

COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

51.

OA 4750/2024 with MA 1008/2025

Col Mahesh Chandr Bhardwaj (Retd) & Ors. Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. K R Verma, Advocate
For Respondents : Mr. K K Tyagi Sr CGSC
Maj Satvik Grover, OIC Legal Cell

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
03.04.2025

MA 1008/2025

MA 1008/2025 is an application filed by the respondents seeking 03 days condonation of delay in filing the counter affidavit which is allowed in the interest of justice, counter affidavit filed on behalf of the respondent no. 4 is taken on record.

2. In reply to a specific Court query, the learned counsel Mr. K K Tyagi for the respondents, the Senior CGSC submits that he represents all 4 respondents arrayed to the OA.

3. The details of the dates of commissioning, and the dates of retirements of the three applicants have been put forth vide Annexure A-6 to the OA which reads to the effect :-

“THE DETAILS OF THE APPLICANTS: PARTY TO

THE PRESENT APPLICATION

Applicant No.	Service No., Rank and Name	Date of Commissioning	Date of Retirement
01	IC- 48478P, Colonel Mahesh Chandr Bhardwaj (Retd.)	17 Dec 1988	12 Aug 2017 (A/N)
02	MR- 05752N, Brig Ajay Malik (Retd.)	25 Dec 1987	18 Oct 2021 (A/N)
03	DR- 10563N, Lt Colonel Venugopal MG (Retd.)	08 June 1991	24 Aug 2022 (A/N)

”

4. It is submitted on behalf of the applicants that they all have been denied the grant of the OROP benefits in view of them having taking premature voluntary retirement.

5. The issue involved in the present matter is no more *res integra*. This is so in view of the order dated 31.01.2025 of this Tribunal in OA 313/2022 in the case of *Cdr Gaurav Mehra (Retd.) vs. Union of India & Ors.* whereby vide Para 83 and 84 thereof, it was directed to the effect :-

“83. Pensioners form a common category as indicated in detail hereinabove. PMR personnel who qualify for pension are also included in this general category. The pension regulations and rules applicable to PMR personnel who qualify for pension are similar to that of a regular pensioner retiring on superannuation or on conclusion of his terms of appointment. However, now by applying the policy dated 07.11.2015 with a stipulation henceforth, the

prospective application would mean that a right created to PMR pensioner, prior to the issue of impugned policy is taken away in the matter of grant of benefit of OROP. This will result in, a vested right available to a PMR personnel to receive pension at par with a regular pensioner, being taken away in the course of implementation of the OROP scheme as per impugned policy. Apart from creating a differentiation in a homogeneous class, taking away of this vested right available to a PMR personnel, violates mandate of the law laid down by the Hon'ble Supreme Court in various cases i.e. Ex-Major N.C. Singhal vs. Director General Armed Forces Medical Services (1972) 4 SCC 765, Ex. Capt. K.C. Arora and Another Vs. State of Haryana and Others (1984) 3 SCC 281 and this also makes the action of the respondents unsustainable in law.

84. Even if for the sake of argument it is taken note of that there were some difference between the aforesaid categories, but the personnel who opted for PMR forming a homogenous class; and once it is found that every person in the Army, Navy and the Air Force who seeks PMR forms a homogenous category in the matter of granting benefit of OROP, for such personnel no policy can be formulated which creates differentiation in this homogeneous class based on the date and time of their seeking PMR. The policy in question impugned before us infact bifurcates the PMR personnel into three categories; viz pre 01.07.2014 personnel, those personnel who took PMR between 01.07.2014 and 06.11.2015 and personnel who took PMR on or after 07.11.2015. Merely based on the dates as indicated hereinabove,

differentiating in the same category of PMR personnel without any just cause or reason and without establishing any nexus as to for what purpose it had been done, we have no hesitation in holding that this amounts to violating the rights available to the PMR personnel under Articles 14 and 16 of the Constitution as well as hit by the principles of law laid down by the Supreme Court in the matter of fixing the cut off date and creating differentiation in a homogeneous class in terms of the judgment of D.S. Nakara (supra) and the law consistently laid down thereafter and, therefore, we hold that the provisions contained in para 4 of the policy letter dated 07.11.2015 is discriminatory in nature, violates Article 14 of the Constitution and, therefore, is unsustainable in law and cannot be implemented and we strike it down and direct that in the matter of grant of OROP benefit to PMR personnel, they be treated uniformly and the benefit of the scheme of OROP be granted to them without any discrimination in the matter of extending the benefit to certain persons only and excluding others like the applicants on the basis of fixing cut off dates as indicated in this order. The OAs are allowed and disposed of without any order as to costs.”

6. Furthermore, it is essential to observe that vide judgment dated 09.12.2024 in Civil Appeal no. 1943/2022 in *Lt Col Suprita Chandel vs. UOI & Ors.* it has been observed by the

Hon'ble Supreme Court vide Para 14 and 15 thereof, to the effect :-

“14. It is a well settled principle of law that where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court. [See Amrit Lal Berry vs. Collector of Central Excise, New Delhi and Others, (1975) 4 SCC 714]

15. In K.I. Shephard and Others vs. Union of India and Others, (1987) 4 SCC 431, this Court while reinforcing the above principle held as under:-

“19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees have not come to court. There is no justification to penalise them for not

having litigated. They too shall be entitled to the same benefits as the petitioners.”
(Emphasis Supplied)”,

Thus, the applicant being similarly situated as the applicant in the OA 313/2022 *Cdr Gaurav Mehra (Retd.)* (Supra) is held entitled to the grant of the OROP benefits.

7. In the circumstances, subject to verification of the date of discharge and the nature of discharge of the applicants being on the grounds of premature voluntary retirement, the benefits of the OROP to the applicants to the extent as granted vide order dated 31.01.2025 in OA 313/2022 be granted to the applicants by the respondents.

8. The OA is disposed of, accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

Yogita