

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

1.
OA1030/2015

**Ex Capt DK Budhraj
Vs.
UOI &Ors**

.....Applicant

.....Respondents

For petitioner : Ms. Archana Ramesh, Advocate
For Respondents : Mr.Prabodh Kumar, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

ORDER
16.02.2017

1. One final opportunity is granted to the respondents to comply with the order dated 09.05.2016. The said affidavit shall positively be filed within three weeks with advance copy to the learned counsel for the applicant. Rejoinder, if any, may be filed within two weeks thereafter.

2. List on **12.04.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

2.
OA 1488/2016 with MA 1115/2016

**Sri Krishan
Vs.
UOI &Ors**

.....Applicant

.....Respondents

For petitioner : Mr. RK Rastogi, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

ORDER
16.02.2017

1. After brief submissions, the learned counsel for the applicant submits that he may be permitted to withdraw the present OA with liberty to approach the Hon'ble Supreme Court in view of the order dated 25.01.1993 passed earlier in respect of Writ Petition No.726/1988 filed by him. The learned counsel for the respondents has no objection.
2. In view of the above statement made by the learned counsel for the parties, the OA stands dismissed as withdrawn with liberty aforesaid.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

3.
OA 1605/2016 with MA 1205/2016

**Ex LMUS Mukesh Chand
Vs.
UOI &Ors**

.....Applicant

.....Respondents

**For petitioner : Mr. JP Sharma, Mr VS Kadian, Advocates
For Respondents : Mr. SP Sharma, Advocate**

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. Vide separate order, the OA stands disposed of.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

3.

OA 1605/2016 with MA 1205/2016

Ex LMUS Mukesh Chand

.....Applicant

Vs.

UOI &Ors

.....Respondents

For petitioner : Mr. JP Sharma, Advocate
For Respondents : Mr.SP Sharma, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. Learned counsel for the applicant submits that by means of the present OA, the applicant had challenged the impugned order passed by CDA (Navy) Mumbai vide letter No.PEN/DIS.B/00/3858 dated 02.06.2000 and Navy Pension Office Mankhurd letter No. LF/PEN/600/Legal Notice/188096 dated 28.09.2016 (Annexure A-1). Learned counsel for the applicant further submits that Medical Adjudicator (Pension) (MA(P) in PCDA (Pension), Allahabad being the final authority on sanction/rejection of the claim had accepted his disability as "Attributable to the service", however, the percentage was re-assessed at less than 20% i.e. (1-5%) and rejected his disability Pension claim by PCDA (Pension) Allahabad vide their letter no.Gts/Navy Cell/Dis/202/2000 dated 27.04.2000.

2. On notice, the respondents do not dispute the facts in the case.

3. We have heard Ld. Counsel for the parties and have carefully gone through the record.

4. Let it be stated at the very outset that there is no proof on record that the petitioner was suffering from any disability from 1999 onwards. Therefore, we confine our order to the grant of disability element of disability pension, based upon the Invalidating Medical Board Proceedings, as available on record as Annexure A-2 and

also to pass appropriate orders with regard to release of disability pension for future disability, if any.

5. The learned counsel for the applicant submits that the applicant joined the Indian Navy on 27 April, 1981 and he was found medically fit by the Recruitment Medical Board in all respects at the time of enrolment. After passing out from Training Centre, he was posted to different units during his service period. The learned counsel for the applicant further submits that the applicant was discharged from service on 30th April 1999 on expiry of engagement with 18 years and 04 days qualifying service consequent upon he was sanctioned service pension vide PPO No. 09/97/B/S/01404/199 dated 17.05.1999.

6. It was submitted by the learned counsel for the applicant that prior to discharge from service, a Release Medical Board held on 05th February, 1999 wherein his disability was recommended as Aggravated by Naval Service assessed @ 20% for two years (Annexure A-2). It was further submitted that Naval Pension Office processed the claim of disability to PCDA(Pension), Allahabad vide their letter dated 23.12.1999. However, Medical Adjudicator (Pension) (MA(P) in PCDA (Pension), Allahabad being the final authority on sanction/rejection of the claim had accepted his disability as "Attributable to the service", however, percentage of disability was re-assessed at less than 20% (1-5%) and rejected his disability pension claim vide their letter dated 27.04.2000.

7. Learned counsel for the applicant submits that due to non receipt of disability pension, a legal notice dated 31 July, 2016 was served which was forwarded by Naval Pension Office to PCDA (Pension), Allahabad, and also a reminder dated 18 October, 2016 was served on which Naval Pension Office, Mankhurd vide their letter No.LC/PEN/600/Legal Notice/188096 dated 28.09.2016, denied for grant of benefit of broadbanding to the applicant indicating GOI policy.

8. The learned counsel for the applicant vehemently argued that the interference of the Pension Sanctioning Authority in reducing the disability percentage of the petitioner from 20% for two years, as assessed by the IMB, to 1-5% for life, is illegal, arbitrary and

without any sanctity of law. Therefore, rejection of the claim of the applicant for disability pension is illegal and the impugned rejection order deserves to be quashed and set aside with appropriate directions to the respondents to grant the requisite benefit to the petitioner.

9. We have given due thought and consideration to the facts of the case as well as the submissions made by the learned counsel for the applicant particularly in view of the law laid down by the Hon'ble Apex Court in Civil appeal No.264 of 1991 dated 14.01.1993 in the case titled **Ex Sapper Mohinder Singh Vs UOI** in which it was held **that the findings given by the medical authorities regarding a claim of disability pension should be respected by the pension disbursing authorities like the CCDA/PCDA (Pensions), Allahabad. This principle of law was followed by Hon'ble Punjab & Haryana High Court in Ex Havildar Babu Singh Vs OI & Ors, CWP No.3296 of 2003, decided on 26.04.2006.** The observations made therein, being relevant, are reproduced below:-

“From the above mentioned facts and the stand taken by the parties before us, the controversy that falls for determination by us lie in a very narrow compass viz. whether the Chief Controller of Defence Accounts (Pension) has any jurisdiction to sit over the opinion of the experts (Medical Board) while dealing with the case of grant of disability pension in regard to the percentage of the disability pension or not. In the present case, it is nowhere stated that the petitioner was subjected to any higher Medical Board before the Chief Controller of Defence Accounts (Pension) decided to decline the disability pension to the pensioner. We are unable to see as to how the accounts branch dealing with the pension can sit over the judgement of the experts in the medical line without making any reference to the detailed or higher Medical Board which can be constituted under the relevant instructions and rules by the Director General of Army Medical Core.”

10. In the above factual and legal scenario, we hold that the action of the respondents to deny disability element of disability pension to the applicant by mere interference by the PCDA(P), Allahabad in reducing the disability percentage of the petitioner from 20% to 1-5%, as illegal, arbitrary and unsustainable in the eyes of law. The impugned rejection order dated 02.06.2000 (Annexure A-1) is, therefore, quashed and set aside by holding the applicant entitled to disability element of disability pension

@ 20% for two years only i.e. w.e.f. 30.04.1999 to 01.03.2001, as the disability in question was held for two years only by the RMB however, with benefit of rounding of to the extent of 50% as against 20% in the light of decision of Hon'ble Supreme Court rendered in civil appeal No.418 of 2012 (UOI & Ors Vs Ram Avtar) decided on 10.12.2014. Since the applicant has approached this Tribunal after lapse of almost two decades but is having a recurring cause of action, the arrears are restricted to two years preceding the date of filing of the present petition i.e. 01.12.2016.

11. The respondents are directed to calculate the arrears payable to the petitioner, as ordered above, and disburse the same to him within a period of three months from the date of receipt of a certified copy of this order by the learned counsel for the respondents, failing which, the amount shall carry interests @ 8% per annum from the date of this order, till actual disbursement thereof.

12. The OA is allowed in part to the extent indicate hereinabove.

13. No order as to costs.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

4.
OA 1615/2016

Sqn Ldr Amit Chauhan
Vs.
UOI &Ors

.....Applicant

.....Respondents

For petitioner : Ms RekhaPali, Sr. Advocate
For Respondents : Mr. KS Bhati, Sr CGSC

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. Mr KS Bhati, Sr. Central Government Standing Counsel sought time to enable him to place on record the reports of medical examination.
2. List on **23.02.2017**.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

5.

OA 1694/2016

Ex Capt Charu Kaushik

.....Applicant

Vs.

UOI &Ors

.....Respondents

For petitioner

: Mr. SS Pandey, Advocate

For Respondents

: Mr. Surjeet Singh, Advocate for R 1-4

Ms. Anjali Vohra, Advocate for R-5

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER

HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER

16.02.2017

1. The learned counsel for the respondents has handed over a copy of PPO to the learned counsel for the applicant in the Court today and the amount shall be credited in the account of the applicant within four weeks. It is further directed that since the amount was withheld by the respondents without any authority, they are also liable to pay interest @9% p.a. from the date when the amount was due and payable to the applicant till 31.01.2017. The aforesaid interest amount shall be calculated and credited alongwith the principal amount in the account of the beneficiary.
2. The learned counsel for respondent No.5 has handed over a copy of letter dated 13.02.2017 addressed to the applicant where in certain formalities are required to be completed by the applicant so that the Group Insurance money which is to the tune of Rs.8 lakh will be credited in the account of the applicant. These formalities are like furnishing of bank details alongwith crossed cheque which have to be given to the learned counsel for Respondent No.5 so as to enable them to complete the process.
3. Mr. SS Pandey, Advocate has assured the Tribunal that necessary formalities in this regard shall be completed by him within a week from today.
4. In view of the aforesaid statement made by the learned counsel for the parties at the Bar, nothing further survives in the OA and the same stand disposed of.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**6.
OA 151/2017 with MA 134/2017**

**Ex gt Dilip Kumar Mishra
Vs.
UOI &Ors**

.....Applicant

.....Respondents

**For petitioner : Mr. VS Kadian, Advocate
For Respondents : Mr.Avdhesh Kr Singh, Advocate**

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. Vide separate order of even date, the OA stands allowed.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

6.
OA 151/2017

**Ex Sgt Dilip Kumar Mishra
Vs.
UOI &Ors**

..... ..Applicant

.....Respondents

For petitioner : Mr. V S Kadian, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. The learned counsel for the applicant submitted that the applicant is entitled to the benefit of rounding off of disability pension from 20% to 50%, in view of the decision of the Hon'ble Supreme Court judgement rendered in Civil Appeal No.418 of 2012 (Union of India and Others Vs Ram Avtar) decided on 10.12.2014.
2. Notice to the respondents.
3. Learned counsel for the respondents, accepts notice.
4. The learned counsel for the petitioner argued that the petitioner is entitled to the benefit as claimed on the basis of the judgement of the Hon'ble Supreme Court in Ram Avtar's case (supra). Confronted with the above facts, learned counsel for the respondents does not dispute the legal position.
5. Since the point in issue is no longer *res integra*, therefore we do not insist upon the respondents for formal reply as it will not improve their case as it shall be sheer wastage of public money and time. The case of the applicant is fully covered by the judgment in Ram Avtar's case (supra) which has clearly laid down that whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his term of engagement or irrespective of mode of discharge, if found entitled to, or is getting disability pension, is entitled to be granted the benefit of rounding off as per the policy of the respondents. The contention raised by the respondents that this benefit can only be given to the personnel who are invalidated out of service and not to any other category of Armed Forces Personnel mentioned herein above did not find favour with the

Hon'ble Supreme Court and it was observed that the disposal of these matters will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to such pensioners before them.

6. In the present case, the petitioner is in receipt of disability pension @ 20% with effect from 01.09.2013 for life vide PPO No. 08/14/B/DP/Corr/122/2015 dated 07.01.2015, therefore, he is entitled of the benefit of rounding off by computing his disability element of disability pension to the extent of 50% as against 20% w.e.f. 01.09.2013. Accordingly, the petition extends allowed.

7. On verification of the aforesaid factual facts from their record, the respondents shall calculate the arrears and release it to the petitioner after getting the requisite government sanction followed by PPO within a period of three months from the date of receipt of certified copy of this order by the learned counsel for the respondents, failing which arrears shall carry interest @ 8% p.a. w.e.f. 01.09.2013.

8. Accordingly, the OA stands disposed of.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

7.

OA 152/2017

Ex Sgt Basant Kumar Tiwari

.....Applicant

Vs.

UOI &Ors

.....Respondents

For petitioner : Mr. VS Kadian, Advocate
For Respondents : Mr.Arvind Patel, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. The case of the applicant is that he is suffering from Primary Hypertension which was assessed to be 30% though neither attributable nor aggravated by military service. The applicant has claimed that he is entitled to disability pension on account of the judgment of the apex Court in Dharamvir's Case (**Dharamvir Singh V UOI & Ors**) 2013 AIR SCW 4236). The learned counsel for the respondents has stated that no formal representation by way of first or second appeal has been preferred although a legal notice on behalf of the applicant dated 31.07.2016 was served on the respondents. Even this legal notice has not been replied by the respondents. The applicant was superannuated only on 31.03.2016.

2. Having regard to the aforesaid position, we direct the respondents to treat the present OA as a first appeal and pass the necessary orders in the light of the law laid down by Hon'ble Supreme Court in the recent Judgments. The decision so taken on the basis of the present OA shall be communicated to the applicant within three months from today. In case, the applicant still feels aggrieved, he shall be at liberty to seek such appropriate remedy as may be available to him in accordance with law.

3. The OA stands disposed of in the aforesaid directions.

4. **Dasti.**

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

8.

OA 176/2017

Ex Sgt Amit Bishnoi

..... **Petitioner**

Versus

Union of India & Ors.

..... **Respondents**

For petitioner : Mr. VS Kadian, Advocate

For respondents : Mr., Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER

HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER

16.02.2017

This is a case where the appellant, who joined the Air Force and discharged at his own request on compassionate grounds with medical disabilities but denied disability pension since these were found to be neither attributable nor aggravated by military service. His application has been accompanied by MA 144/2017 for condonation of delay of 122 days in filing this application.

2. Notice to the respondents.

3. The brief facts in the case can be summarized as under:-

That applicant was enrolled in the Indian Air Force on 02.02.1995 and discharged from service w.e.f 14.05.2014 after completion of 19 years 03 months and 12 days of service under the clause at his own request in low medical category A4G4. The applicant was downgraded to low medical category due to injuries sustained (i) FRACTURE LATERAL CONDYLE OF TIBIA (LT) ACL AND LCL TEAR (CPTD) ON 25.08.1999 due to slip

over the floor in Airmen Mess, (ii) FRACTURE LATERAL 3RD of CLAVICLE (LT) on 23.09.2007 due to fall down in bathroom when he was running back after a bath and (iii) FRACTURE NECK OF FEMURE (LEFT) (OPTD) on 02.10.2010 due to slipping while climbing stairs in the Mess. The applicant was discharged from service in medical category A4G4 by the medical board and all the three IDs were held as neither attributable nor aggravated to military service.

4. The Release Medical Board proceedings dated 24.06.2014 (Annexure A-2) classified the composite assessment for all disabilities as 50% for life long, but not qualifying for disability pension. The claim for grant of disability pension was prepared and forwarded to the competent authority but it was rejected by their letter dated 11.08.2014 (Annexure A-3). The applicant preferred the First Appeal to the competent authority which was again rejected as not attributable to service by their letter dated 12.04.2016 (Annexure A-1) on the grounds that the individual was not performing any service duty or performing service related journey at the material time of sustaining the injury. It further brought out that the individual was managed adequately at service hospitals and any residual deficit at the RMB was in keeping with the initial severity of the injury. The petitioner continued to serve in peace with due management of injuries, hence, it was concluded that the injuries were neither attributable to nor aggravated by service.

5. The applicant was asked to make a second and final appeal within a period of six months, but he has not made such an appeal so far.

6. We, thus, allow this OA and direct that it be considered as a second and final appeal by the respondents. We further direct the respondents to consider his second appeal in the light of the catena of judgments by this court and Hon'ble Supreme Court with regard to grant of disability pension within a period of three months from the date of this order. In case the petitioner still feel aggrieved by the decision of the respondents, he is permitted to come to this court for his redressal.

7. With this order, the OA stands disposed of.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

9.
OA 177/2017

**Ex Sgt Sunder Singh
Vs.
UOI &Ors**

.....Applicant

.....Respondents

**For petitioner : Mr. VS Kadian, Advocate
For Respondents : Mr. Shyam Narayan, Advocate**

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. Heard on admission.
2. The OA is admitted for hearing.
3. Issue noticed.
4. Mr. Shyam Narayan, Advocate appearing on behalf of the respondents accepts notice and seeks time to file counter affidavit. Let the counter affidavit be filed within four weeks with advance copy to the learned counsel for the applicant. Rejoinder, if any, may be filed within two weeks thereafter.
5. List on **04.05.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

10.
OA 178/2017

Ex MC Mech (AL) Hony Lt Sawaliya Singh
Vs.
UOI &Ors

.....Applicant

.....Respondents

For petitioner : Mr. VS Kadian, Advocate
For Respondents : Ms Archana Gaur, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. Heard on admission.
2. The OA is admitted for hearing.
3. Issue noticed.
4. Ms Archana Gaur, Advocate appearing on behalf of the respondents accepts notice and seeks time to file counter affidavit. Let the counter affidavit be filed within four weeks with advance copy to the learned counsel for the applicant. Rejoinder, if any, may be filed within two weeks thereafter.
5. List on **04.05.2017**.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

11.
MA 204/2017 with MA 162/2017

**Ex Rect Ram Awdhesh Singh
Vs.
UOI &Ors**

.....Applicant

.....Respondents

**For petitioner : Mr. VS Kadian, Advocate
For Respondents : Mr.Ashok Chaitanya, Advocate**

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

ORDER
16.02.2017

1. Respondents are directed to check as to whether the medical record pertaining to the applicant is available with them or not. Though for the present no notice is being issued to the respondents. If the medical record of the applicant is available with the respondents, the same shall be produced before this Tribunal for perusal on the next date of hearing.

2. List on **10.04.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

12.
OA 233/2017

**Lt Col SK Singh
Vs.
UOI &Ors**

.....Applicant

.....Respondents

For petitioner : Mr. Rajiv Manglik, Advocate
For Respondents : Mr.SP Sharma, Advocate

**CORAM:
HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER
ORDER
16.02.2017**

1. The grievance of the applicant is that he is essentially an employee of the Department of Posts who had been sent on deputation to the Army authorities to man their posts of Army Postal Service which is controlled by the MoD. It is also contended by him that while serving on deputation with the Army Postal Service(APS), the applicant has also been given a temporary commission by conferring on him the rank of Lieutenant Colonel as is given to regular Army officers. It has been stated that the applicant is presently holding the rank of Lt Col. It is also submitted that the age of retirement for such officers is 57 years. The applicant being a civil officer on deputation with the Army authority, there is past practice that such officers are given a year to year extension while on deputation after 57 years of age upto the age of 60 years which is the normal age of superannuation in case of civil officers. It is further contended by the learned counsel that the applicant is presently aged 58 years and though his case was recommended by the Department of Posts on 16.01.2017 to the Joint Secretary, MoD for extension of one year which can travel upto 20.02.2018, however, no decision on the said communication has been taken by the MoD till date as a consequence of which though the applicant is ready and willing to serve the Army Postal Service but on account of no action by the MoD, the repatriation of the applicant will be made a fait accompli on 28.02.2017 and

thereafter. Accordingly, it is prayed that the respondents be directed to take an early and urgent decision on the letter dated 16.01.2017 so that the applicant is able to know his fate as to whether he is to continue with the Army Postal Service or has to be repatriated.

2. The learned counsel for the applicant has also brought to the notice of the Tribunal an order of Lucknow Bench of the AFT in CA 26/2017 filed by one Lt. Col Anil Kumar Mishra and under similar circumstances, the respondents has been given three months time from the date of communication of the said order to take a decision with regard to continuation or repatriation to the parent department of the said officer by the MoD and till then repatriation of the said officer has been stayed.

3. We have thoughtfully considered the submissions made by the learned counsel for the applicant as well as the learned counsel for the respondents who is present in response to advance notice having been served on him by the applicant.

4. Having regard to the aforesaid facts, we dispose the present OA with directions to the respondents that they may take a decision on the communication dated 17.01.2017 with regard to continuation of the applicant with Army Postal Service for another one year within a period of 08 weeks from today and communicate the said decision to the applicant. Till the time such a decision is taken and communicated to the applicant, he shall not be repatriated to his parent department.

5. With these observations, the OA stands disposed.

6. A copy of this order be given DASTI to the learned counsel for the parties.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

13.
OA 234/2017 with MA 191/2017

**Ex L/Hav Rajesh gupta
Vs.
UOI &Ors**

.....Applicant

.....Respondents

For petitioner : Ms. Archana Ramesh, Advocate
For Respondents : Mr.Avdhesh Kr Singh, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. This is a case where the applicant is claiming disability pension. The learned counsel for the applicant has contended that though he has been tried by the General Court Martial and sentenced to reduction in rank, dismissal from service apart from Rigorous Imprisonment for five years. However, he is still entitled to disability pension based on the basis of the judgment of the Tribunal in OA 173/2014 dated 29.01.2015 in as much as the disability with which he suffers was attributable and aggravated by military service and further it was suffered by him prior to the date he was tried by the General Court Martial.

2. We feel that the matter requires consideration.

3. Issue notice to the respondents to show cause as to why the OA may not be admitted. Mr. Avdhesh Kumar Singh, learned counsel for the respondents, accepts notice and seeks time to file reply affidavit.

4. Let the reply affidavit be filed within six weeks with advance copy to the learned counsel for the applicant, who may file rejoinder, if any, within two weeks thereafter.

5. It is also contended by the learned counsel for the applicant that the applicant has also filed OA 237/2017 wherein he has challenged the court martial proceedings which was listed before Hon'ble Court No.1 and which has been

adjourned to 19.05.2017. Subject to the order of the Hon'ble the Chairperson, the matter may be tagged alongwith said OA No. 237/2017.

6. Post for directions before the Hon'ble Chairperson on 19.05.2017.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

16.02.2017/chanana

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

14.
OA 235/2017

Wg Cdr Sunbinder Singh Sud (Retd)
Vs.
UOI &Ors

.....Applicant

.....Respondents

For petitioner : Mr. VS Kadian, Advocate
For Respondents : Mr.Prabodh Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. Heard on admission.
2. The OA is admitted for hearing.
3. Issue noticed.
4. Mr. Prabodh Kumar, Advocate appearing on behalf of the respondents accepts notice and seeks time to file counter affidavit. Let the counter affidavit be filed within six weeks with advance copy to the learned counsel for the applicant. Rejoinder, if any, may be filed within two weeks thereafter.
5. List on **08.05.2017**.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**15.
OA 236/2017**

**Lt Col Deepti Sabhlok (Retd)
Vs.
UOI &Ors**

.....Applicant

.....Respondents

**For petitioner : Mr. Rajiv Manglik, Advocate
For Respondents : Ms Archana Gaur, Advocate**

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. Heard on admission.
2. The OA is admitted for hearing.
3. Issue noticed.
4. Ms Archana Gaur, Advocate appearing on behalf of the respondents accepts notice and seeks time to file counter affidavit. Let the counter affidavit be filed within six weeks with advance copy to the learned counsel for the applicant. Rejoinder, if any, may be filed within two weeks thereafter.
5. List on **02.05.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**16.
OA 239/2017**

**Ex NAOMI Manoj Kumar
Vs.
UOI &Ors**

.....Applicant

.....Respondents

**For petitioner : Mr. Rajiv Manglik, Advocate
For Respondents : Mr.YP Singh, Advocate**

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. This is a case for grant of disability pension. The learned counsel for the applicant has pointed that though the second appeal was filed by the applicant on 25.12.2012, however, the same has not been disposed of till date. Attention in this regard has been drawn to Page 44 of the Paper Book where in response to the RTI enquiry, the respondents have intimated on 30.01.2015 that the second appeal is still pending for consideration. It is contended that more than four years have gone by still no decision has been taken on the basis of the said second appeal. The appeal ought to have been decided within a reasonable time preferably within six month's time specially when the applicants are expected to file the second appeal from date of rejection of first appeal. Be that as it may for the present we dispose of the OA with directions to the respondents to decide the second appeal of the applicant within a period of eight weeks from today by a reasoned order keeping in view the law laid down by the Apex Court in catena of judgments on grant of disability pension. A copy of the order, so passed, shall be communiated to the applicant. In case, the applicant still feels aggrieved with the order so passed on the basis of his second appeal, it will be open to the applicant to seek appropriate relief as available in accordance with law.

2. With these directions, the OA stands disposed of.
3. A copy of this order be given DASTI to the learned counsel for the parties.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

16.02.2017/chanana

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

17.

OA 241/2017 with MA 195/2017

Col Pradeep Kumar Tiwari (Retd)

.....Applicant

Vs.

UOI &Ors

.....Respondents

For petitioner

: Mr.Adarsh Kumar Tiwari , Advocate

For Respondents

: Mr. Arvind Patel, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER

HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER

16.02.2017

1. On request, adjourned to **09.05.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

18.
OA 242/2017 with MA 196/2017

**Sep Jai Bhagwan
Vs.
UOI &Ors**

.....Applicant

.....Respondents

For petitioner : Ms. Archana Ramesh, Advocate
For Respondents : Mr.YP Singh, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

ORDER
16.02.2017

Heard on admission.

- 2.** The OA is admitted for hearing.
- 3.** Issue noticed.
- 4.** Mr. Arvind Patel, Advocate appearing on behalf of the respondents accepts notice and seeks time to file counter affidavit. Let the counter affidavit be filed within six weeks with reference to the OA as well as to the application for condonation of delay with advance copy to the learned counsel for the applicant. Rejoinder, if any, may be filed within two weeks thereafter.
- 5.** List on **22.05.2017**.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

19.
MA 9/2016 in OA 495/2011

Sub Chanchal Sen **Applicant**
Vs.
UOI &Ors **Respondents**

For petitioner : Mr. SS pandey, Advocate
For Respondents : Ms.Jyotsana Kaushik, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. This is an MA 9/2016 filed by the applicant seeking clarification of the order dated 18.07.2013 passed by this Tribunal. The contention of the learned counsel for the applicant is that the Senior Accounts Officer has not permitted the applicant to take the more beneficial option available to him for fixation of pay though that is true in sums and substance of all such judgments which have been passed by the Tribunal from time to time with regard to exercise of option at different point of time, irrespective of the fact where the incumbent has exercised an option or not.

2. The learned counsel for the respondents has not been able to show anything to the contrary as has been observed herein above. We are also of the view that in the sums and substance of the judgment in this case as well as in other connected cases has been that the official who have come to the Court have been permitted to exercise the beneficial option although they may have exercised an option earlier or not exercise an option at all to take the advantage of a scale of pay fixed which is more beneficial to them and that should be the principle expected of the senior officers to follow. In the light of the aforesaid observations, the Senior Accounts Officer of the respondents will act on the

option dated 16.11.2013 exercised by the applicant with regard to his pay fixation from the date of promotion in the pay scale available at that time.

3. With these observations, the application stands disposed.
4. A copy of this order be given DASTI to the learned counsel for the parties.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

20.

MA 348/2016 in OA 309/2015

Lt Col Gurinderjit Singh Grewal (Retd)

.....Applicant

Vs.

UOI &Ors

.....Respondents

For petitioner

: Mr. IS Singh, Advocate

For Respondents

**: Mr Prabodh Kumar, Adv proxy for Mr. KK Tyagi,
Advocate**

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER

HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER

16.02.2017

1. The learned counsel for the respondents submits that the respondents have already communicated when the applicant to appear before the Re-Survey Medical Board at Pune.
2. In view of the above statement made by the learned counsel for respondents, the MA 348/2016 stands disposed of.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

21.

MA 351/2016 & MA 352/2016 in OA 380/2013

**Ex Sub Man Singh (since deceased) through Smt.
Maya Devi (LR)**

.....Applicant

Vs.

UOI &Ors

.....Respondents

For petitioner : Mr. SS pandey, Advocate

For Respondents : Mr. JS Rawat, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. The learned counsel for the respondents has handed over a copy of the PPO issued to the learned counsel for the applicant in the Court today. In view of the above, nothing survives in the execution application and the same stands disposed of.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

22.

MA 466/2016 in OA 1104/2015

Maj (Retd) Anil Kumar Passi

.....Applicant

Vs.

UOI &Ors

.....Respondents

For petitioner : Mr. SS Pandey, Advocate

For Respondents : Ms.Jyotsana Kaushik, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1.

1. The learned counsel for the respondents has handed over a copy of the PPO to the learned counsel for the applicant in the Court today. In view of the above, nothing survives in the MA 466/2016 and the same stands disposed of.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

23.

MA 1166/2016 in OA 589/2016

Lt Col VK Goel (Retd)

.....Applicant

Vs.

UOI &Ors

.....Respondents

For petitioner : Mr. VS Kadian, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. The learned counsel for the respondents submits that necessary sanction order has been issued and assured the PPO shall be issued within a period of eight weeks from today.
2. In view of the above statement made by the learned counsel for the respondents at the Bar, nothing survives in the MA and the same stands disposed of.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

24.

MA 1171/2016 in OA 189/2016

Col Sushil Kumar (Retd)

.....Applicant

Vs.

UOI &Ors

.....Respondents

For petitioner : Mr. Rajendra Kumar, Advocate
For Respondents : Mr. VS Tomar, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. Subject to payment of cost of Rs.5,000/- one more opportunity of four weeks is granted to the respondents to issue PPO as nearly one year has gone by.
2. Subject to payment of cost and issuance of PPO, the MA 1171/2016 stands disposed of.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

25.
MA 194/2017 in OA 659/2016

Ex Nk Ghurahu RamApplicant
Vs.
UOI & Ors.Respondents

For petitioner : Mr. VS Kadian, Advocate
For Respondents : Mr V Pattabhi Ram, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. The learned counsel for the respondents submits that sanction has been issued and necessary PPO shall be issued within eight weeks.
2. In view of the above statement made by the learned counsel for the respondents at the Bar, nothing survives in MA 194/2017 and the same stands disposed of.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

26.

MA 197/2017 in OA 507/2015

Smt. Usha Sharma

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr K. Ramesh, Advocate
For Respondents : Mr KK Tyagi, Sr CGSC

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. This is an MA 197/2017 seeking implementation of the judgment dated 04.10.2016 by virtue of which the applicant was given the special family pension with interest @ 9%p.a. on the arrears for the period of three years proceeding to the date of filing of the OA. Almost six months have gone by and still nothing has been paid to the applicant. One more opportunity of four weeks is granted to the respondents from today failing which the respondents shall pay interest @9%p.a. to the applicant and the officer concerned shall also be present in the Court alongwith record explaining as to why order has not been complied with so far.

2. List on **09.05.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

27.

MA 198/2017 in OA 236/2012

Ex Nk Naraesh Kumar Chaudhary

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner

: Mr.Praveen Kumar, Advocate

For Respondents

: Mr. VVV Pathbhram, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER

HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER

16.02.2017

1. The respondents have still not complied with the order dated 28.08.2015 though same was to be complied with within three months. It has been contended by the learned counsel for the respondents that the applicant has filed the MA only in the month of Feb. 2017 seeking implementation of the order and therefore, some time may be granted. It is really a very strange submission only if that the applicant file application for execution, only then the respondents will wake up to comply with the order. When the Tribunal is giving reasonable time to comply with the order, it is expected that the order should be complied with in that period.

2. This is unnecessary resulting in avoidable second round of litigation and thus inundating the Tribunal with frivolous and unuseful applications. We are constrained to impose a cost of Rs.10,000/- on the respondents and the respondents are free to hold an enquiry for recovery of the aforesaid amount from the salary of the person who is found responsible for causing the delay. It has been stated by the learned counsel for the respondents that the matter is pending in MoD since Feb. 2017. Be that as it may, the respondents are directed to comply the order before the next date of hearing,

3. List on **19.04.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

28.

OA 444/2016 with MA 280/2016

Maj Gen MS Ahluwalia (Retd) & Ors

.....Applicants

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr IS Singh, Advocate
For Respondents : Mr. KS Bhati, Sr. CGSC

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. Vide separate of even date, the OAs stand allowed.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

28-32.

OA 444/2016 with MA 280/2016

Maj Gen MS Ahluwalia (Retd) & Ors

.....Applicants

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr IS Singh, Advocate
For Respondents : Mr KS Bhati, Sr. CGSC

WITH

OA 687/2016

Maj Gen Subhash Chand Mehra (Retd) & Ors

.....Applicants

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr Indra Sen Singh, Advocate
For Respondents : Ms Barkha Babbar, Advocate

WITH

OA 701/2016

Maj Gen Arun Nargowala (Retd)

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr IS Singh, Advocate
For Respondents : Mr YP Singh, Advocate

WITH

OA 746/2016

Rear Admiral RM Kshetrapal

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr IS Singh, Advocate
For Respondents : Mr KS Bhati, Sr. CGSC

WITH

OA 925/2016

Maj Gen Govinder Singh Kohli (Retd)

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr IS Singh, Advocate
For Respondents : Mr Prabodh Kumar, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

This is an application by a bunch of applicants who all are Pre-2006 retiree Major Generals of the Army (and equivalents from Navy and Air Force) who are claiming parity in the matter of fixation of their pensions at par with the applicants in OA NO. 100/2010 at AFT, Regional Bench, Chandigarh in the order dated 04.03.2010 as the Applicants herein are exactly similarly circumstanced in terms of rank and seniority. The Govt. of India has implemented the above judgment through a Ministry of Defence Notification dated 10.08.2015 (Annexure A-1), whereby the pension of all the applicants in the aforementioned OA have been revised/raised at par with Post-2006 retiree Maj Generals/equivalent ranks in the Army and the other two Services, in tune with the principle laid down and directions of the Constitutional Bench of the Hon'ble Supreme Court in the case of DS Nakra & Ors Vs UOI (AIR 1983 SC 130) as well as Hon'ble Supreme court judgment dated 09.09.2008 in SLP No. (Civil) 12357 of 2006 (UOI Vs SPS Vain (Retd. & Ors) reported in (2008) 9 SCC-125. The respondents have, however, not given the benefit of said judgment cum order to the Applicants herein although, they are similarly circumstanced as the applicants in OA No. 100/2010 (Maj Gen SPS Vain, (Retd) & Ors Vs UOI). By this OA, the applicants herein are also impugning the relevant Govt Notifications which discriminate between the Pre-2006 and Post-2006 retiree Maj Generals/equivalents in the matter of rate of pension granted to them only on the basis that the Applicant retired before 01.01.2006, whereas higher rate of pension has been granted to those Maj Generals/equivalents who retired after 01.01.2006 when the 6th CPC recommendations were implemented.

2. We have heard the arguments of both the learned counsel and perused the record.

3. In the light of the observation of the Hon'ble Supreme Court in the aforesaid judgment rendered in SLP (Civil) 12357 OF 2006 (UOI and another Vs SPS Vains (Retd) and others and in particular the principle laid down by the Constitution Bench of the Hon'ble Supreme Court, we find herein that the same does not appear to have been followed or implemented in letter and spirit in the matter of fixation of the pension of the present set of petitioners. Accordingly, we allow this OA. For ready reference, we reproduce the principle laid down by the Hon'ble Supreme Court :

“The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in D.S. Nakara where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that Article 14 of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, what was counterproductive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of Article 14 of the Constitution.”

4. In the facts and circumstances of the case of the applicants herein, the respondents are directed to grant them the same pay fixation on “notional basis” and consequently the same rate of pension, as has been granted to the post-2006 retirees Major Generals (and equivalents of Navy and Air Force thereto) with effect from 01.01.2006, thereby ensuring that there is no disparity in the grant of pension between pre and post-2006 retirees.

5. We further direct that the above fixation and payment to the petitioners be carried out within a period of three months from the date of this order with interest @ 9% per annum be paid on the arrears from the date of filing this petition i.e. **12.04.2016**.

6. With the above direction, this application is disposed of.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

29.
OA 687/2016

Maj Gen Subhash Chand Mehra (Retd) & OrsApplicants
Vs.
UOI & Ors.Respondents

For petitioner : MrIndraSen Singh, Advocate
For Respondents : MsBarkhaBabbar, Advocate

WITH

30.
OA 701/2016

Maj Gen Arun Nargowala (Retd)Applicant
Vs.
UOI & Ors.Respondents

For petitioner : Mr IS Singh, Advocate
For Respondents : MrYP Singh, Advocate

WITH

31.
OA 746/2016

Rear Admiral RM KshetrapalApplicant
Vs.
UOI & Ors.Respondents

For petitioner : Mr IS Singh, Advocate
For Respondents : Mr KS Bhati, Sr. CGSC

WITH

32.
OA 925/2016

Maj Gen Govinder Singh Kohli (Retd)Applicant
Vs.
UOI & Ors.Respondents

For petitioner : Mr IS Singh, Advocate
For Respondents : Mr Prabodh Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER

16.02.2017

1. Vide separate of even date, the OAs stand allowed.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

16.02.2017chanana

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

33.

OA 712/2016 with MA 552/2016

Ex Hav Sitaram Jangir

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr RK Rohtagi, Adv proxy for Mr Rajesh Nandal,
Advocate

For Respondents : Mr JS Rawat, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. A request for adjournment has been made.
2. List on **17.05.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

34.
OA 722/2016

**Devi Ram
Vs.
UOI & Ors.**

.....Applicant

.....Respondents

For petitioner : MrRK Rastogi, Advocate
For Respondents : Mr Ashok Chaitanya, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

ORDER
16.02.2017

1. One final opportunity of four weeks is granted to the learned counsel for the respondents to file affidavit within a week. Prima facie the claim is highly belated. Respondents to file reply to the application for condonation of delay as well.

2. List on **17.05.2017**.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

35.

OA 903/2016 with MA 695/2016

Shiv Ram

.....Applicant

Vs.

UOI & Ors.

.....Respondents

**For petitioner : MrRK Rastogi, Advocate
For Respondents : MrSD Windlesh, Advocate**

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. The learned counsel for the applicant seeks time to place on record a copy of the original pension book. The learned counsel for the applicant also to satisfy the Court with regard to delay.

2. List on **01.03.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

35.
OA 133/2016

Nb Sub Shyam Bir
Vs.
UOI & Ors.

.....Applicant

.....Respondents

For petitioner : Ms Archana Ramesh, Advocate
For Respondents : Mr SD Windlesh, Advocate

Dated : 15th February, 2017.

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

JUDGEMENT

The petitioner was enrolled in the Rajput Regiment of Army on 04th Sep 1976 and got discharged from military service on 28 Feb. 1995 as Havildar on completion of his term of engagement. Admittedly, he is getting pension for this spell of service.

2. The petitioner was re-enrolled in Defence Security Corps ('DSC' for short) on 29 June, 2000 for a period of 10 years extendable by 5 years and thereafter he could have been discharged on completion of full 15 years of DSC service on 29th June, 2015 but having attained the age of 57 years, which is the maximum permissible, he had to retire on 30 April 2015 with a shortfall of 59 days of service. The petitioner has been denied pension for this spell of service on the ground that he has not completed the minimum required qualifying service of 15 years. In other words, there is a shortfall of only 59 days for earning pension for the DSC service, condonation whereof has been denied by the respondents, thereby denying him the second pension. The representation dated 21st July 2015 and reminder dated 28 December, 2015 have not been responded to.

3. In the above premises, the present petition has been filed seeking grant service pension to the petitioner for the spell of service rendered by the petitioner in DSC by condoning the shortfall *inter alia* grant of any other relief, the petitioner may be found entitled to in the facts and circumstances of the case.

4. The submission of the petitioner is that in terms of Rule 125 and the policy of the respondents, he is entitled to condonation of shortfall in service. The denial by the respondents on the ground that he is getting pension from the Army, therefore, not entitled for condonation of shortfall in the second spell of service with DSC, is unjustified.

5. Learned counsel for the respondents submits that behind grant of condonation of 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 which the petitioner is already in receipt of. As per the provisions contained in Para 132 and 271(a) of the Pension Regulations for the Army 1961 (Part-I), 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 service is not applicable for the grant of second service pension.

6. Heard the Id. Counsel for the parties and perused the record.

7. We find that the controversy involved in this case is no longer *res integra* and has been set at rest in favour of the petitioner in the following case:-

- (i) **OA No.931 of 2012**, titled **Ex Sub Krishan Singh Tanwar vs. Union of India & others**, decided by the Jaipur Bench of AFT on **18.05.2015**; and,

- (ii) **OA No.60 of 2013**, titled **Bhani Devi vs. Union of India & Ors.**, decided by the AFT, Principal Bench, New Delhi on **07.11.2013**.

8. In the case of *Bhani Devi vs. Union of India (supra)*, the Principal Bench has considered: (i) Rule 266 , given in Chapter 4 of the provisions for the DSC; (ii) Rule 125, relating to condonation of deficiency in service for eligibility of service/ reservist pension; and (iii) the letter dated 23.04.2012, issued by the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, D(Pension/Policy). The said letter dated 23.04.2012 being the anchor sheet of the respondents' arguments, is reproduced below:-

*“No.14(2)/2011/D(Pen/Pol)
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare
D(Pension/Policy)*

...

New Delhi, the 23rd April, 2012

To

*The Chief of Army Staff
The Chief of Naval Staff
The Chief of Air Staff*

Subject: Review of Rule 125 of Pension Regulation for Army Pt. I (1961): Condonation of deficiency in service for grant of 2nd service pension.

The matter regarding condonation of shortfall in service towards second service pension in respect of DSC (Defence Security Corps) personnel raised by ADGPS vide their No.B/46453/AG/PS-4(Legal) dated 9th March 2012 has been examined in this department. It is conveyed 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 and 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 is clarified that no condonation shall be allowed for grant of 2nd service pension.

2. *This has the approval of Secretary (ESW).*

Yours faithfully,

sd/-

(Malathi Narayanan)
Under Secretary (Pen/Pol)”

9. The Principal Bench, after taking into consideration the aforesaid letter in the light of the relevant provisions of the Pension Regulations for the Army, has concluded in the following manner:-

“The communication dated 23.04.2012 (R-1), nowhere conveys that the Rule 125 stands modified by the order/ communication dated 23.04.2012 (Annexure R-10). It appears that the matter was brought to the notice of the Ministry with respect to the interpretation of Rule 125. The communication dated 23.04.2012 is only an opinion given by the Government and therefore observed that “intention behind grant of condonation” is that individual must not be left high and dry “but should be made available for at least one pension”. The benefit of Rule 125 “for at least for one pension” is not in the Rule 125. The communication dated 23.04.2012 nowhere supersedes the original Rule 125 nor reviewed Rule 125, but it is only an opinion of the Govt. that according to Govt. what was the intention behind the grant of condonation for deficiency of service for grant of service pension. When the rule is very clear the intention is irrelevant. The Rule 266 clearly declared that all general rules shall be applicable to the employees governed by the provisions of Chapter 4 and we have already observed that there is no inconsistent rule to the Rule 125 under Chapter 4 of the Regulations. The communication/ letter dated 23.04.2012 neither have modified the Rule 125 nor reviewed it but it only conveyed that according to opinion of Govt. what was the intention for making Rule 125. In view of the above reasons, more opinion of the Govt. and interpretation of Rule 125, is not binding upon the Tribunal, particularly, when the Rule 266 and Rule 125 as are in force today are very clear.

11. *In view of the above reasons, we are of considered opinion that petitioner’s husband was eligible under Rule 125 for condonation of shortfall in service in pensionable service. So far as the fact is concerned, petitioner’s husband’s shortfall in service was only less than one year which could have been condoned. In view of the clear rules made under Pension Regulations for the Army 1961, and particularly, Rule 266, which provides that the general rule shall not be applicable when they are inconsistent with the rules framed under Chapter 4, the*

Govt.'s communication dated 23.04.2012, just runs just contrary to Rule 266 and therefore, cannot be given effect to."

10. We may, with advantage, also refer to the decision of the Apex Court in a case pertaining to Navy, titled **Union of India & another vs. Surinder Singh Parmar, Civil Appeal No.9389 of 2014**, decided on **January 20, 2015** in which it has been held that such a benefit is admissible w.e.f. 14.8.2001 and not prior to the said date.

11. In view of the above, it is held that the petitioner is entitled for condonation of shortfall in service, which is only for 59 days, for the purposes of pension and, thus, is entitled to get pension for the DSC service as well, in addition to the pension which he is getting from the Army. The respondents are directed to grant service pension to the petitioner from the due date i.e. 01.05.2015.

12. The respondents are further directed to work out the arrears admissible to the petitioner by virtue of the present order and pay the same to him within a period of three months from the date of receipt of a certified copy of this order, failing which, the amount shall carry interest @ 8% per annum from the date of this order, till actual payment thereof.

13. No order as to costs.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
(MEMBER (A))

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

36.

OA 42/2012 with MA 55/2012 & MA 157/2013

**Md Azam Ansari
Vs.
UOI & Ors.**

.....Applicant

.....Respondents

**For petitioner : In person
For Respondents : Mr SD Windlesh, Advocate**

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. The applicant who is present in person shall serve a copy of the entire paper book to the learned counsel for the respondents within three days and the respondents shall file reply affidavit within a period of four weeks from the date of service of such copy with advance copy to the applicant who may file response, if any, within a week thereafter.
2. List on **21.04.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

37.

OA 96/2014 with MA 108/2014

Ex Maj Deep Singh

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr K Ramesh, Advocate

For Respondents : Mr V. Pattabhi Ram, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER

HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER

16.02.2017

1. On request, list on **18.05.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**38.
OA 167/2015**

**Ex Sepoy Balbir Singh
Vs.
UOI & Ors.**

.....Applicant

.....Respondents

**For petitioner : Ms. Archana Ramesh, Advocate
For Respondents : Mr VVVM Pattabhi Ram, Advocate**

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. On request, list on 18.05.2017.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

39.
OA 195/2015

Col AK Yadav (Retd)
Vs.
UOI & Ors.

.....Applicant

.....Respondents

For petitioner : None
For Respondents : MrSD Windlesh, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. There is no appearance on behalf of the applicant despite the fact that is already 3.30p.m. In the interest of justice, no adverse is passed.
2. List on **19.05.2017**.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

40.

OA 370/2015 with MA 419/2015

Ex Gnr Prem Singh Yadav

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner

: Mr VS Kadian, Advocate

For Respondents

: Mr Ashok Chaitanya, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER

HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER

16.02.2017

1. On request, list on **05.05.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

41.

OA 565/2015

Sub/Jene Samit Pal

Vs.

UOI & Ors.

..... ..Applicant

.....Respondents

For petitioner

: Mr. VS Kadian, Advocate

For Respondents

: Mr.Prabodh Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER

HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER

16.02.2017

1. The learned counsel for the applicant has pointed out that though the applicant has exercised his option on 09.06.2013 regarding the pay fixation under the 6th Pay Commission. However, till date his salary has not been fixed in accordance with the said option. It has also been submitted that he has already filed a comparative statement wherein the salary which are receiving by his juniors is more than the applicant. The learned counsel has also drawn the attention of the Tribunal to the averment made in reply affidavit to the fact that though they have recommended the case of the applicant for re-fixation of his pay in accordance with above option, however the PAO(OR) Corps of Signal has still not decided the same.

2. Having regard to the submission made by the learned counsel for the respondents we feel for the present a direction deserves to be issued to the respondents to get the matter decided by the PAO(OR) based on the option exercised by the applicant. The decision, so taken, by the respondents shall be communicated to the applicant as well as a copy of the said order of pay fixation shall also be placed on record.

3. A copy of this order be given DASTI to the learned counsel for the parties.

4. List on **19.05.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

42.
OA 782/2015

Ex Hav (Hony Nb Sub) Hari PrasadApplicant
Vs.
UOI & Ors.Respondents

For petitioner : Mr Tanvir Nayar, Advocate
For Respondents : Mr VVV. Pattabhi Ram, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. Vide separate order, the OA stands dismissed.
 2. The learned counsel for the respondents orally prayed for leave to appeal.
- Since there is no substantial question of law of general public importance is involved, the prayer is declined.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

42.
OA 782/2015

**Ex Hav (Hony Nb Sub) Hari Prasad
Vs.
UOI & Ors**

..... Applicant

..... Respondents

For petitioner : Mr. V S Kadian, Advocate
For Respondents : Ms. Arschana Gaur, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

ORDER
16.02.2017

1. The learned counsel for the applicant submitted that the applicant is entitled to the benefit of rounding off of his disability pension from 20% to 50%, in view of the decision of the Hon'ble Supreme Court judgement rendered in Civil Appeal No.418 of 2012 (Union of India and Others Vs Ram Avtar) decided on 10.12.2014. However, the same has been illegally denied to him vide their letter dated 22.09.2015 (Annexure A-1 Impugned order). Hence the present OA.
2. Notice to the respondents.
3. Learned counsel for the respondents, accepts notice.
4. The learned counsel for the petitioner argued that the petitioner is entitled to the benefit as claimed on the basis of Govt. of India, Min. of Defence letter NO.1(2)/97/D(Pen-C) dated 31.01.2001 and the judgement of the Hon'ble Supreme Court in Ram Avtar's case (supra). Confronted with the above facts, learned counsel for the respondents does not dispute the legal position.
5. Since the point in issue is no longer *res integra*, therefore we do not insist upon the respondents for formal reply as it will not improve their case as it shall be sheer wastage of public money and time. The case of the applicant is fully covered by the judgment in Ram Avtar's case (supra) which has clearly laid down that whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his term of engagement or irrespective of mode of discharge, if found entitled to, or is getting disability pension, is entitled to be granted the benefit of rounding off as per the policy of the respondents. The contention raised by the respondents that this benefit can only be given to the personnel who are invalidated out of service and not to any other category of Armed Forces Personnel mentioned herein above did not find favour with the Hon'ble Supreme Court and it was observed that the disposal of these matters

will be taken note of by the High Courts as well as by the Tribunals in granting appropriate relief to such pensioners before them.

6. In the present case, the petitioner is in receipt of disability pension @ 20% with effect from 01.12.2012 for life vide PPO No. DE/011133 (Army) (Annexure - 3), therefore, he is entitled of the benefit of rounding off by computing his disability element of disability pension to the extent of 50% as against 20% w.e.f. 01.12.2012. Accordingly, the petition extends allowed.

7. On verification of the aforesaid factual facts from their record, the respondents shall calculate the arrears and release it to the petitioner after getting the requisite government sanction followed by PPO within a period of three months from the date of receipt of certified copy of this order by the learned counsel for the respondents, failing which arrears shall carry interest @ 8% p.a. w.e.f. 01.12.2012.

8. Accordingly, the OA stands disposed of.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

43.
OA 871/2015

Lt. Col (Retd.) Abhimanyu Nayar
Vs.
UOI & Ors.

.....Applicant

.....Respondents

For petitioner : Mr Akshat Sharma, Advocate
For Respondents : Mr SD Windlesh, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. The learned counsel for the respondents has handed over a letter dated 25.11.2016 issued by the Principal Controller of Defence Accounts(Pensions), Allahabad addressed to the Chief Manager, State Bank of Patiala and copy endorsed to the applicant under which it has been stated that the applicant is entitled to higher amount than the one claimed by him in the application. Based on the Circular No.568 dated 13.10.2016. He has also assured that whatever amount has been recovered earlier from the pension of the applicant amounting to approximately one lakh shall also be adjusted/repaid to him. The learned counsel for the applicant has very fairly conceded that in the light of this letter for the present he may be permitted to withdraw the present OA so as to enable the respondents to honour the commitment made in the letter in question. He further stated that incase the applicant still feels aggrieved on account of non-compliance of the terms and conditions of letter dated 25.11.2016 or on account of no adjustment or repayment of the amount already deducted by them he is at liberty to file a fresh petition in accordance with law. The learned counsel for the respondents does not have any objection.

2. Having regard to the aforesaid submissions made by the learned counsel for the parties, the present OA is dismissed as not pressed with liberty to the

applicant to seek such appropriate remedy as may be permissible under law. In the event of the respondents not adhering to the terms and conditions of the letter dated 25.11.2016 or not re-compensating the applicant in restoring the deduction which have already been made from his salary. A request for interest by the applicant is made. However, grant of interest is discretionary and we do not find it a fit case to award any interest. But the respondents are free to give any relief to the applicant without contesting the matter, although they appear to have paid much more than what has been prayed for in the application.

3. The OA stands disposed of in the aforesaid terms.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

44.
OA 76/2016

Ex Sigmn Gurdayal Singh
Vs.
UOI & Ors.

.....Applicant

.....Respondents

For petitioner : Mr. AK Trivedi, Advocate
For Respondents : Mr. Prabodh Kumar, Adv proxy Mr. Arvind Patel,
Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. The learned counsel for the applicant has fairly conceded that an appeal filed by the applicant on 24.08 2015 was not considered on merits and that the respondents had written a letter dated 29.09.2015 asking the applicant to furnish the appeal in duplicate, submit explanation for delay and to give an undertaking with reference to delay. He further stated that he will comply with the directions of the respondents within two weeks once the said condition is complied with, the respondents may take a decision on appeal filed by the applicant on merits rather than on technicalities including on the question of limitations. The learned counsel for the applicant has stated that they will comply with any order which the Hon'ble Tribunal may pass.
2. Having regard to the submissions made, we feel the averment made by the learned counsel for the applicant is reasonable one and therefore, for the present, the OA is treated as an appeal with directions to the respondents to decide the first appeal within three months from the date of the receipt of the documents which have been sought by the respondents vide letter dated 29.09.2015. We hope and trust that the aforesaid documents shall be filed by the applicant within two weeks.

3. Once the decision on the appeal is taken, a copy of the said decision shall be communicated to the applicant for information. It shall be open to the applicant to seek such appropriate remedy against the said order in case, he feels aggrieved.

4. A copy of this order be given DASTI to the learned counsel for the parties.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

45.
OA 236/2016

Ex Sep Suman Kumar Rao
Vs.
UOI & Ors.

.....Applicant

.....Respondents

For petitioner : None
For Respondents : Mr Dilip Nayak, Advproxy for Mr. Avdhesh Kumar
Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA MEMBER

ORDER
16.02.2017

1. There is no appearance on behalf of the applicant. In the interest of justice,
no adverse order is passed.
2. List on **23.05.2017**.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

46.

OA 307/2016 with MA 193/2016

Ex Rect Deepam Thapa

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner

: Mr. Archana Ramesh, Advocate

For Respondents

**: Mr Arvind Patel & SR Swain, Advocates for R 1-3,
Ms. Ajali Vohra for R-4**

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER

HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER

16.02.2017

1. On request, list on **23.05.2017**.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

47.

OA 310/2016 with MA 200/2016

Sub Wazir Singh Malik (Retd)

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr K. Ramesh, Advocate
For Respondents : Mr. JS Rawat, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. On request, list on **23.05.2017**.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**48.
OA 489/2016**

**Ex NC(E) Kuldip Singh
Vs.
UOI & Ors.**

.....Applicant

.....Respondents

**For petitioner : Mr VS Kadian, Advocate
For Respondents : Mr. Arvind Patel, Advocate**

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. On request, adjourned to 05.05.2017.

**(V.K. SHALI)
MEMBER (J)**

**(SANJIV CHACHRA)
MEMBER (A)**

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

49.

OA 548/2016 with MA 392/2016 & 393/2016

Ex Sub/SKT Achintya Das Choudhary

.....Applicant

Vs.

UOI & Ors.

.....Respondents

For petitioner : Mr Sanjiv Kalia, Advocate
For Respondents : Ms Barkha Babbar, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER**

**ORDER
16.02.2017**

1. The learned counsel for the applicant has very fairly conceded that he is confining his prayer only with regard to the release of leave encashment of the applicant. A perusal of the OA shows that the applicant was tried by Court Martial holding him guilty and he was sentenced with punishment of dismissal from service with one year Rigorous Imprisonment. The said Court Martial proceedings have attained finality on account of re-confirmation and post confirmation petitions having been dismissed and no challenge was laid to the Court Martial proceedings or the imposition of sentence. Since the applicant is dismissed from service, obviously, unless and until the challenge is made to the court martial proceedings or the sentence or even proportionality of the punishment the dismissal result in forfeiture of pensionary benefits. The applicant accordingly cannot be granted the benefits of pension and gratuity as has been claimed by him.

2. One of the prayers made by the applicant is with regard to the release of outstanding pay and allowances.

3. The impugned letter which is made in the instant OA is the letter dated 24.01.2014 (Annexure A-1 (colly) wherein it has been categorically stated that

all the pay and allowances for the period for which he was in service have been paid to him. The learned counsel for the applicant is unable to specifically mention the month or the year or any credible information to the effect that he has been paid for any period of service, clearly shows that nothing is due and payable to the applicant. Accordingly, the prayer in that regard is also totally misconceived.

4. Accordingly, the learned counsel for the respondents is directed to obtain instructions with regard to the payment of leave encashment only. Prima facie, the Tribunal is of the view that even though the incumbent may be visited with punishment of dismissal from service, leave encashment cannot be denied to him because that is the money which belongs to the applicant on account of leave encashment standing to his credit.

5. A copy of this order be given DASTI to the learned counsel for the parties.

6. List on **23.03.2017**.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

50.
OA 561/2016

Col T Samson (Retd)
Vs.
UOI & Ors.

..... ..Applicant

.....Respondents

For petitioner : Ms Archana Ramesh, Advocate
For Respondents : Mr. Ashok Chaitanya, Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
16.02.2017

1. On request, list on **24.05.2017**.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

**COURT No.3, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

10.
OA 146/2017 with MA 146/2017

Col (TS) Sanjay Kumar Gupta (Retd) Applicant
Vs.
UOI &Ors Respondents

For petitioner : Mr. VS Kadian, Advocate
For Respondents : Mr., Advocate

CORAM:

HON'BLE MR. JUSTICE V.K. SHALI, MEMBER
HON'BLE LT. GEN. SANJIV CHACHRA, MEMBER

ORDER
15.02.2017

1. The applicant was commissioned in the Indian Army on 08.06.1985 and superannuated after rendering 31 years one month and 23 days of service on 31.07.2016. At the time of his superannuation a release medical board had been conducted and he was found to be suffering from 30% disability. The applicant has filed the present OA for rounding of disability pension from 30% to 50% in terms of judgment of the Apex Court in **Civil Appeal No.418/2012 in UOI & Ors Vs Ram Avtar.**

2. The learned counsel for the applicant has brought to the notice of the Tribunal a letter F No.3(11)/2010-D/Pen/Legal) Pt.V, Ministry of Defence dated 18.04.2016 authored by the Under Secretary Department of Ex-Servicemen Welfare D(Pension/Legal), issued to Chief of Army Staff, Navy and the Air Force with regard to the broad banding of disability pension in respect of Armed Forces personnel retired/discharged on completion of terms of engagement with disability aggravated by or attributable to Military Service. It has been observed that in this letter that wherever the applicant has gone to the Court and obtain orders from the Court or the AFT in such of the matters broad banding of disability pension has been paid.

3. It is contended by the learned counsel for the applicant that since the respondents are not violating the judgment of the Apex Court in all the cases of

discharge on ground of disability whether it is premature voluntarily or superannuation forcing the incumbent to rush to the Tribunal for the purpose of obtaining orders and it is only then the respondents are activated and giving the disability pension.

4. This kind of attitude on the part of the respondents is not appreciated by the Tribunal. Once the Hon'ble Apex Court has laid down the law it must be complied with across the board by the respondents unless and until there is specific objection with regard to the ground of disability pension in an individual cases on account of disability or on account of delay, laches or any other objections. If this is not done then, it has unnecessarily not only increase the work of the Tribunal and the incumbent is forced to rush to the Tribunal to obtain order and then get it implemented. In some of the matters, the learned counsel for the respondents have still contested the matter on the ground that until and unless the orders are not passed by the Tribunal, the respondents are not granting the disability pension. This, we feel is gross and willful disobedience of the orders passed by the Apex Court which is law of the land. It has also been pointed out that earlier on 31.01.2001 where a particular disability is neither attributable nor aggravated by Military service is also not taken cognizance by the respondents unless and until a specific order is obtained by them from the Tribunal. In this regard also the Apex Court in Dharamvir Case has categorically observed that irrespective of the fact that when the incumbent joined the military service he is presumed to be physically fit and there is inherent disability recorded in his medical record, then the onus is on the respondents to establish that the disability which was found to be in existence at the time of superannuation, invalidates or discharge was not attributable to the military service otherwise there is presumption in favour of the incumbent claiming disability pension. This Policy letter is still being relied upon by the respondents by denying the benefit of the judgement of the Apex Court. in Dharmvir' case. Obviously, the judgment of the Supreme Court in Dharamvir's case does not get eroded by a policy letter of MoD. We feel that such a kind of interpretation or attitude on the part of the officers of the MOD at the lower level is also totally unwarranted and not in tune with the judgment of the Apex Court. We therefore, hope and trust that the Secretary, MOD will look into

the matter at his own level and pass the necessary directions to the concerned officers/officials to bring their policy letter in line with the judgment of the Apex Court failing which we will be constrained to refer the matter to the Supreme Court for initiation of such action as the Tribunal may deem fit. A copy of this order be given DASTI and a copy be also be sent to the Secretary, MoD for information and necessary action at his end.

5. So far as the applicant in the instant case is concerned is suffering from disability only last year i.e. 31.07.2016, therefore, as a matter of course, keeping in view the judgement in Ram Avtar's case they ought to given him the disability pension # 50%. We hope and trust that necessary sanction and the PPO shall be issued in this regard granting him the disability pension @50% within a period of eight weeks from today and the arrears shall also be paid within four months from today.

6. With these observations, the OA stands allowed.

(V.K. SHALI)
MEMBER (J)

(SANJIV CHACHRA)
MEMBER (A)

