted him

relief and the said decision also answers this question squarely.

(d) There is another reason for defence personnel, their widows and their families not applying for time or approaching Courts and Tribunals for their benefits, and that is, lack of knowledge about various schemes of the Government and their subsequent interpretation by Courts. To add to the problem, most of the times the decisions rendered by Courts are not implemented by the instrumentalities of the State for all similarly placed employees or pensioners and there is also no way of knowing about the same or even beneficial letters issued by the Government from time to time by the affected parties. Though it may be stated by the Respondents that such policies are now circulated widely on the internet and in various offices but the practical reality of the affected parties not having access to such information or decisions due to the reason of distance, education, age or other disabling factors cannot be lost sight of. In fact, the Hon'ble Rajasthan High Court in *Phoola Devi v. Union of India*(2007 (2) SCT 700) made very pertinent observations in this regard:

> ***…It has often come to the notice of the court that welfaremeasures taken by the Government***

> ***for the Ex-Servicemen/their dependents and War Widows etc. do not reach the concerned persons as they live in remote areas and are not even aware about their welfare measures. There must be given wider publicity in local newspapers and Door Darshan Channels in regional languages so that the persons concerned can avail the benefits of these measures****. In the instant case, the son of the petitioner went missing in 1986 and could only apply for the benefit of the Scheme issued in 1992 by the Government of India in 1997 even though there were similar Schemes in operation previously. The respondents are thus, directed to issue regular news updates on these measures commencing March, 2007 on a monthly basis, as mentioned above, with copies to be made available with the Tehsildars with whom a list of dependents of Ex-Servicemen and Ex-Servicemen should be kept who may avail these benefits...*

(e) It is well known thatthe Hon'ble Courts have held that that the concept of limitation does not apply at all to continuing wrongs and to recurring causes of action such as pension and pay fixation. A "time limit" or the notion of limitation or delay & laches can only be invoked in matters which may affect third party rights in issues such as promotion etc. or one-time causes of action such as a challenge to a dismissal from service, thereby leading to stale claims upsetting settled rights of other parties. Reference in this regard can be made to the decisions of the Hon'ble Supreme Court in *Union of India v.Tarsem Singh*(2008) 8 SCC 648,*MR Gupta v. Union of India* (1995) 5 SCC 628,*SR Bhanrale v. Union of India*1996 (10) SCC 172and*Madhukar v. State of*

Maharashtra(2014) 15 SCC 565. Of course, at times the Courts may mould the relief and there can be no straitjacket formula in that regard, for example, when the relief is not strictly by way of entitlement by existing rules and flows from legal interpretation, then the arrears can be restricted to three years prior to initiation of litigation, an example would be*Tarsem Singh* (supra), whereas when the entitlement is by way of an existing or vested right or a claim illegally held back then full arrears can be directed to be paid [See *Mastaan Bee* (supra), Three Judge Bench decision in Civil Appeal 3086/12 *Balbir Singh Vs Union of India*(C.A No. 3086 of 2012 decided on 08-04-2016) and *Giridhar Vs State of Maharashtra(2019) 5 SCC 230*].

(f) Further the Hon'ble Supreme Court has also held that financial implications cannot form the basis of determining matters concerning pension and other retiral benefits. Reference in this regard may be made to*Kallakkurichi Taluk Retired Officials Association v. State of Tamil Nadu*(2013) 2 SCC 772,*Haryana State Minor Irrigation Tubewells Corporation v. GS Uppal*2008(7) SCC 375 and the very recent decision of the Hon'ble Supreme Court in *All Manipur Pensioners Association v. The State*

of Manipur(C.A No. 10857 of 2016 decided on 11.07.2019.

(g) The relief however in condonation of shortfall cases cannot be granted from the date of discharge of personnel in all cases since the same has already been moulded by the Hon'ble Supreme Court specifically in Paragraph 12 of*Surender Singh Parmar* (supra) and we are bound by the same. In the said case, while this Tribunal had granted the relief from the date of discharge in the year 1985, the Respondents had protested against the grant of arrears from 1985. The Hon'ble Apex Court had then ruled that the relief shall be payable to litigants only with effect from 14.08.2001, that is, the date of issuance of the letter authorising condonation of deficiency in shortfall. The relevant part of the judgement is as under:

> *...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..."*(Emphasis supplied)

(h) The question of moulding the relief in condonation cases also hence stands answered by the Hon'ble Apex Court and the service pension or the consequent family pension can only be granted with arrears from 14-08-2001 and not prior to the said date. Further we are informed that in cases wherein widows are entitled to dual family pension, the second family pension (in addition to the first family pension) is only authorised with effect from 24-09-2012 as per Ministry of Defence Letter No 01(05)/2010-D(Pen/Policy) dated 17-01-2013, hence dual family pension from the separate military and DSC services shall be regulated in terms of the Respondents' own ibid letter in cases where dual family pension is admissible.

Questions (b) and (c) are also answered accordingly.

46. **Re: (d) Does the judgement of *Bhani Devi v.Union of India and others* – O.A No. 60 of 2013 dated 07.11.2013 decided by AFT lay down the correct legal proposition of law?**

This question also stands fully answered in our discussion above. In fact, there should have been no doubt about the correctness of the decision in *Bhani Devi's* case when it was not in apparent conflict with any other decision and especially in light of the fact that it

was implemented by the Respondents along with many other cases on similar lines prior to and after the decision. However, we need not encumber our opinion with any more words since *Bhani Devi's* decision is already in line with law declared by Constitutional Courts, including by the Hon'ble Supreme Court in *Surender Singh Parmar* and *Chattar Pal* and of the Division Benches of the Hon'ble Punjab & Haryana and Delhi High Courts in *Mani Ram* and *Madan Singh* (supra). In this light of the matter, there is no occasion to even cast the minutest doubt on the decision in *Bhani Devi*.

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

We find that keeping in view the settled proposition and the law already declared by Constitutional Courts and interpreted earlier by this Tribunal as discussed in the preceding paragraphs on the subject of condonation of shortfall of service, this question loses its significance and need not be answered in the instant matter. Once the stand of the Respondents in this regard has already been interpreted and even struck down and read down by judicial intervention and the proposition endorsed by multiple decisions, no purpose is served by delving into

an academic question as far as the present matter is concerned. It needs no underlining that faced with the law declared by Constitutional Courts and also interpreted by benches of this tribunal on one side *vis-a-vis* a policy of the Respondents on the other, this tribunal is bound by judicial pronouncements and not by letters issued by the Respondents. In fact, it is also a settled principle that when there is a clash between law laid down by a Court or an interpretation rendered judicially or even a legal provision, then policy issued to the contrary needs to be ignored. We hence find that there is no need whatsoever to go into this issue once the judicial pronouncements on this matter are clear and binding upon all concerned.

Question No. (e) also stands answered.

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 2(2) of the Armed Forces Tribunal Act, 2007. Though there is no 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.

49. The reference stands answered by us accordingly.

50. The present two cases shall now be placed before the appropriate Bench as per roster for their final consideration and all similar matters of this natureshall now be placed before regular Benches of AFT for consideration in terms of the principles laid down

in this reference. Registry is directed to circulate the judgment to all the Regional Benches of this Tribunal forthwith.

Pronounced in open Court on this 01st day of October, 2019.

(Virender Singh)
Chairperson

(Sunita Gupta)
Member (J)

(Philip Campose)
Member (A)

Neelam/Alex