

[2026 LiveLaw \(SC\) 292](#)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
**MANOJ MISRA, J., MANMOHAN, J.**

CIVIL APPEAL NO \_\_\_\_\_ OF 2026 (Arising out of Diary No(s). 27246/2023) March 24, 2026  
**UNION OF INDIA & ORS. versus BALAKRISHNAN MULLIKOTE (EX HAV 256812 M)**

**Pension Regulations for the Army, 1961 – Regulation 125 & 266 – Pension Regulations for the Army, 2008 – Regulation 44, 173 & 175 – Defence Security Corps (DSC) – Second Service Pension – Condonation of Deficiency in Service – The Supreme Court dismissed the appeals filed by the Union of India, holding that personnel of the Defence Security Corps (DSC) are entitled to seek condonation of shortfall in their qualifying service (up to one year) for the purpose of a second service pension - Key Findings – i. DSC as Part of Armed Forces: DSC constitutes a "Corps" of the Indian Army under the Army Act, 1950, and its personnel are recognized as "Armed Forces personnel"; ii. Applicability of General Rules: Paragraph 266 (1961 Regulations) and Paragraph 173 (2008 Regulations) stipulate that pensionary awards for DSC shall be governed by the same rules applicable to the Regular Army, unless specifically inconsistent; iii. No Inconsistency: There is no "inconsistency" or express prohibition in the DSC - specific chapters against the condonation of shortfall provided in Regulation 125 (1961) or Regulation 44 (2008); iv. Calculation of Service: Before applying condonation, the length of service must be determined by treating a fraction of a year between 3 to 6 months as a completed half-year, as per Note 5 of the MoD letter dated 30th October 1987; v. Executive Letters vs. Regulations: The Government cannot override or amend statutory Pension Regulations through administrative letters (such as those dated 20th June 2017 and 22nd March 2022) to bar condonation benefits. [Relied on *Union of India v. Surender Singh Parmar*, (2015) 3 SCC 404; Paras 31-48]**

WITH CIVIL APPEAL NO. \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 10617/2018), CIVIL APPEAL NO. \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 38229/2018) CIVIL APPEAL NO.5199 OF 2023, CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 30477/2023), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 48314/2023), CIVIL APPEAL NO \_\_\_\_\_ OF 2026 (Arising out of Diary No(s). 1818/2024), CIVIL APPEAL NO \_\_\_\_\_ OF 2026 (Arising out of SLP(C) No. 27725/2024), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 11632/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 32319/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 32321/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 33255/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 32320/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 32795/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 33679/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 34652/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 34253/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 57276/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 58071/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 59355/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 62611/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 58829/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 60221/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 62330/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 63679/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 64995/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 38559/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 64337/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 62372/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 65005/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of SLP(C) No. 510/2026) CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 69413/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 65163/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 69726/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 70272/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary

No(s). 60220/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 62616/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 69755/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 69735/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 73216/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 64998/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 60026/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 73198/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 73265/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 73886/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 64456/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 73224/2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026, (Arising out of Diary No(s). 65002 /2025), CIVIL APPEAL NO \_\_\_\_\_ OF 2026 (Arising out of Diary No(s). 69733 /2025)

*For Petitioner(s): Ms. Archana Pathak Dave, A.S.G. Mr. Mukesh Kumar Maroria, AOR Mr. Jagdish Chandra, Adv. Mr. Kamal Digpaul, Adv. Mr. Digvijay Dam, Adv. Ms. Priyanka Tyagi, Adv.*

## **J U D G M E N T**

### **MANMOHAN, J.**

1. Delay condoned.
2. Leave to appeal granted.
3. Applications for intervention / impleadment are allowed.

### **THE TWO SUBSTANTIAL QUESTIONS OF LAW**

4. The two substantial questions of law that arise for consideration in this batch of appeals are:

A. Whether the Union of India, through the Ministry of Defence, is bound to give effect to Paragraphs 9 and 18 of the Pension Regulations for the Army, 1961 (hereinafter referred to as 'Pension Regulations, 1961') and Pension Regulations for the Army, 2008 (hereinafter referred to as 'Pension Regulations, 2008') respectively, as well as Note 5 appended to the letter dated 30<sup>th</sup> October 1987, while determining the length of qualifying service of personnel serving in the Defence Security Corps (hereinafter referred to as '**DSC**') and

B. Whether such personnel are entitled to seek condonation of deficiency in the qualifying period of service for the purpose of pension eligibility in accordance with Paragraph 125 of the Pension Regulations, 1961 and Paragraph 44 of the Pension Regulations, 2008.

### **ARGUMENTS ON BEHALF OF THE APPELLANTS**

5. Ms. Archana Pathak Dave, learned Additional Solicitor General of India stated that the present batch of matters fall into two distinct categories: one involving a shortfall in qualifying service of less than one year and the other involving shortfall exceeding one year. She has handed over a chart indicating shortfall in service of each of the Respondents. The relevant portion of the said chart is reproduced hereinbelow:-

Sl. No	Case No	Particulars of the individual	QS for Regular Army/ First Service	Date of ReEnrollme nt in DSC	Date of Discharge from DSC	AQS for 2nd Service Pension	Shortfal l for 2 <sup>nd</sup> Service Pension
1	2	3	4 (Y/M /D)	5	6	7 (Y/M /D)	8 (Y/M /D)

1	Diary No 27246 /2023	Ex Hav Balakrishana n Mullikote	<b>22/00/02</b>	24.08.1994	31.05.2008	<b>13/09/08</b>	<b>01/02/22</b>
2	Diary No 10617 /2018	Ex Nb Sub Ram Chander Disodia	<b>19/01/18</b>	20.09.1983	31.05.1997	<b>13/08/11</b>	<b>01/03/19</b>
3	Diary No 38229 /2018	Ex Sep Kanshi Ram	<b>18/06/00</b>	22.12.1986	29.02.2000	<b>13/10/14</b>	<b>01/01/16</b>
4	Diary No 27300 /2023	Ex Nk K Boja Rajan	<b>22/00/00</b>	24.03.2006	29.02.2020	<b>13/11/05</b>	<b>01/00/25</b>
5	Diary No 30477 /2023	Ex Nk Govindan Kutty MC	<b>19/01/13</b>	22.12.1999	31.11.2013	<b>13/11/09</b>	<b>01/00/21</b>
6	Diary No 48314 /2023	Ex Nk Daljit Singh	<b>24/00/02</b>	23.04.2007	31.01.2021	<b>13/09/08</b>	<b>01/02/22</b>
7	Diary No.1818/2024	Ex Sub Ved Prakash	<b>24/00/00</b>	26.06.1992	31.05.2006	<b>13/11/05</b>	<b>01/00/25</b>
8.	SLP(C) 27725 /2024	Ex NK Chinna Vedyappan & 344 ors	<b>22/00/06</b>	08.07.2003	30.09.2017	<b>14/02/22</b>	<b>00/09/08</b>
9	SLP(C)No.11632/ 2 025	Ex Nk Babu Ram	<b>17/00/00</b>	02.08.2006	30/06/2021	<b>14/10/28</b>	<b>00/01/02</b>
10	SLP(C) No.32319/2025	Ex Nk Shyam Lal	<b>24/00/00</b>	29.02.2008	31.07.2022	<b>14/05/03</b>	<b>00/06/27</b>
11	SLP(C) No.32321/2025	Ex Hav Mam Raj sharma	<b>16/03/04</b>	10.10.2008	29.02.2023	<b>14/04/18</b>	<b>00/07/12</b>
12	SLP(C) No.33255/2025	Ex Lnk Jage Ram	<b>15/00/29</b>	03.01.1986	31.10.2000	<b>14/09/28</b>	<b>00/02/02</b>
13	SLP(C) No.32320/2025	Ex Nk Bhaskar Jankiram Shinde	<b>16/01/19</b>	22.03.2005	30.04.2019	<b>14/01/09</b>	<b>00/10/21</b>
14	SLP(C) No.32795/2025	Ex Nk Ramesh Singh	<b>17/00/00</b>	06.02.2006	30.11.2020	<b>14/09/25</b>	<b>00/02/05</b>

15	SLP(C) No.33679/2025	Ex Nk Lekh Raj	<b>21/04/2</b> <b>4</b>	10.08.2003	01.05.201 6	<b>14/10/0</b> <b>0</b>	<b>00/02/0</b> <b>0</b>
16	SLP(C) No.34652/2025	Ex Nk Santosh Kumar Parmanik	<b>17/00/0</b> <b>0</b>	30.05.200 1	29.02.201 6	<b>14/07/2</b> <b>6</b>	<b>00/04/04</b>
17	SLP(C) No.34253/2025	Ex Nk Sher Singh	<b>17/07/1</b> <b>6</b>	11.03.200 8	31.03.202 2	<b>1400/21</b>	<b>01/11/09</b>
18	Diary No.57276/2025	Ex Sep Randhir	<b>17/03/0</b> <b>3</b>	30.04.198 4	30.11.1998	<b>14/07/2</b> <b>7</b>	<b>00/04/03</b>
19	Diary No.58071/2025	Ex Hav Madan Mohan Lal	<b>24/00/0</b> <b>3</b>	07.05.200 9	31.01.202 4	<b>14/08/2</b> <b>5</b>	<b>00/03/05</b>
20	Diary No.59355/2025	Ex Nk Bihari Lal	<b>19/02/2</b> <b>4</b>	05.11.200 2	30.06.201 6	<b>13/07/2</b> <b>9</b>	<b>01/04/08</b>
21	Diary No.62611/25	Ex Nk Ranjit Singha	<b>20/00/2</b> <b>1</b>	11.02.200 8	30.09.202 2	<b>14/07/1</b> <b>9</b>	<b>00/04/03</b>
22	Diary No.58829/2025	Ex Naik Pratap Malick	<b>20/00/1</b> <b>4</b>	16.03.200 9	31.07.202 3	<b>14/04/1</b> <b>6</b>	<b>00/07/18</b>
23	Diary No.60221/2025	Ex Nk Bidhi Chand	<b>16/02/3</b> <b>0</b>	17.01.200 4	30.04.201 8	<b>14/03/1</b> <b>4</b>	<b>00/08/16</b>
24	Diary No.62330/2025	Ex Nk Prem Singh	<b>19/02/1</b> <b>3</b>	19.03.199 3	30.4.2007	<b>14/01/1</b> <b>2</b>	<b>00/10.18</b>
25	Diary No.63679/2025	Ex Nk Om Prakash	<b>15/09.0</b> <b>0</b>	28.05.200 5	31.08.201 9	<b>14/03/0</b> <b>4</b>	<b>00/08/26</b>
26	Diary No 64995/25	Ex Nk Bhakta Man Gurung	<b>22/00/1</b> <b>7</b>	22.09.200 0	31.01.201 5	<b>14/04/0</b> <b>9</b>	<b>00/07/21</b>
27	SLP(C) No.38559/2025	Ex Hav. Kirpal Singh	<b>24/00/1</b> <b>7</b>	28.02.198 5	30.09.199 9	<b>13/09/0</b> <b>7</b>	<b>01/02/23</b>
28	Diary No.64337/2025	Ex Hav Gyan Prakash	-	25.03.200 9	30.04.202 3	<b>14/00/1</b> <b>9</b>	<b>00/11/11</b>
29	Diary No.62372/2025	Ex NK Satyavan Singh	<b>20/03/0</b> <b>8</b>	13.03.200 7	31.01.202 2	<b>14/10.1</b> <b>8</b>	<b>00/01//12</b>

30	Diary No. 65005/2025	Ex Nk Karnail Singh	<b>17/00/0 3</b>	15.06.200 6	31.01.202 1	<b>14/07/1 6</b>	<b>00/04/14</b>
31	SLP(C) No.510/2026	Smt Madhu Kumari	<b>17/00/2 0</b>	31.07.199 6	31.07.2011	<b>14/04/0 6</b>	<b>00/06/24</b>
32	Diary No.69413/2025	Ex Hav Sita Ram	<b>22/00/2 8</b>	03.05.199 5	30.11.2009	<b>14/06/2 7</b>	<b>00/05/03</b>
33	Diary No.65163/2025	Ex Lnk Naginder Singh	<b>17/10/0 6</b>	24.04.200 3	28.02.201 7	<b>13/10/0 4</b>	<b>01/01/26</b>
34	Diary No.69726/2025	Ex Sep Subhash Chand	<b>22/00/0 9</b>	24.04.199 7	30.04.2011	<b>14/00/0 6</b>	<b>00/11/24</b>
35	Diary No. 70272/2025	Ex Nk Baljinder Singh	<b>18/11/2 2</b>	11.07.200 7	31.01.202 2	<b>14/06/2 0</b>	<b>005/05/1 0</b>
36	Diary No.60220/2025	Babu Ram	<b>17/08/1 9</b>	02.08.200 6	31.08.202 0	<b>14/01/0 0</b>	<b>00/11/00</b>
37	Diary No.62616/2025	Deepak Sharma s/o Ex Sep Girdhari lal	<b>15/00/0 7</b>	18.09.198 3	31.10.199 7	<b>14/01/1 4</b>	<b>00/10/21</b>
38	Diary No.69755/2025	Ex Nk Thangzalam	<b>22/09/1 5</b>	03.08.200 4	31.03.201 9	<b>14/07/2 9</b>	<b>00/04/06</b>
39	Diary No 69735/2025	Ex Nk Ishwar Singh	<b>18/04/0 8</b>	16.08.199 7	31.07.2011	<b>13/11/2 0</b>	<b>01/00/15</b>
40	Diary No 73216/2025	Ex Nk Chiman Kimar	<b>24/00/1 3</b>	29.02.200 8	31.03.202 2	<b>14/01/0 1</b>	<b>00/10/29</b>
41	Diary No 64998/2025	Ex Nk Ashok Kumar	<b>24/00/1 2</b>	25.05.200 7	30.06.202 1	<b>14/01/0 7</b>	<b>00/10/23</b>
42	Diary No 60026/25	EX NK RAM JANAM DUBEY	<b>24/00/1 5</b>	26.03.200 8	31.12.202 2	<b>14/09/0 6</b>	<b>00/02/25</b>
43	Diary No 73198/25	EX NK SURJIT SINGH	<b>20/00/1 2</b>	10.09.199 3	31.09.200 8	<b>14/04/2 1</b>	<b>00/07/10</b>

44	Diary No. 73265/25	Ex Nk Kuldip Singh	<b>22/00/0 9</b>	04.03.200 8	28.02.202 2	<b>14/03/2 8</b>	<b>00/08/02</b>
45	Diary No. 73886/25	Ex Hav (Hony Nb Sub) Nirmal Singh	<b>22/00/1 5</b>	24.12.199 3	31.10.200 7	<b>13/10/1 0</b>	<b>01/01/22</b>

6. Subsequently, learned ASG has handed over another chart of four other Respondents. The said chart is reproduced hereinbelow: -

Sl. No.	Case No.	Name of the individual	Date of Enrollment in DSC	Date of Discharge from DSC	Shortfall in second service	Duration in second services
46	Dy No 65002/2025	Sarup Chand	30.05.2005	31.08.2019	271 days	14 Years 9 days
47	Dy No 69733/2025	Suresh Kumar	27.01.2007	31.05.2021	256 days	14 Years 109 days
48	Dy No 64456/2025	Kishan Chand	25.05.1999	31.01.2014	3 months 23 days	14 years 8 months 7 days
49	Dy No 73224/2025	Paras Nath Yadav	29.12.2007	31.10.2022	1 month 27 days	14 years 10 months 3 days

7. She submitted that at the time of re-employment in the DCS, an individual is afforded two distinct options: (i) to continue drawing pension from the Regular Army and retain retirement gratuity, in which case his prior service in the Regular Army is not reckoned for pensionary benefits in the DSC or (ii) to cease drawing pension, refund the pension already received with effect from the date of reemployment in the DSC and have his previous service counted as qualifying service towards the current engagement in the DSC.

8. Attention of this Court was invited to Paragraph 173 of the Pension Regulations, 2008, which stipulates that pensionary awards to DSC personnel are governed by the same provisions applicable to the Regular Army, save where inconsistent with the specific provisions relating to DSC (Chapter VIII, Paragraphs 173–181). It was contended that individuals who, at the time of re-employment, opted to continue drawing pension from the Regular Army are entitled to pension for service rendered in the DSC under Paragraph 175(a)(i), and not under Paragraph 47 of the Pension Regulations, which applies exclusively to personnel of the Regular Army. The very existence of a separate provision, it was urged, demonstrates the inconsistency contemplated in Paragraph 173, thereby excluding the applicability of condonation of shortfall for DSC personnel under Paragraph 44 of the Pension Regulations, 2008. It was emphasised that, had Paragraph 44 been intended to apply equally to both Regular Army and DSC personnel, there would have been no necessity to incorporate Paragraph 175(a)(i) specifically for DSC personnel.

9. Ms. Dave, learned ASG further pointed out that under Paragraph 47, the qualifying service for grant of service pension to Personnel Below Officer Rank (hereinafter, 'PBOR') of the Regular Army is fixed at fifteen (15) years. In contrast, for DSC personnel, Paragraph 175(a)(i) prescribes qualifying service of "15 years or more." Moreover, the expression "qualifying service" in Paragraph 47 is preceded by the word "Minimum," whereas in Paragraph 175(a)(i) it is preceded by the word "Actual." This distinction, it was submitted, reinforces the inconsistency and excludes the applicability of condonation of shortfall for DSC personnel.

10. On a holistic reading of the relevant provisions, it was contended that condonation of shortfall in service is not available to DSC personnel for purposes of eligibility for a second service pension. To make this exception explicit, the Ministry of Defence, Department of Ex-Servicemen Welfare (MoD, DESW),

issued a letter dated 20<sup>th</sup> June 2017, categorically barring condonation of shortfall in service for DSC personnel seeking eligibility for a second service pension. The said letter dated 20<sup>th</sup> June 2017 is reproduced hereinbelow:

*"No. 14(02)/2011-D(Pen/Pol)*  
*Government of India*  
*Ministry of Defence*  
*Department of Ex-Servicemen Welfare*  
*New Delhi*

*Dated 20th June 2017*

*To,*

*The Chief of the Army Staff*

*The Chief of the Naval Staff*

*The Chief of the Air Staff*

*Subject: Condonation of deficiency in service for grant of 2nd service pension in respect of DSC (Defence Security Corps) personnel.*

*Condonation of deficiency in service for eligibility of service pension has been mentioned in Rule 125 of Pension Regulation Part-I 1961 (Rule 44 of Pension Regulation Part-I 2008). This rule is applicable in all cases except the case mentioned under the Rule 125 of Pension Regulation Part-I 1961 (Rule 44 of Pension Regulation Part-I 2008). Deficiency in service for eligibility of Service pension or Reservist pension or Gratuity in lieu may be condoned by competent authority up to 12 month as mentioned in GoI, MoD letter No. 4684/DIR(PEN)/2001 dated 14th August 2001.*

2. *Representations of the ex-servicemen who have been granted Service pension from Army side and re-employed in DSC are received for condonation of deficiency in service for the 2nd service pension from DSC. The matter has been examined and decided that condonation of deficiency in qualifying service is to be accorded on merit and in the deserving cases to make individual eligible for at least one service pension. Condonation of deficiency in qualifying service for grant of 2nd service pension in respect of DSC personnel has no merit.*

3. *It is conveyed that the intention behind condonation of deficiency in service for grant of service pension is that the individual must not be left high & dry but should be made eligible for at least one service pension. In view of above, it is clarified that no condonation shall be allowed for grant of second service pension.*

4. *The Pension Regulation for the Army shall stand amended by inserting item "(iv) an individual who is eligible for 2nd service pension for the service rendered by individual in respect of DSC" below Regulation 44 of Pension Regulation for the Army Pt-I (2008).*
5. *All other terms and conditions shall remain unchanged.*
6. *This issues with the concurrence of Finance Division of this Ministry vide their ID No 10(16)/2016/FIN/PEN dated 26/08/2016*
7. *Hindi version will follow.*

*Yours faithfully*

*Sd/-*

*(K.T. Lepcha) Under Secretary to the Government of India"*

**11.** Learned senior counsel for the Appellants submitted that, from the foregoing provisions and clarifications, it is evident that the consistent stand of the Appellants has been that the provision for condonation of shortfall was intended solely to ensure that service personnel are able to secure at least one pension, the underlying objective being that no individual should be left without pensionary support.

**12.** It was emphasised that all Respondents herein are already in receipt of service pension from the Regular Army. None of them exercised the option of counting their former service towards DSC service at the time of re-enrolment. The option exercised by them was final, and it was done with full knowledge that unless they rendered the actual qualifying service of fifteen (15) years or more, as mandated under Paragraph 175 of the Pension Regulations, 2008, they would not be eligible for pension in respect of their service in the DSC.

**13.** Learned senior counsel for the Appellants further contended that the question of whether the provision for condonation of deficiency in service should extend to DSC personnel was examined and clarified by the Ministry of Defence, Department of Ex-Servicemen Welfare (MoD/DESW), on the basis of recommendations made by an Expert Committee. The decision conveyed by the MoD on 22<sup>nd</sup> March 2022 contains the following excerpts:

*"1. As per Regulation 125 of Pension Regulations for the Army 1961, except in the case of (a) an individual who is discharged at his own request or (b) an individual who is eligible for special pension or gratuity under regulation 164 or (c) an individual who is invalided out with less than 15 years of service, deficiency in service for eligibility to service pension or reservist pension or gratuity in lieu may be condoned by competent authority up to six months in each case.*

*2. As per clarification issued vide Army Hqrs letter No.83370/AG/PS(a) dated 7<sup>th</sup> December, 1962 and 65745/P/DSC-2 dated 3<sup>rd</sup> December 1992, the condonation of deficiency under Rule 125 of Pension Regulations for Army 1961 will not be allowed for grant of second service pension. Condonation of deficiency, under Rule 125 of Pension Regulations for Army 1961, up to six months by Officer-in-Charge Records and up to one year are being done by Adjutant General (AG).*

*3. The issue was earlier considered in view of few AFT judgments wherein directions were given for condonation of deficiency in service for the purpose of granting 2nd service pension. It was decided in a meeting held between Secretary (ESW) and AG on 06.02.2012 that the position would be examined and clarified.*

*4. CGDA to whom the matter was referred for their views/comments, had stated that condonation of deficiency in Qualifying Service for grant of service pension is to be granted only on merit and in deserving cases to make individual eligible for at least one pension, however in the instant case, the individual is already drawing pension from his 1st service therefore grant of*

*condonation for deficiency of service for 2nd spell has no merit. CGDA has further stated that, it is also pointed out that prior to 6th CPC, element of weightage was not allowed to DSC personnel for grant of 2nd pension on the analogy that no dual benefit shall be allowed on same accord hence on similar lines the proposal for condonation deficiency in service for grant of 2nd service pension in respect of DSC personnel has no merit.*

5. *It was conveyed to Service Hqrs with the approval of Secretary (ESW) vide letter dated 23.04.2012 that the intention behind grant of condonation for deficiency of service for grant of service pension is that the individual must not be left high & dry but should be made eligible for at least one pension. On the principle that no dual benefit shall be allowed on same accord, it was clarified that no condonation shall be allowed for grant of 2nd service pension. The matter regarding condonation of shortfall in service towards second service pension in respect of Defence Security Corps (DSC) personnel was examined in DESW in consultation with CGDA and MoD (Fin/Pen) and with the approval of the then Hon'ble Raksha Mantri Govt, letter No. 14(2)/2011/D(Pen/Pol) dated 20.07.2017 has been issued vide which it has been clarified that condonation of deficiency in service is not applicable in the case of second service pension for the service rendered by personnel in DSC."*

14. Ms. Dave pointed out that Paragraph 44 of the Pension Regulations, 2008, if applicable, permits condonation of shortfall only up to twelve (12) months, and contains no provision for condonation beyond that period. With respect to the second category of cases, involving shortfall of more than one year, she contended that the courts below erred in relying upon the judgment of this Court in ***Union of India v. Surender Singh Parmar, (2015) 3 SCC 404***. That judgment, she argued, pertained to the grant of a first service pension and was based on provisions arising from the Fourth Central Pay Commission (CPC) letter dated 30<sup>th</sup> October 1987, which were subsequently clarified and superseded by the Fifth CPC letter dated 3<sup>rd</sup> February 1998, and thereafter incorporated in Paragraph 18 of the Pension Regulations, 2008.

15. In conclusion, learned Additional Solicitor General submitted that the grant of a second pension itself constitutes an additional benefit to individuals already in receipt of a first service pension. To permit condonation of shortfall in service for such second pension would amount to creating an exception to the general rule mandating fifteen (15) years of qualifying service. Extending such condonation to DSC personnel, who are required to render actual qualifying service of fifteen (15) years or more, would amount to adding an exception upon an exception. She contended that in no circumstances could such condonation be extended to cases where the shortfall in service exceeds twelve (12) months.

#### **ARGUMENTS ON BEHALF OF THE RESPONDENTS**

16. *Per contra*, learned counsel for the Respondents submitted that Paragraphs 125 and 44 of the Pension Regulations, 1961 and 2008 expressly provide for condonation of shortfall in qualifying service for Army personnel. According to them, neither of these provisions contain any prohibition against condonation of deficiency in qualifying service for the second spell of service rendered in the DSC.

17. They emphasised that the DSC is a branch of the Army consisting of former personnel of the defence services wherein they are re-enrolled in the Army. DSC personnel, being an integral part of the Indian Army, are subject to the Army Act, 1950 and governed by the applicable statutory provisions. Further, DSC personnel are also governed by the same general pensionary rules as the Regular Army except where there is any specific inconsistency in the provisions as provided in Paragraphs 266 and 173 of the Pension Regulations, 1961 and 2008.

18. It was further submitted that while former Army personnel who opt to join civil government service after retirement are entitled to earn a second pension upon rendering ten years of service, those who are encouraged to join the DSC instead of civil employment are placed at a disadvantage. This is because DSC personnel can earn a second pension only after completing fifteen years of service, and condonation of shortfall is disallowed by the Union of India under its interpretation of the Regulations.

19. They contended that although there is no express prohibition against condonation of shortfall in the second spell of service in the DSC, the Union of India has, from time to time, issued letters imposing such restrictions. These prohibitory letters, they argued, have been repeatedly read down or struck down by judicial pronouncements, yet the Union of India has continued to re-issue them in disregard of settled law.

20. They stated that the first such prohibitory letter was, in fact, issued in the year 1962, which was read down by a Division Bench of the Punjab and Haryana High Court in **LPA 755/2010** titled **Union of India vs. LNK DSC Mani Ram** decided on 05<sup>th</sup> July 2010. The issue was also interpreted by the Delhi High Court in **WP(C) No.9593/2003** titled **Ex. Sep. Madan Singh vs. Union of India** decided on 31<sup>st</sup> August 2006. Then again, another letter was issued in the year 2012 by the Union of India, once more trying to reintroduce the same provisions which had been read down and interpreted, which letter was also struck down by the Principal Bench of the AFT in OA 60/2013 titled **Bhani Devi vs. Union of India** decided on 07<sup>th</sup> November 2013. Another letter was issued by the Union of India in the year 2017 introducing a prohibition for condonation of shortfall in second spell of service which was again struck down by the Kochi Bench of the AFT in OA 131/2017 titled **Mohan T vs. Union of India** decided on 12<sup>th</sup> October 2017.

21. They submitted that the larger Bench of the AFT, Principal Bench, New Delhi in **Smt. Shama Kaur vs. Union of India, OA No.1238 with MA No.923 of 2016 & connected matter dated 1<sup>st</sup> October 2019** noted that though the stand of the Union of India had been consistently struck down and read down, yet the Union of India continued to issue similar prohibitory letters on the same issue from time to time as if a struck down/read down letter could be revalidated or brought back to life by the mere issuance of a similar letter again. The larger Bench emphasised that a dead provision or a logic declared illegal or arbitrary could not be revived or brought back to 'life' simply by issuing it again and again and that such attempts by the Union of India were only an afterthought to 'overrule' judicial pronouncements since there was no such apparent intention of the rule-makers to prohibit such benefits in the second spell of service in the DSC which had no link with past service and had it been so, it would have been specified or hinted at in the original regulations in the first go or there would have been a separate regulation for DSC when the regulations had been originally published.

22. The learned counsel for the Respondents pointed out that Paragraphs 9 and 18 of the Pension Regulations, 1961 and 2008, read with the Government of India letter dated 30<sup>th</sup> October 1987, provide that a fraction of a year equal to three (3) months and above but less than six (6) months shall be treated as a completed half-year. By application of these provisions, the Respondents' total service is to be reckoned as fourteen (14) years. If the one-year deficiency in qualifying service is condoned under Paragraph 44, the total service in DSC would amount to fifteen (15) years. Consequently, under Paragraph 47, a personnel with fifteen (15) years of qualifying service is entitled to pension. Paragraphs 9 and 18 of the Pension Regulations, 1961 and 2008 as well as relevant portion of the letter dated 30<sup>th</sup> October, 1987 are reproduced hereinbelow: -

Paragraph 9 of the Pension Regulations, 1961

**“Additional benefit at half a year’s pension or gratuity in cases where the total period of qualifying service exceeds completed years by six months or more**

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.”

Paragraph 18 of the Pension Regulations, 2008

**“Half a year’s pension or gratuity**

18. (a) In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service. The period of nine months and above would, therefore, be two half years. This shall however not be applicable for completing minimum qualifying service for pensionary awards.”

Letter dated 30<sup>th</sup> October 1987

“No.1(5)/87D(Pensions/Services) Government of India/Bharat Sarkar  
Ministry of Defence/Raksha Mantralaya

New Delhi, dated the 30th October, 1987,

To

The Chief of the Army Staff

The Chief of the Naval Staff

The Chief of the Air Staff

Subject: - Implementation of the Government decisions on the recommendations of the Fourth Central Pay Commission regarding pensionary benefits for the Armed Forces officers and personnel below officer rank retiring or dying in harness on or after 1.1.1986.

Sir,

I am directed to refer to the Government decisions on the recommendations of the Fourth Central Pay Commission as notified vide Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners’ Welfare Resolution No.2/13/87-PIO dated 18<sup>th</sup> March, 1987 and to convey the sanction of the President to the modifications, to the extent specified in this letter, in the rules/regulations concerning pensionary benefits of the Commissioned Officers (including MNS and Territorial Army Officers) and personnel below officer rank (including NCs(E) of the three Services, Defence Security Corps and the Territorial Army) (hereinafter collectively referred to as Armed Forces personnel).....

xxxx xxxx xxxx

**5. Qualifying service**

(a) The term ‘Qualifying Service’ (QS) shall mean:-

Qualifying service reckonable for

Category Pension Death-cum-Retirement Retiring/Service

Gratuity /Invalid/Terminal

Gratuity xxx xxx xxx

*Personnel Actual qualifying service  
below rendered by the individual plus a weightage  
officers rank of  
(including  
Commission  
ed Officers*

*5 years subject to the total qualifying service including weightage not exceeding 33 years.....*

*Notes: .....*

*(5) In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service.”*

**23.** Learned counsel for Respondents submitted that this Court, in **Surender Singh Parmar** (supra), held that Army personnel are entitled to the benefit of rounding off as well as condonation of shortfall in qualifying service.

**24.** Learned counsel for the Respondents lastly submitted that once the issue had been repeatedly adjudicated and settled, not only on technical grounds but also on principles of logic and multiple judgments had attained finality and been implemented by the Appellants including by a larger Bench of the Principal Bench of the AFT, it was wholly inappropriate for the Union of India to continue raising the same issue time and again.

### REJOINDER

**25.** In rejoinder, learned Additional Solicitor General stated that Paragraphs 9 and 18 of the Pension Regulations, 1961 and 2008 respectively stipulate that a fraction of a year equal to three months and above but less than six months shall be treated as a completed half-year. However, she emphasised that this provision is unambiguous in limiting its application solely to the calculation of the length of qualifying service, and not to the completion of the minimum qualifying service required for pension, which for DSC personnel remains fifteen (15) years or more. In support of her submission, she relied upon the judgment of this Court in **Ex Sep Chhatar Pal vs. Union of India & Ors., Civil Appeal No. 6692 of 2019**, which she stated had considered the judgment of this Court in **Union of India vs. Surender Singh Parmar** (supra) and Paragraph 9 of the Pension Regulations, 1961. The relevant portion of the judgment in **Ex Sep Chhatar Pal** (supra) is reproduced hereinbelow: -

*“...Learned senior counsel appearing for the respondents submitted that the case for relaxation of the qualifying service was duly considered pursuant to the direction issued by the Armed Forces Tribunal. It was found that the appellant had not completed three years consecutive period with exemplary remarks in DSC. He earned six red ink entries due to indisciplined attitude/character. As he had completed only 13 years and 332 days which is a period short by 79 days for 14 years service, we are of the opinion that the appellant is not entitled to pension.*

*Regulation 9 of the Pension Regulations for the Army, 1961 (Part-I) reads as follows :*

*“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.”*

*It is clear from Regulation 9 that it is the qualifying service in excess of the completed years which has been dealt with under Regulation 9. The appellant cannot get any benefit from this Regulation as his service was only for 13 years and 332 days. So far as the judgment of this Court in Parmar’s*

*case is concerned, the appellant therein was voluntarily discharged from service. Therefore, the said judgment is not applicable to the facts of this case as the discharge of the appellant herein is not voluntary. In the instant case, the service record of the appellant was taken into account by the respondents while reconsidering his case for relaxing the qualifying service. We are of the considered opinion that relaxation of the period of one year has already been granted in spite of which the appellant fell short by 79 days for completion of 14 years....”*

### REASONING

#### DSC PART OF "ARMED FORCES PERSONNEL”

26. DSC has been constituted with the primary responsibility of providing security cover to defence installations of the three Armed Services as well as civil establishments functioning under the Ministry of Defence. The contribution of the three services towards DSC recruitment is 75% Ex-Army, 1% Ex. Navy/Airforce and 24% Ex. Territorial Army. Unlike Regular Army, the employment in DSC is contractual in nature for initial period of ten years extendable till the age of superannuation i.e. 55 years of age based on various factors like discipline, medical category, annual confidential reports.

27. In accordance with the Rule 187(1)(r) of the Army Rules, 1954, read with Section 3(vi) of the Army Act, 1950, the DSC constitutes a “Corps” of the Indian Army. Consequently, DSC personnel, together with other defence personnel, are collectively recognised as “Armed Forces personnel”.

#### PENSIONARY PROVISIONS APPLICABLE TO REGULAR ARMY MEN ARE EQUALLY APPLICABLE TO DSC PERSONNEL EXCEPT WHEN ‘INCONSISTENT’

28. Paragraph 266 of the Pension Regulations, 1961 and Paragraph 173 of the Pension Regulations, 2008, stipulate that the pensionary provisions applicable to PBOR of the Regular Army shall govern pensionary awards to DSC personnel, save where such provisions are “inconsistent” with the Regulations specifically applicable to DSC.

29. It is a settled principle of law that provisions are said to be ‘inconsistent’ when they are mutually contradictory to the extent that the operation of one necessarily implies the negation of the other. In legal parlance, the term ‘inconsistent’ connotes a state of contradiction, repugnancy, or irreconcilability. Two or more provisions are inconsistent if they cannot co-exist harmoniously, and if their simultaneous application results in conflict, confusion, or legal uncertainty. The judicial duty, therefore, is to eschew a ‘head-on clash’ between provisions of the same Regulations and, wherever possible, to adopt a construction that harmonises apparently conflicting provisions. **[See : *University of Allahabad vs. Amritchand Tripathi (1986) 4 SCC 176, Krishna Kumar vs. State of Rajasthan (1991) 4 SCC 258, Sultana Begum vs. Premchand Jain (1997) 1 SCC 373, CIT vs. Hindustan Bulk Carriers, (2003) 3 SCC 57 and Afjal Imam vs. State of Bihar (2011) 5 SCC 729*].**

30. Accordingly, all pensionary provisions applicable to Regular Army personnel extend equally to DSC personnel unless they are patently contrary, irreconcilable, contradictory, or repugnant to the DSC-specific provisions. Paragraphs 266 of the 1961 Regulations and 173 of the 2008 Regulations are reproduced hereinbelow:

#### Paragraph 266 of the Pension Regulations, 1961

*“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.”*

#### Paragraph 173 of the Pension Regulations, 2008

*“173. The grant of pensionary awards to personnel of the Defence Security Corps shall be governed by the same Regulations as are applicable to Personnel Below Officer Rank of the Army, except where they are inconsistent with the provisions of the Regulations in this chapter.”*

**THE APPELLANTS SHALL FIRST DETERMINE THE LENGTH OF QUALIFYING SERVICE**

**31.** Paragraphs 9 and 18 of the Pension Regulations, 1961 and 2008 as well as the Note 5 of the letter dated 30<sup>th</sup> October, 1987 stipulate that in calculating the length of qualifying service, fraction of a year equal to three months and above but less than six (6) months shall be treated as a completed one half year and reckoned as qualifying service.

**32.** Consequently, this Court is of the considered view that the Appellants must first determine the length of qualifying service of each of the Respondents. In undertaking such computation, the Appellants are enjoined to give effect not only to the relevant provisions of the Pension Regulations but also to the beneficial stipulation contained in Note 5 of the Government of India letter dated 30<sup>th</sup> October 1987, which reads as follows:

*“Notes: .....*

*(5) In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service.”*

**CONDONATION OF SHORTFALL OF QUALIFYING SERVICE IS SPECIFICALLY PROVIDED IN REGULATIONS 1961 AND 2008**

**33.** The condonation of shortfall of qualifying service up to twelve (12) months is specifically provided in Paragraph 125 of Pension Regulations, 1961 and Paragraph 44 of Pension Regulations, 2008. These provisions make it clear that the rule-makers contemplated situations where a personnel might fall short of the prescribed qualifying service and accordingly incorporated a mechanism for condonation. Paragraphs 125 of the 1961 Regulations and 44 of the 2008 Regulations are reproduced hereinbelow-

**Paragraph 125 of the Pension Regulations, 1961**

***“Condonation of deficiency in service for eligibility to service/reservist pension***

*125. Except in the case of –*

- (a) an individual who is discharged at his own request;*
- (b) who is eligible for special pension or gratuity under Regulation 164 or*
- (c) an individual who is invalided with less than 15 years of service. deficiency in service for eligibility to service pension/reservist pension/ gratuity in lieu may be condoned by a competent authority upto six months in each case”*

**Paragraph 44 of the Pension Regulations, 2008**

***“Condonation of deficiency in service for eligibility to pension/gratuity***

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

- (i) an individual who is discharged at his own request;*
- (ii) an individual who is invalided with less than 15 years of service.*
- (iii) who is eligible for special pension or gratuity under these Regulations.”*

**34.** The contention advanced by the Appellants that the DSC Chapter contains no provision analogous to Paragraphs 125 or 44 of the Pension Regulations, 1961 and 2008, which permit condonation of shortfall in service, is untenable. This argument disregards express language of Paragraphs 266 and 173 of the Pension Regulations, 1961 and 2008,

which categorically provide that the pensionary provisions applicable to PBOR of the Regular Army shall equally govern pensionary entitlements of DSC personnel. By virtue of the principle of *'incorporation by reference'*<sup>1</sup>, the pensionary provisions applicable to PBOR of the Regular Army extend to DSC personnel, thereby entitling the Respondents to condonation of shortfall in qualifying service under Paragraphs 125 and 44 of the respective Regulations. Moreover, apart from making a bare assertion that condonation under these provisions is inapplicable to DSC service, the Appellants have failed to identify any express provision within the DSC-specific chapters that prohibits such condonation.

**NO INCONSISTENCY BETWEEN PARA 175 AND PARAS 44, 47 OF PENSION REGULATIONS, 2008.**

**35.** Paragraph 175(a)(i) stipulates the conditions precedent to be fulfilled for grant of pension and prescribes the methodology for computation thereof. Significantly, it contains no embargo or prohibition against condonation of shortfall in qualifying service. Accordingly, this Court finds no inconsistency between Paragraph 175 and Paragraph 44 of the Pension Regulations, 2008.

**36.** The mere existence of a separate provision for service pension in the form of Paragraph 175 of the Pension Regulations, 2008, does not, by itself, establish inconsistency so as to exclude the applicability of condonation of shortfall for DSC personnel under Paragraph 44 of the Pension Regulations, 2008.

**37.** It is pertinent to reiterate that when a person joins DSC, he has two options, either to get his former army service counted towards his subsequent DSC service and take one full pension for two service spells or opt for continuance of his former pension, if any, and then earn separate retiral benefits from DSC without counting his former service, in which case the subsequent service in DSC is wholly independent and divorced from the previous army service. All cases before this Court belong to the second category as the Respondents have not taken the benefit of former service and individuals have been re-enrolled in DSC as a separate entity. However, the argument that none of the Respondents opted for counting of former service towards DSC Service at the time of re-enrolment as they knew that if they did not render the actual qualifying service of 15 years or more as mandated under Paragraph 175 of the Pension Regulations, 2008, they will not be eligible for pension for the service rendered in DSC is based on presumption and assumption and is not borne out from the explicit language of the Regulations.

**38.** Further, no merit attaches to the Appellants' contention that the terminology employed in relation to qualifying service in Paragraph 175(a)(i) and Paragraph 47 of the Pension Regulations, 2008 is different. In the opinion of this Court, such contention amounts to mere *'hairsplitting'*. Both Paragraphs unequivocally stipulate that to qualify for service pension, DSC personnel must render fifteen (15) years of service. Paragraphs 47 and 175(a)(i) of the Pension Regulations, 2008 are reproduced herein below:

***"Minimum qualifying service for service pension***

***47. Unless otherwise provided for, the minimum qualifying service for earning a service pension is 15 years.***

***Option to continue to draw military pension***

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<sup>1</sup> According to Francis Bennion *Statutory Interpretation* Fourth edition "It is a common device of... drafters to incorporate earlier statutory provisions by reference, rather than setting out similar provisions in full. This saves space, and also attracts the case law and other learning attached to the earlier provisions".

175. (a) *The retired Armed Forces personnel re-employed in Defence Security Corps and who opted under Regulation 174(b)(i) to continue to draw pension and retain retirement gratuity including service gratuity, if any, for former service in the Armed*

*Forces, shall for his service with Defence Security Corps, be entitled to the following:*

(i) *Service Pension - In case his service in Defence Security Corps is 15 years or more, service pension shall be calculated as per Regulation 50 for actual qualifying service rendered in the Defence Security Corps without the element of weightage.”*

39. This Court is of the view that, in the absence of any inconsistency between the provisions for condonation and those dealing with DSC service, it is not open to the Appellants to contend that Paragraph 125 of the 1961 Regulations and Paragraph 44 of the 2008 Regulations, which expressly provide for condonation of shortfall in service, are inapplicable to DSC personnel.

#### CONSISTENT JUDICIAL VIEW

40. This Court notes that the consistent view of the High Courts [Punjab and Haryana High Court in ***Union of India v. LNK DSC Mani Ram, LPA No. 755 of 2010, decided on 5 July 2010***, Delhi High Court in ***Ex Sep. Madan Singh v. Union of India, W.P.(C) No.9593 of 2003, decided on 31 August 2006***] as well as the Principal Bench of the Armed Forces Tribunal in ***Smt. Shama Kaur*** (supra), has been in favour of the Respondents. These judgments have held the field for long and have been accepted and implemented by the Union of India. The relevant portion of the judgment in ***Smt. Shama Kaur*** (supra) is reproduced hereinbelow:

*“.....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 judgment, 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.”*

41. Accordingly, this Court holds that the Respondents are entitled to condonation of shortfall in qualifying service up to one (1) year, in accordance with Paragraph 125 of the Pension Regulations, 1961 and Paragraph 44 of the Pension Regulations, 2008 after determining the length of qualifying services in accordance with Paragraphs 9 and 18 of the Pension Regulations, of 1961 and 2008 respectively, as well as Note 5 appended to the letter dated 30<sup>th</sup> October 1987.

#### GOVERNMENT CANNOT AMEND REGULATIONS BY WAY OF LETTERS

42. This Court is of the considered opinion that once the Pension Regulations specifically provide for condonation of shortfall in minimum DSC service, it is not open to the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare (MoD/DESW), to stipulate an exception by way of executive letters. While the Government may issue beneficial circulars/letters or clarifications where ambiguity exists, it cannot, by administrative fiat, amend or override clear and categorical provisions of the Regulations. As long as the Regulation remains valid and on the ‘*statute-book*’, it cannot be deemed to have been amended by letters such as those dated 20<sup>th</sup> June 2017 and 22<sup>nd</sup> March 2022.

#### ISSUE OF LIMITATION

43. Since the judgment of this Court in ***Union of India & Ors. vs. Tarsem Singh, (2008) 8 SCC 648*** was not invoked during the course of arguments, this Court refrains from examining the issue of limitation in the present matter. Nonetheless, it is pertinent to note that a recent coordinate Bench, in ***Union of India through its Secretary & Ors. vs. SGT***

**Girish Kumar & Ors., 2026 SCC OnLine SC 194**, has reaffirmed the settled principle that pension is neither a bounty nor an ex gratia payment dependent upon the largesse of the State. It constitutes a deferred portion of compensation for past service, which, upon fulfilment of the governing conditions, matures into a vested and enforceable right. Pensionary entitlements, therefore, partake the character of property and cannot be withheld, curtailed, or extinguished save by authority of law. The relevant portion of the judgment passed by the coordinate Bench in **Union of India through its Secretary & Ors. vs. SGT Girish Kumar & Ors.** (supra) is reproduced hereinbelow: -

*“...This Court has, in a consistent line of decisions, recognised that right to receive disability pension is a valuable right and once found due, the benefit of the same has to be given from the date it became due. The same cannot be curtailed by restricting the benefit to a period of three years preceding the filing of the original application.....The reliance placed by the appellant on the decision of a two-Judge Bench of this Court in Tarsem Singh (supra) is of no assistance to it, as the legal landscape did not remain static after decision in Tarsem Singh. Subsequently, a three-Judge Bench of this Court in Ram Avtar (supra), decided the issue of applicability of instruction dated 31.01.2001 and the aforesaid decision is in rem.....Thus, the objections founded on the delay and limitation are without any merit....”*

In any event, the said question of law is left open.

#### NO BAR ON DSC PERSONNEL EARNING SECOND SERVICE PENSION

44. The contention of the Appellants that the provision for condonation of shortfall was intended only to ensure grant of a single defence pension is contrary to the express language of the Regulations.

45. Indeed, during the course of hearing, both parties were ad idem that a conjoint reading of Paragraph 6 with Paragraph 174(1)(b) of the Pension Regulations, 2008, reveals no bar on DSC personnel earning a second service pension. Such entitlement does not arise from the same service, post, or continuous spell of employment, but from a distinct and independent engagement.

46. Consequently, the second spell of service in the DSC is separate and distinct from the first spell in the Regular Army. Condonation of shortfall in DSC service is therefore entirely consistent with the scheme of the Army Regulations and does not create any inconsistency.

#### ANSWERS TO THE TWO SUBSTANTIAL QUESTIONS OF LAW

47. This Court is of the view that Union of India through the Ministry of Defence shall determine the length of qualifying services in accordance with Paragraphs 9 and 18 of the Pension Regulations, of 1961 and 2008 respectively, as well as Note 5 appended to the letter dated 30<sup>th</sup> October 1987.

48. If, upon determination of the length of qualifying service, there remains a shortfall of one year or less, the Respondents shall be entitled to seek condonation of such deficiency for the purpose of pension eligibility, in accordance with Paragraph 125 of the Pension Regulations, 1961 or Paragraph 44 of the Pension Regulations, 2008. This position has already been affirmed by this Court in **Surender Singh Parmar** (supra). The relevant portion of the said judgment is reproduced hereinbelow: -

*“3. The factual matrix of the case is as follows : the respondent joined the Indian Navy on 12-8-1971 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 24-6-1985. 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 30-10-1987. The appellant denied the said benefit to the respondent vide order dated 14-8-2001.

4. The respondent initially approached the High Court of Delhi by filing Writ Petition (C) No. 12507 of 2004. It was pointed out before the High Court that the Division Bench of the Bombay High Court titled *Gurmukh Singh v. Union of India* vide judgment dated 22-11-2006 declared the Navy (Pension) Regulation 82(a) as null and void being ultra vires to Article 14 of the Constitution of India. Regulation 82(a) provided that the benefit of condonation of shortfall in pensionable service shall not be applicable to the case in which a sailor got the discharge from the service at his own request. It was also brought to the notice of the High Court that similar finding was given by the Delhi High Court in the case of the respondent in *Surender Singh Parmar v. Union of India* vide order dated 6-11-2007 and that the appellant Union of India was directed to consider the case of the respondent for the purpose of condoning the deficiency in service and pass appropriate orders within three months.

5. The appellant opposed the said prayer on the ground that the respondent has not completed the requisite service of 14 years upon which only one can get the benefit of condonation of shortfall of service up to one year. Therefore, according to the appellant, the respondent was not eligible candidate for condonation of the shortfall in pensionable service of one year. Before the High Court the respondent contested the statement made by the appellant that the respondent served for 13 years 8 months and 13 days and brought to the notice of the High Court that actually he served 13 years 10 months and 13 days which was not disputed. The respondent claimed benefit by rounding off the period of service in terms of the Government of India Instructions dated 30-10-1987. The Division Bench of the Delhi High Court after considering the rival submissions and taking note of the Instructions dated 30-10-1987 by the order dated 6-11-2007 [WP (C) No. 12507 of 2004, decided on 6-11-2007 (Del)] set aside the appellant's earlier rejection order dated 14-8-2001 and directed the appellant to reconsider the case of the respondent.

xxx xxx xxx

10. The note below Para 5 of the Government of India, Ministry of Defence Instructions dated 30-10-1987 at Clause 5 provides that in calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year for reckoning qualifying service. The said provision reads as follows:

**"5. Qualifying service.—**

**(a)-(b)\*\*\***

**Notes.—(1) to (4)\*\*\***

**(5) In calculating the length of qualifying service fraction of a year equal to three months and above but less than six months shall be treated as a completed one half year and reckoned as qualifying service."**

11. In view of the aforesaid provisions the respondent is entitled to claim total period of service as 14 years for the purpose of calculation of pension. By the Government of India, Ministry of Defence Order dated 14-8-2001 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 up to 12 months. The said provision reads as follows:

**"(a)(v) Condonation of shortfall in qualifying service for grant of pension in respect of PBOR beyond six months and up to 12 months."**

12. In view of the aforesaid provision, the respondent is also entitled to claim for condonation of shortfall in qualifying service for grant of pension beyond six months and

*up to 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 24-6-1985 when the Instruction dated 14-8-2001 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."*

(emphasis supplied)

49. This Court is further of the view that the Appellants' reliance upon the judgment of this Court in **Ex Sep. Chattar Pal** (supra) is untenable in law as the said judgment pertains to a DSC personnel who had neither sought nor was given voluntary discharge. In **Ex Sep. Chattar Pal** (supra), the DSC personnel was discharged on the ground that there were 'six red ink entries due to in-disciplined attitude/character'. By contrast, in the present case, all the Respondents have sought voluntary discharge. The rationale behind the judgment in **Ex Sep. Chattar Pal** (supra) is not difficult to discern. The power to condone shortfall in qualifying service is discretionary as is apparent from the use of the expression 'may' in Paragraphs 125 and 44 of Pension Regulations, 1961 and 2008. Moreover, the judgment in **Ex Sep. Chattar Pal** (supra) does not overrule the judgment of this Court in **Surender Singh Parmar** (supra).

50. Consequently, this Court finds that all aspects of the matters have already been adjudicated, accepted, and implemented by the Union of India. The issue is no longer open to doubt or reconsideration, having attained finality through repeated judicial pronouncements and consistent application.

### CONCLUSION

51. For the reasons aforesaid, this Court holds that the present Appeals are devoid of merit. The Appeals are accordingly dismissed, with no order as to costs.

Pending applications, if any, shall stand disposed of.

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