

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

1.
OA 483/2013

Lt Gen (Retd) SS DahiyaPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr SR Kalkal, Advocate
For respondents : Mr Anil Gautam, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HONIBLE MR. JUSTICE SUNIL HALI, MEMBER.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Learned counsel for the petitioner in OA 483/2013 orally prayed for grant of leave to appeal to challenge the order, pronounced today in OA 483/2013, before the Hon'ble Supreme Court. We are of the considered opinion that no question of law of public importance is involved. Hence, the oral prayer for grant of leave to appeal before the Hon'ble Supreme Court is rejected.

(PRAKASH TATIA)
CHAIRPERSON

(SUNIL HALI)
MEMBER

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

FORM NO. 4
(See Rule 11 (1))
IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

1.
OA 481/2015
With MA 507/2015

Col (TS) Arun Kumar (Retd)Petitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr Virender Singh Kadian, Advocate
For respondents : Mr SP Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Notes of the Registry	Orders of the Tribunal
Dated 24.07.2015	Order passed vide separate order sheet, is placed on record. The OA stands disposed of.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated: 24.07.2015/als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

1.
OA 481/2015
With MA 507/2015

Col (TS) Arun Kumar (Retd)Petitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr Virender Singh Kadian, Advocate
For respondents : Mr SP Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

The petitioner has filed this OA seeking relief of broad-banding without making any request to the concerned authority, therefore, this OA is not entertainable.

2. However, the petitioner will be free to submit his representation before the respondents for grant of the benefit of rounding off of his disability pension in the light of the judgment of the Hon'ble Supreme Court delivered in **Civil Appeal No. 418/2012-Union of India & Ors Vs. Ram Avtar**, on 10.12.2014. If the respondents decide in favour of the petitioner, the relief may be granted to the petitioner without any delay and if the petitioner's prayer is rejected, then a brief reasoned order will be communicated to the petitioner. If the petitioner would have any grievance, he will be free to challenge the order of rejection of his prayer for rounding off of his disability pension. The representation be decided within three months from the date of receipt of the representation along with a copy of this order.

3. The OA stands disposed of accordingly.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

(See Rule 11 (1))
IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

2.
OA 483/2015

Ex SCPO Ashok Kumar **Petitioner**

Versus

UOI & Ors. **Respondents**

For petitioner : Mr VS Kadian, Advocate
For respondents : Mr Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Notes of the Registry	Orders of the Tribunal
Dated 24.07.2015	Order passed vide separate order sheet, is placed on record. The OA stands disposed of.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated: 24.07.2015/als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

2.

OA 483/2015

Ex SCPO Ashok KumarPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr VS Kadian, Advocate

For respondents : Mr Ankur Chhibber, Advocate

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.

HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Heard learned counsel for the parties.

2. Learned counsel for the petitioner submitted that the petitioner's OA may be disposed of with direction to the respondents to consider the petitioner's case in the light of the decision of the Principal Bench of the Tribunal given in OA 200/2011-Ex Hav Om Prakash Khati & Ors Vs Union of India & Ors on 06.08.2014.

3. Learned counsel for the respondents submits that after decision of the Principal Bench of the Tribunal in the case of Ex Hav Om Prakash Khati & Ors, the respondents have considered the case of Ex Hav Om Prakash Khati and passed appropriate orders.

4. Since the prayer of the petitioner is very limited, therefore, the respondents are supposed to consider the case of the petitioner in the light of the judgment of the Principal Bench of the Tribunal given in Ex Hav Om Prakash Khati's case.

5. Therefore, this OA is disposed of with direction to the respondents to consider and decide the petitioner's representation in the light of the decision given in OA 200/2014-Ex Hav Om Prakash Khati & Ors Vs Union of India & Ors on 06.08.2014. If the petitioner is found entitled to the relief, he may be granted the relief. In case the petitioner's prayer is rejected, he may be communicated a brief reasoned order. After decision in the case

of the petitioner, if the petitioner's grievance still survives, he will be free to challenge the said order.

**(PRAKASH TATIA)
CHAIRPERSON**

**(SANJIV LANGER)
MEMBER**

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

3.
OA 504/2015

Flt Lt JS Bhadoria**Petitioner**

Versus

UOI & Ors.**Respondents**

For petitioner : Mr SM Dalal, Advocate
For respondents : Mr Ajai Bhalla, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Heard learned counsel for the parties.

2. The matter requires consideration. Therefore, admit. Issue notice. Learned counsel for the respondents accepts notice. He may file memo of appearance also.

3. Heard learned counsel for the parties on interim relief application.

4. We have considered the submissions of the learned counsel for the parties. We have also perused the original file of the petitioner wherein the petitioner's prayer for extension in service has been rejected. The petitioner challenged the Invaliding Medical Board's proceedings dated 28.01.2014 by filing appeal on 06.08.2014. According to the record, the appeal was already dismissed.

5. Learned counsel for the petitioner also submitted that no Government order has been passed to discharge the petitioner whereas the respondents' contention is that the petitioner has been invalided out long back. It is also submitted that the petitioner's case was considered sympathetically because of the reason that he suffered serious injuries resulting into paralysis of his entire body below the neck and he was continued in the hospital for more than 4 years only on sympathetic ground and because of this reason, the petitioner enjoyed the medical facilities also though he was invalided out long back.

6. After going through the entire record, we are of the considered opinion that at this stage the petitioner's some interest is required to be protected in the facts of the case of the petitioner. The petitioner suffered paralysis in his entire body below the neck, therefore, he was treated in the hospital and his condition improved and then he got some strength in the upper limbs of his body. The

petitioner, at this stage, cannot be put out from the hospital where he is getting his treatment. Therefore, it is directed that till disposal of this OA, the petitioner will be given the full medical facilities which he is getting presently and none of the medical facilities will be withdrawn on the ground that the extended period of service of the petitioner i.e. upto 31.07.2015 has come to an end.

7. The petitioner's prayer for continuing him in service beyond 31.07.2015, which is, in effect, in the nature of final relief sought in this OA, and therefore, we are not inclined to grant the same.

8. Since it is a case of a seriously disabled person, therefore, it requires early hearing. The respondents, therefore, are directed to file the counter within a period of two weeks. Rejoinder, if any, be filed within a week's time thereafter.

9. List the matter for final hearing **01.09.2015**. Order be given **Dasti** to both the parties.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

4.
OA 513/2015
With MA 552/2015

Ris/Rdr Bedi Prakash RaiPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr VS Kadian, Advocate
For respondents : Mr JS Yadav, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Admit. Issue notice.

2. Learned counsel for the respondents accepts notice. He may file memo of appearance also.
3. Four weeks' time is granted to file the counter. Rejoinder, if any, be filed within two weeks thereafter.
4. Put up on **11.09.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

5.
OA 515/2015

Wg Cdr Arvind Kumar GuptaPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr Ajit Kakkar, Advocate

For respondents : Col Sonali

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.

HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Admit. Issue notice.

2. Col Sonali accepts notice on behalf of the Respondents.
3. Two weeks' time is granted to the respondents to file the counter.
4. Put up on **14.08.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

6.
RA 31/2015
In OA 421/2013

Ex Rfn Kuldeep Singh**Petitioner**

Versus

UOI & Ors.**Respondents**

For petitioner : Mr SR Kalkal, Advocate
For respondents : Mr SP Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Learned counsel for the petitioner submitted that he would like to wait for the decision of the Hon'ble Supreme Court in the case of Manju Tiwari Vs. Union of India which is likely to be listed on 27.07.2015.

2. Put up on **16.9.2015**.
3. During this period, if the learned counsel for the petitioner wants to amend the review application, he may submit a proper application for the same.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

7.
MA 776/2014
In OA 256/2013

Cdr (Retd) Anupam PrasadPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr SR Kalkal, Advocate
For respondents : Lt Dayanand

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Lt Dayanand, who is present on behalf of the respondents, submitted that the petitioner's file for appropriate orders was sent to the Director, (Pension/Legal) in the Ministry of Defence on 28.01.2015.

2. On 13.05.2015, we granted last opportunity of six weeks' time to the respondents to implement the order in question. We also directed that in case the order is not implemented within six weeks', the petitioner will be entitled to the cost of Rs. 10,000/-.

3. Director, (Pension/Legal) in the Ministry of Defence is directed to remain present before us on 04.08.2015 to show cause as to why the cost imposed may not be recovered from him. He should file affidavit on or before 04.08.2015. The period will be computed from the date he received the file. Order be given **Dasti**.

4. Put up on **04.08.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

8.
MA 304/2014
In TA 340/2009 (WP (C)4880/2008)

Smt Dhan Pati DeviPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr SR Kalkal, Advocate
For respondents : Mr Ankur Chhibber, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Learned counsel for the respondents submitted that in view of the order passed on the petitioner's review application, the petitioner is entitled to more benefit than the benefit already given to her, and for that purpose, the matter is in progress.

2. Learned counsel for the respondents has given break up/details, how the amount paid to the petitioner has been calculated. Copy of the calculation sheet be given to the learned counsel for the petitioner.
3. The respondents are granted six weeks' time to complete the process for giving remaining payment to the petitioner.
4. Put up on **16.09.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

9.
MA 531/2015 & MA 532/2015
In OA 82/2015

UOI & OrsPetitioner

Versus

Gp Capt Sanjiva Kumar Dwivedi (Retd)Respondents

For petitioner : Ms Sangeeta Tomar, Advocate
For respondents : Mr Rohit Pratap, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Learned counsel for the Union of India sought time to place on record the letter dated 27.01.2015 on the basis of which the Union of India is seeking leave to appeal before the Hon'ble Supreme Court.

2. We find that there is no reference of the said letter in the application for leave to appeal nor the said letter is on record. Therefore, the applicants/respondents may file appropriate affidavit stating that they want to take ground of challenge to the Tribunal's order on the basis of Government of India letter dated 27.01.2015 and also bring it on record.

3. Put up on **20.08.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

11.

OA 351/2015

With MA 392/2015

Ex Nk Mohan RamPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr VS Kadian, Advocate

For respondents : Mr Satya Saharawat, Advocate

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.

HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Four weeks' time is granted to file the counter. Rejoinder, if any, be filed within two weeks thereafter.

2. Put up on **11.09.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

13.
OA 116/2015

Smt Jayamani**Petitioner**

Versus

UOI & Ors.**Respondents**

For petitioner : Mr SR Kalkal, Advocate
For respondents : Mr Ajai Bhalla, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Four weeks' time is granted to file the counter. Rejoinder, if any, be filed within two weeks thereafter.

2. Put up on **11.09.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

14.
OA 359/2015

Ex Sub/RT B.N. Dewivedi**Petitioner**

Versus

UOI & Ors.**Respondents**

For petitioner : Mr SR Kalkal, Advocate
For respondents : Mr JS Yadav, Advocate for R-1 to 3
None for R-4

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Four weeks' time is granted to file the counter. Rejoinder, if any, be filed within two weeks thereafter.

2. Put up on **10.09.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

15.
OA 504/2014

Ex JWO Shyam Kishore TantiPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr VS Kadian, Advocate
For respondents : Ms Jagrati Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Respondents are directed to produce petitioner's original medical record from the year 2007 till he was invalidated out.

2. Put up on **17.08.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

16.
OA 248/2015

Smt Nater Prabha widow of late Nk (TS)
Iqbal NathPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr VS Kadian, Advocate
For respondents : Mr Ankur Chhibber, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Four weeks' time is granted to file the counter. Rejoinder, if any, be filed within two weeks thereafter.

2. Put up on **11.09.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

17.

OA 33/2015

With MA 34/2015

Ex Hav Suresh Chand

.....Petitioner

Versus

UOI & Ors.

.....Respondents

For petitioner : Mr SM Dalal, Advocate

For respondents : Mr Satya Saharawat, Advocate

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.

HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Four weeks' time, as a last opportunity, is granted to file the counter. Rejoinder, if any, be filed within one week thereafter. It is made clear that in case counter is not filed, the matter will be decided without counter.

2. Put up on **02.09.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

18.
OA 557/2014

Capt (Retd) Aditya SinghPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr SR Kalkal, Advocate
For respondents : Mr Ankur Chhibber, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Learned counsel for the respondents submitted that other identical matters are listed on 28.07.2015 wherein all or some of the issues may be common to the issues involved in this OA.

2. Learned counsel for the petitioner raised serious objection and submitted that this OA may not be clubbed with other matters as most of the issues involved in this OA are not common to the issues involved in those matters.

3. There may not be any dispute with respect to the submission of the learned counsel for the petitioner, but at the same time, it will be beneficial to every body if total study of the subject is done in all the cases so that there may not be any conflicting view of different Benches or of the same Bench.

4. Therefore, we are of the considered opinion that even one question of law being common, it will suffice to club all such matters together for deciding them by a common order.

5. Therefore, this OA may also be put up on **28.07.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

19.
OA 259/2015
With MA 289/2015

Smt Nater Prabha widow of late Nk (TS)
Iqbal NathPetitioner

Versus

UOI & Ors.Respondents

For petitioner : Mr VS Kadian, Advocate
For respondents : Mr JS Yadav, Advocate

CORAM:
HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Four weeks' time is granted to file the counter. Rejoinder, if any, be filed within two weeks thereafter.

2. Put up on **11.09.2015**.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

(See Rule 11 (1))
IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

20.
OA 623/2014
With MA 10/2015

Smt Ajmero Devi**Petitioner**

Versus

UOI & Ors.**Respondents**

For petitioner : Mr DS Kauntae, Advocate
For respondents : Mr Satya Saharawat, Advocate

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.
HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER
24.07.2015

Notes of the Registry	Orders of the Tribunal
Dated 24.07.2015	Order passed vide separate order sheet, is placed on record. The OA stands allowed.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated: 24.07.2015/als

IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH AT NEW DELHI

20.

OA 623/2014

With MA 10/2015

Smt Ajmero Devi

.....Petitioner

Versus

UOI & Ors.

.....Respondents

For petitioner : Mr DS Kauntae, Advocate

For respondents : Mr Satya Saharawat, Advocate

CORAM:

HON'BLE MR. JUSTICE PRAKASH TATIA, CHAIRPERSON.

HON'BLE LT. GEN. SANJIV LANGER, MEMBER.

ORDER

24.07.2015

The petitioner is the wife of Ex Gnr Sarwan, who died on 25.05.1993, after he was discharged from the Army Service on 28.05.1970 because of his falling in low medical category CEE(P). The petitioner's contention is that the petitioner as well as her husband were not aware about their right and therefore, they could not avail the legal remedy against denial of disability pension. It is also submitted by the learned counsel for the petitioner that right to pension, including disability pension, gives rise to continuing cause of action. It is further submitted that the petitioner is now at the age of 71 years. It will be worthwhile to mention here that though the petitioner has approached this Tribunal in the year 2014, but the petitioner's husband in his life time also agitated his claim for grant of disability pension. This fact has already been admitted by the respondents in their counter affidavit, the details of which may not be necessary for the simple reason that in number of judgments, not only various High Courts, but the Hon'ble Supreme Court have held that the claim of pension, including disability pension, gives rise to continuing cause of action. Therefore, even after such inordinate delay of almost more than 40 years, the petitioner's OA can be considered on merit. Hence, the objection raised by the respondents of delay and bar of limitation are rejected.

2. It appears from the counter affidavit filed by the respondents that the petitioner's husband entered into Army Service on 11.11.1963 and was discharged from service only because of his low medical category. The petitioner's husband could have been discharged in low medical category by sending the petitioner's husband to the Invalidating Medical Board but that was

not done and the petitioner's husband was discharged only on the opinion given by the Release Medical Board. The case of the petitioner's husband for grant of disability pension was recommended by the Service to the PCDA (P) Allahabad. But, the PCDA(P), Allahabad rejected the claim only on the ground that the disability of the petitioner's husband was less than 20%. The said communication of the PCDA(P) Allahabad was challenged in the first appeal by the petitioner's husband and the appeal of the petitioner's husband was rejected on the ground of bar of limitation. This fact was conveyed to the petitioner's husband on 16.01.1981. We need not to give much details of past history for the simple reason that the facts of this case are not in dispute that the petitioner's husband entered into service in a fit medical condition and developed the medical disability during his service period. His discharge from service before completion of the term of engagement was done only because of the medical ground. The petitioner's husband disability was already accepted as attributable to the military service of the petitioner's husband. The rejection of the claim of the petitioner's husband for disability pension, on the ground of his disability being 15-19%, appears to be legally wrong and this Tribunal has also held that there cannot be any accurate parameter whereby the disability of even point 1% can be assessed. If the petitioner's husband would have only one more point of disability, he would have been entitled to the disability pension. Therefore, even the experts/doctors have been given liberty to assess the disability percentage in the bracket of 15-19% etc. Therefore, we are of the considered opinion that because of point 1% less disability, the petitioner's husband could not have been denied the benefit of disability pension.

3. It appears that the Government itself reconsidered the matter and vide letter dated 31.01.2001, it was decided that where the disability will be less than 50%, it would be rounded off to 50%, the disability between 51% to less than 75% would be rounded off to 75% and the disability of 75% and above would be rounded off to 100%. Therefore also, we are of the view that the petitioner's husband claim for disability pension was wrongly rejected.

4. Since the claim of the disability pension of the petitioner's husband became barred by time, therefore, the petitioner may not get any benefit of her husband's disability pension, but the petitioner will be entitled to consequential benefit of only family pension and for this, the petitioner became entitled because

of the reason that we are holding that the petitioner's husband, at the time of his discharge from service, was entitled to the disability pension.

5. In view of the above reasons, this OA is allowed. It is held that the petitioner is entitled to family pension. In view of the inordinate delay, the petitioner is entitled to the arrears of past three years only from the date of filing of this OA which was filed on 03.12.2014. The petitioner will also be entitled to the interest at the rate of 9% per annum over the arrears. The order may be implemented within three months from the date of receipt of a copy of this order.

6. Learned counsel for the respondents, as usual, orally prayed for grant of leave to appeal before the Hon'ble Supreme Court to challenge this order. We are of the considered opinion that no question of law of public importance is involved. Hence, the oral for grant of leave to appeal is rejected.

(PRAKASH TATIA)
CHAIRPERSON

(SANJIV LANGER)
MEMBER

Dated:24.07.2015
als

Regional Bench, Chandigarh for sending the entire record of the OA 1171/2014 to the Armed Forces Tribunal, Regional Bench, Kochi.

4. The parties shall appear before the Armed Forces Tribunal, Regional Bench, Kochi on **19.08.2015**.

(PRAKASH TATIA)
CHAIRPERSON

Dated:24.07.2015
als

