

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

37.

OA 4377/2024

Wg Cdr Rajesh Upadhyay (Retd) Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Ms. Eti, proxy for
Mr. Ajit Kakkar & Associates, Advocate
For Respondents : Mr. Prabodh Kumar Sr CGSC, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE MS. RASIKA CHAUBE, MEMBER (A)

ORDER
07.03.2025

The applicant vide the present OA makes the following prayers:-

- (a) *To set aside the arbitral clause/provision in the Impugned Circular dated 04.01.2023 wherein the applicant is disentitled under the OROP scheme.*
- (b) *To cover the Applicant under the OROP Scheme.*
- (c) *To pass any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper anytime the proceedings of this case.*

2. Notice thereof is issued to the respondents and accepted on their behalf. The contention raised on behalf of the respondents is to the effect that the applicant having taken premature retirement with a conscious decision, thus the OROP benefits cannot be granted to him.

3. The matter in issue is no more *res integra* in view of the orders of this Tribunal in OA 313/2022 whereby vide Paras 83 and 84 thereof, it has been observed 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 in fact 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.”

4. Furthermore, vide the verdict of the Hon’ble Supreme Court in *Lt. Col. Suprita Chandel vs. Union of India* (Civil Appeal No. 1943/2022) whereby vide Paras 14 and 15 it has been directed to the effect:-

“14. It is a well settled principle of law that where a citizen is 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)”

In the circumstances, there is no necessity even for the applicant to have sought redressal in the mode that the applicant has now sought.

4. In terms of the directions dated 31.01.2025 in OA 313/2022 of the AFT PB, New Delhi, the applicant is held entitled to the grant of OROP benefits despite his having sought premature retirement on the date 15.03.2025. Thus, subject to verification of the date of discharge of the applicant and of his having taken premature retirement, the OROP benefits to the applicant in terms of directions dated 31.01.2025 in OA 313/2022 be granted to the applicant by the respondents.

5. The OA is disposed of accordingly.

**(JUSTICE ANU MALHOTRA)
MEMBER (J)**

**(MS. RASIKA CHAUBE)
MEMBER (A)**