

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

59.

OA 135/2009

Hav/Clk Khyali Singh **... Applicant**

Versus

Union of India &Ors. **... Respondents**

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : Shri Sagar Mehlawat, Advocate for
Shri Harish V Shankar, Advocate

WITH

60.

OA 1932/2017 WITH MA 1474/2017

Hav Tech Comn Trilok Singh **... Applicant**

Versus

Union of India & Ors. **... Respondents**

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : Shri Anil Gautam, Sr. CGSC

WITH

61.

OA 1990/2017 WITH MA 1507/2017

CHM Arjun Singh **... Applicant**

Versus

Union of India & Ors. **... Respondents**

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : None for R 1-4

WITH

62.

OA 61/2015 WITH MA 75/2015

Sub/SKT N Mohanan Nair **... Applicant**

Versus

Union of India & Ors. **... Respondents**

For Applicant : Shri S.S Pandey, Advocate

For Respondents : Shri V Pattabhi Ram, Advocate

WITH

63.

OA 270/2016

Sub /Skt Meghsyam Singh Sinsinwar ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : Shri Y.P. Singh, Advocate

CORAM :

**HON'BLE MR. JUSTICE RAJENDRA MENON, CHAIRPERSON
HON'BLE LT. GEN. C.P. MOHANTY, MEMBER (A)**

**O R D E R
25.04.2023**

Even though the matters are listed for Final Hearing today, while going through the order passed by Hon'ble Supreme Court on 09.03.2017, the following observations made by the Hon'ble Supreme Court are reproduced herein:

“be it noted, the learned counsel though challenged the constitutional validity of the policy issued on 5th January, 2009, he has not pressed the same. As he has not pressed the same, we do not enter into the said area. Therefore, the only controversy that remains to be adjudicated is whether the judgment of the Tribunal in O.A. No. 191 of 2011 decided on 19th March, 2012, would cover the cases of the likes of the appellant. For the said purpose, certain facts are to be brought on record and adjudication on the factual score is necessary.”

Resultantly, we think it appropriate to remit the matter to the tribunal to consider the same. Accordingly, the appeals are allowed, the order impugned is set aside and it is directed that the tribunal shall determine the seniority after absorption regard being had to the judgment pronounced in OA. No. 191 of 2011.

3. Even though learned counsel for the applicant pointed out that he is not challenging the constitutional validity of the policy dated 05.01.2009 and the same is not pressed by him, but the controversy now is as to whether the applicants were entitled to any protection with regard to their rights which was available to them before change of the policy or has the policy created any uncertainty with regard to their future prospects and the reasons for the change of the policy and why the rights of the petitioner could not be protected in view of the change of the policy, these aspect have to be clarified by the respondents by giving relevant facts and reasons. The justification given by the respondents is then required to be tested on the basis of the principles of law with regard to reasonableness and arbitrariness, if any, in bringing out the policy, particularly with regard to its applicability to the applicants.

4. As the aforesaid facts are not available on record, we grant four weeks' time to the respondents to take note of the aforesaid observations of the Hon'ble Supreme Court and file an additional affidavit, if any, within four weeks, failing which, we shall proceed in the matter without

granting any further time and after considering various aspects of the matter, will decide the controversy.

5. As the matter is pending since 2017, we direct the respondents to file the additional affidavit positively within four weeks and the office is directed to list the matter for Final Hearing on **12th July, 2023**.

6. The respondents while filing the additional affidavit should also take note of the order passed by this Tribunal passed on 19.03.2012 in OA No. 191/2011 (**Hav Pratap Chand Sahu Vs Union of India Vs. Union of India & Anr.**) and the observation made therein with regard to protection of uncertainty to the employees due to implementation of the policy with regard to their future prospects.

7. A copy of this order be provided '**DASTI**' to learned counsel for both the parties.

**[RAJENDRA MENON]
CHAIRPERSON**

**[C.P. MOHANTY]
MEMBER (A)**

Tarun/ps