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

1.
OA 2032/2018

Ex WO Kashi Nath Tiwary ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. V S Kadian , Advocate
For Respondents : Mr. S R Swain, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

2.
OA 2033/2018

Ex Hony Sub Lt MCPO LOG (F&A) II
Ghan Shyam Das ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. V S Kadian, Advocate
For Respondents : Mr. Rajesh Kumar Das, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

3.
OA 2039/2018

Ex Sub Panchi Lal **... Applicant**
Versus
Union of India & Ors. **...Respondents**

For Applicant : Mr. V S Kadian , Advocate
For Respondents : Mr. K K Tyagi, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

4.
OA 44/2019

Ex Sep Balbir Singh ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. J P Sharma , Advocate
For Respondents : Mr. , Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

5.

OA 46/2019 with MA 424/2019

Lt Col V Raveendran Kutty (Retd.) ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. J P Sharma, Advocate
For Respondents : Mr. , Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

6.
OA 47/2019 with MA 425/2019

Ex Rfn Mahaveer Singh ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. J P Sharma , Advocate
For Respondents : Mr. Prabodh Kumar, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Heard. Admit.

2. Issue notice in OA as well as MA. Notice is accepted by learned counsel for the respondents, who seeks time to file reply. Same be filed within four weeks with copy to the applicant.

3. List before the Court of Principal Registrar on **26.02.2019** for completion of pleadings.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

7.
OA 74/2019

Ex POELA Radhe Shyam Saini ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Heard. Admit.

2. Issue notice. Notice is accepted by learned counsel for the respondents, who seeks time to file reply. Same be filed within four weeks with copy to the applicant.

3. List before the Court of Principal Registrar on **26.02.2019** for completion of pleadings.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

8.
OA 75/2019

Ex Cpl Nivin Ravi **... Applicant**
Versus
Union of India & Ors. **...Respondents**

For Applicant : Mr. Ajit Kakkar , Advocate
For Respondents : Mr.Rajiv Kumar , Advocate
Wg. Cdr Sunit Tripathi, Legal Cell

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Heard. Admit.

2. Issue notice. Notice is accepted by learned counsel for the respondents, who seeks time to file reply. Same be filed within four weeks with copy to the applicant.

3. List before the Court of Principal Registrar on **26.02.2019** for completion of pleadings.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

9.

OA 80/2019 with MA 469/2019

Ex Sigmn Hasti Ram Hooda ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. A K Trivedi, Advocate
For Respondents : Mr. Ashok Chaitanya, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Heard. Admit.

2. Issue notice in OA as well as MA. Notice is accepted by learned counsel for the respondents, who seeks time to file reply. Same be filed within four weeks with copy to the applicant.

3. List before the Court of Principal Registrar on **26.02.2019** for completion of pleadings.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

10.
OA 85/2019

Col Rajeshwar Singh Bazad (Retd.) ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Anil Srivastava , Advocate
For Respondents : Mr. Neeraj, Sr. CGSC

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Heard. Admit.

2. Issue notice. Notice is accepted by learned counsel for the respondents, who seeks time to file reply. Same be filed within four weeks with copy to the applicant.

3. List before the Court of Principal Registrar on **26.02.2019** for completion of pleadings.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

11.
OA 91/2019 with MA 492/2019

Ex EAR-4 Gopal Gupta ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Heard. Admit.

2. Issue notice in OA as well as MA. Notice is accepted by learned counsel for the respondents, who seeks time to file reply. Same be filed within four weeks with copy to the applicant.

3. List before the Court of Principal Registrar on **26.02.2019** for completion of pleadings.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

12.

OA 92/2019 with MA 493/2019

Ex MCERA-II VN Murali Vummadisetty ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Ved Prakash , Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Heard. Admit.

2. Issue notice in OA as well as MA. Notice is accepted by learned counsel for the respondents, who seeks time to file reply. Same be filed within four weeks with copy to the applicant.

3. List before the Court of Principal Registrar on **26.02.2019** for completion of pleadings.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

13.
OA 93/2019

Ex XCHMECH (P) Joju C Joy ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Ved Prakash , Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

By way of this OA, applicant claims disability pension. It is stated that first appeal was preferred on 31.05.2018 which has not been disposed off by the respondents.

2. Learned counsel for the respondents seeks time to take necessary instructions.

3. In case appeal has not been disposed off, the same be disposed off within six weeks by a speaking order with a copy to the applicant.

4. Relist on **06.05.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

14.
OA 94/2019

Ex PO A (AH) Sundeep Pathak ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Shyam Narayan, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

By way of this OA, applicant claims disability pension. It is stated that first appeal was preferred on 08.06.2018 which has not been disposed off by the respondents.

2. Learned counsel for the respondents seeks time to take necessary instructions.

3. In case appeal has not been disposed off, the same be disposed off within six weeks by a speaking order with a copy to the applicant.

4. Relist on **06.05.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

15.
OA 95/2019

Ex POELA Murali Krishnan V K ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Ved Prakash, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

By way of this OA, applicant claims disability pension. It is stated that first appeal was preferred on 08.06.2018 which has not been disposed off by the respondents.

2. Learned counsel for the respondents seeks time to take necessary instructions.

3. In case appeal has not been disposed off, the same be disposed off within six weeks by a speaking order with a copy to the applicant.

4. Relist on **06.05.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

16.
OA 96/2019

Ex Sgst Pankaj Kumar Mishra ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Ved Prakash , Advocate
For Respondents : Mr. Y P Singh, Advocate
Wg. Cdr Sunit Tripathi, Legal Cell

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

By way of this OA, applicant claims disability pension. It is stated that first appeal was preferred on 18.06.2018 which has not been disposed off by the respondents.

2. Learned counsel for the respondents seeks time to take necessary instructions.

3. In case appeal has not been disposed off, the same be disposed off within six weeks by a speaking order with a copy to the applicant.

4. Relist on **06.05.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

17.
OA 104/2019 with MA 494/2019

Ex Rect Kundal Lal Yadav ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. A K Trivedi, Advocate
For Respondents : Mr. Arvind Patel, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Heard. Admit.

2. Issue notice in OA as well as MA. Notice is accepted by learned counsel for the respondents, who seeks time to file reply. Same be filed within four weeks with copy to the applicant.

3. List before the Court of Principal Registrar on **26.02.2019** for completion of pleadings.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

18.
MA 10/2018 in OA 575/2017

Ex Sub Amrender Kumar Singh ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : None
For Respondents : Mr. V S Mahndiyan, Advocate
Maj. BVS Chaudhary, OIC, Legal Cell

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Proxy counsel for the applicant requested for pass over. When the matter is again called, none has appeared for the applicant.

2. There is nothing to show that the amount has not been credited in the account of the applicant as submitted by Maj. BVS Chaudhary, OIC, Legal cell on the last date of hearing. This shows that the MA stands satisfied and is accordingly, disposed off.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

19.
MA 1977/2018 in OA 1489/2016

Sub (TIFC) Jaman Singh Bisht ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Ms. Devina Sharma, proxy counsel for Mr. S S Pandey, Advocate
For Respondents : Mr. V Pattabhi Ram, Advocate
Maj. BVS Chaudnary, OIC, Legal Cell

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Neither the Tribunal order has been complied with nor the concerned officer responsible for implementation of the order is personally present. However, Major BVS Chaudhary from Legal Cell of the Department seeks two weeks time for implementation of the Tribunal order.

2. It is made clear that in case the Tribunal order is not implemented within two weeks, then concerned Record Officer is directed to be personally present before the Bench.

3. Relist on **16.04.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

20.
MA 479/2019 in OA 894/2018

Col Ravindra Dixit (Retd.) ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. V S Kadian, Advocate
For Respondents : Mr. Rajesh Kumar Das, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Vide this application, the applicant seeks execution of Tribunal order dated 08.05.2018 .

2. Learned counsel for the respondents submits that Second Appellate Committee has already given their remarks and the same has been sent to the Vice Chief for his approval. As such, four weeks time is sought for implementation of the order.

3. Relist on **16.04.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

21.
OA 339/2012

Brig (Retd.) P K Tikoo ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Rajiv Manglik, Advocate
For Respondents : Mr. K S Bhati, Sr. CGSC

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Challenge in this OA is to the letter dated 13.03.2012 sent by Accounts Officer, PCDA (P) Allahabad II, to Centralized Pension Processing Centre State Bank of India, Chandni Chowk, Delhi for stoppage of payment of pensionary benefits of the applicant and for recovery of lump-sum amount of Rs.6 lacs from his account and the recovery of balance amount @ 1/3rd of his pension up to liquidation of the amount. The applicant seeks further direction to the respondents not to recover the amount of gratuity and to pay provisional pension to the applicant at full rate of pension.

2. The facts germane to the case are that the applicant was commissioned in Indian Army on 13.06.1976 and was promoted from time to time. He was appointed as Deputy Director General, Military Farms (MF) in the IHQ of MOD (Army) in November 2004. A complaint was lodged at the fag end of his service by Shri Vinod Gandhi, a civilian property dealer, who had no direct or indirect

relation to MF. A Court of Inquiry was convened vide letter no.3335/C of I/ Brigadier P K Tikoo/DV dated 15.09.2010. The applicant superannuated on 31.03.2011, prior to which Army Rule 123 was invoked against him for finalising the disciplinary proceedings and he was accordingly attached to HQ, Delhi area. PCDA (P) Allahabad issued PPO No. M/003413/2011 dated 11.05.2011 wherein the gratuity and the pension were sanctioned to the applicant and he was paid gratuity amount of Rs.10 lacs minus Rs.60,000/- deducted as ECHS contribution and Rs.1000/- withholding amount of gratuity thereby a net payment of Rs.9.39 lacs was remitted to the applicant in his account. However, subsequently, a corrigendum PPO No. M/Corr/007553/2011 dt. 26.07.2011 was issued by respondent No.3 wherein gratuity already sanctioned and granted was nullified and a sum of Rs.10 lacs was directed to be recovered. Accordingly, vide letter dated 29.08.2011, State Bank of India Centralized Pension Processing Centre directed respondent No.4 to hold/freeze the account of the applicant till recovery of Rs.10 lacs is made. The account of the applicant was frozen and the applicant was not allowed to withdraw any money. A tentative charge sheet dated 22.09.2011 was issued to the applicant containing 4 charges. But none of the charges reflected that any pecuniary loss has been caused to the Government. The applicant requested the respondents to defreeze the account. Nevertheless vide letter dated 13.03.2012, respondent No.3 intimated SBI, Centralized pension processing centre to recover an amount of Rs.6

lacs in one go and balance amount to be recovered @ 1/3rd of pension on monthly basis till the liquidation of the amount of gratuity. It has been submitted that the account of the applicant has been defrozen after illegally recovering an amount of Rs.6 lacs on 23.04.2012 and thereafter, pension is being paid @ 2/3rd of the pension sanctioned. It is alleged that the action of the respondents is illegal and the pensionary benefits including gratuity cannot be withheld for an offence not related to the discharge of official duty while in service.

3. The factual matrix of the case as set up by the applicant in the OA has not been disputed by the respondents. However, it is submitted that action has been taken in accordance with rules and Reserve Bank of India circular dated 07.12.2009.

4. The record reveals that when the OA came up for admission on 26.09.2012, recovery from the applicant was stayed and as per proceedings dated 06.08.2013, the amount which was recovered after the passing of the order, was refunded to the applicant.

5. Learned counsel for the applicant submits that the action of the respondent in recovery of gratuity amount is illegal. It is submitted that the applicant had challenged the court martial proceedings initiated by the respondents by filing OA No.226/2013. On 20.12.2017, learned senior counsel for the respondents' stated that the respondents have decided to handover the matter pertaining to initiation of court of inquiry, summary of evidence and General Court Martial to CBI as two civilians were involved. In view of the said

statement, the OA was disposed off, as having become infructuous. It is submitted that till date, CBI has not initiated any proceedings against the applicant neither any FIR has been registered nor any charge sheet has been submitted against him. That being so, the applicant is entitled to get refund the gratuity amount which has been illegally recovered by the respondents along with interest at least from the date when the order dated 20.12.2017 was passed by the Coordinate Bench of this Tribunal in OA 226/2013.

6. Learned senior counsel for the respondents under instructions from the Department submits that the authorities concerned approached CBI twice but they are not inclined to takeup the matter. That being so, under instructions from the Department, it was submitted that the gratuity amount can be refunded to the applicant subject to his furnishing of an indemnity bond. However, learned senior counsel opposed the prayer of learned counsel for the applicant for grant of interest on the said amount.

7. We have given our considerable thoughts to the respective submissions of counsel for the parties and have perused the records. It goes without saying that gratuity and pension are not bounty and the same is earned by an employee due to his long continuous service. The observation made by Hon'ble Supreme Court in para 7 and 8 of judgement passed in **Civil Appeal No. 6770 of 2013 titled Jitendra Kumar Srivastava & Anr.** in this regard, deserves mention.

> *"It is an accepted position that gratuity and pension are not bounties. An employee earns these benefits by dint of his*

long, continuous, faithful and un-blemished service. Conceptually, it is so lucidly described in D.S. Nakara and Ors. Vs. Union of India; (1983) 1 SCC 305 by Justice D.A. Desai, who spoke for the Bench, in his inimitable style, in the following words:

"The approach of the respondents raises a vital and none too easy of answer, question as to why pension is paid. And why was it required to be liberalised? Is the employer, which expression will include even the State, bound to pay pension? Is there any obligation on the employer to provide for the erstwhile employee even after the contract of employment has come to an end and the employee has ceased to render service?

What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need to seek answer to these and incidental questions so as to render just justice between parties to this petition.

The antiquated notion of pension being a bounty; a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nandan Prasad v. State of Bihar and Ors.[1971] Su. S.C.R. 634 wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon any one's discretion. It is only

for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab and Anr. V. Iqbal Singh (1976) IILLJ 377SC.

It is thus hard earned benefit which accrues to an employee and is in the nature of "property". This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India."

8. That being the legal position, let us revert to the case in hand. It is the undisputed case of the parties that, when the applicant was superannuated, he was paid the gratuity amount of Rs.10 lacs after necessary deductions. Subsequently, on account of planned disciplinary proceedings, recovery of Rs.6 lacs of gratuity amount was made from his account and directions were also given to the bank for recovery of balance amount by deduction of 1/3rd of his pension on monthly basis till liquidation of the amount. As stated above, the proceedings pertaining to GCM did not reach its logical end and the respondents decided to hand over the matter to CBI. It is admitted by learned senior counsel for the respondents that despite the fact that CBI has been approached twice, no FIR has been registered and CBI is not inclined to take up the matter. In the backdrop of this factual scenario, withholding of gratuity amount for an indefinite period cannot be allowed. At the most, the applicant can

be put to terms to which the department had also agreed that the refund can be made subject to furnishing of indemnity bond to which learned counsel for the applicant has no objection. Under the circumstances, amount of Rs.6 lacs which has been recovered from the applicant towards gratuity, be refunded to him subject to furnishing of indemnity bond, within four weeks that in case any finding comes against him, he shall return the said amount.

9. On furnishing of indemnity bond, respondents are directed to release the amount within eight weeks. The said amount shall carry interest @ 6% p.a. from 21.12.2017 (when OA No. 226/2013 was disposed off).

10. With these observations, OA stands disposed off.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

22.
OA 1011/2015 with MA 970/2015

Maj K Mahendra Singh (Retd) ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : None
For Respondents : Mr. J S Rawat, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

When the matter was called, Mr. J P Sharma, proxy counsel for the applicant requested for pass over. But when the matter was called again, none has appeared on behalf of the applicant.

2. List for hearing on **10.05.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

23.

OA 325/2016 with MA 1970/2018

Lt col (Retd.) S P Bhardwaj ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. A K Trivedi, Advocate
For Respondents : Mr. Y P Singh, Advocate
Maj. BVS Chaudhary, OIC, Legal Cell

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

MA 1970/2018

Vide this MA, the applicant seeks amendment in the OA.

2. Major BVS Chaudhary, submits that no comments have been received from the Department in this regard and requests for four weeks time to file reply.

3. Reply be filed within four weeks with a copy to the applicant.

4. Relist on **01.05.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

24.
OA 1272/2016

Ex Sgt Anil Kumar ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. J P Sharma, proxy counsel for
Mr. V S Kadian, Advocate
For Respondents : Mr. H V Shankar, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

On request of proxy counsel for the applicant, adjourned.

2. Relist for hearing on **01.05.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

25.
OA 1281/2016

Ex Sep Naresh ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Naresh Ghai, Advocate
For Respondents : Mr. J S Rawat for R 1, 2 &4
Ms. Anjali Vohra for R-3, Advocates

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

By virtue of this OA, applicant claims three reliefs:

(i) 5% cut should not be made in service element of pension;

(ii) Fixed medical allowance; and

(iii) AGIF benefit.

2. Learned counsel for the applicant submits that he does not press the relief for grant of fixed medical allowance and press for other two reliefs.

3. Ms. Anjali Vohra, appeared for respondent No.3, submits that the applicant is not entitled for AGIF benefit on several counts including delay in filing the claim for said relief. Furthermore, reference is made to the order passed in earlier OA No.3499/2013 filed by the applicant where it is mentioned that the applicant has submitted his unwillingness certificate and was discharged from Territorial Army service.

4. Learned counsel for the respondents submits that as per AGIF rules, a person who expresses his unwillingness for the sheltered appointment, is not entitled to the relief. This fact is disputed by learned counsel for the applicant and he seeks time to place on record the copy of reply filed by the respondents in the earlier OA. Learned counsel for the respondents is also directed to verify from the department, whether the applicant had expressed his unwillingness to take sheltered appointment.

5. List for hearing on **05.04.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

26.
OA 338/2017

Smt Geeta Devi **... Applicant**
Versus
Union of India & Ors. **...Respondents**

For Applicant : Applicant in person
For Respondents : Mr. Arvind Patel for R 1-3
Ms. Sonam Chauhan for R-4, Advocates

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Learned counsel for the respondents submits that after receiving the documents from the applicant, same have now been sent to PCDA and more time is required for processing the case of the applicant for issuance of necessary PPO.

2. It is made clear that PPO be issued within four weeks failing which, the concerned official form PCDCA is directed to be personally present in the Court.

3. Relist on **07.03.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

27.

OA 883/2017 with MA 604/2018

Lt. Col Subhash Chander Yadav (Retd.) ... Applicant

Versus

Union of India & Ors. ...Respondents

For Applicant : Mr. J P Sharma, Proxy counsel for
Mr. V S Kadian, Advocate

For Respondents: Mr. S P Sharma, Advocate

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)

HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R

21.01.2019

MA 604/2018:

Vide this application, learned counsel for the respondents seeks condonation of delay of 42 days in filing counter affidavit. Learned counsel for the applicant has no objection.

2. In view of the averments made in the application, delay of 42 days in filing the counter affidavit is condoned and counter affidavit is taken on record.

3. Application stands disposed off.

OA 883/2017:

Request for adjournment is made by proxy counsel for the applicant on the ground that the main counsel for the applicant is not available today.

2. Relist for hearing on **03.05.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

28.
OA 1636/2017

Nb Risaldar G L Sharma
Thru Smt Savitri Sharma (Wife) ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. J P Sharma, proxy counsel for
Mr. V S Kadian, Advocate
For Respondents : Mr. Tarunvir Singh Khehar, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Learned proxy counsel for the applicant submits that Smt. Savitri Sharma had expired on 10.01.2019, as such, he seeks time to take necessary steps.

2. Relist on **03.05.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

29.
OA 307/2018

AVM D K Pandey (Retd.) **... Applicant**
Versus
Union of India & Ors. **...Respondents**

For Applicant : Mr. J Rajesh, Advocate
For Respondents : Mr. Avdhesh Kumar Singh, Advocate
Wg. Cdr. M Kumaran Raja, Legal Cell

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Similar matters involving the same issue are stated to be listed on 30.01.2019. As such relist on **30.01.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

30.

OA 1099/2018 with MA 1911/2018

Lt. Col Narasimha Rao Rayudu (Retd.) ... Applicant

Versus

Union of India & Ors. ...Respondents

For Applicant : Mr. Indra Sen Singh, Advocate

For Respondents : Mr. S P Sharma, Advocate

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)

HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R

21.01.2019

MA 1911/2018:

Vide this application, learned counsel for the respondents seeks condonation of delay of 18 days in filing counter affidavit. Learned counsel for the applicant has no objection.

2. In view of the averments made in the application, delay of 18 days in filing the counter affidavit is condoned and counter affidavit is taken on record.

3. Application stands disposed off.

OA 1099/2018:

Learned counsel for the applicant does not want to file rejoinder. Pleadings are complete.

2. List for regular hearing as per **Seriatim.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

31.
OA 1306/2018

Hony Nb Sub Chandra Singh (Retd.) ... Applicant
Versus
Union of India & Ors. ...Respondents
For Applicant : Ms. Vibhuti Sharma, proxy counsel for Mr. S S Pandey, Advocate
For Respondents : Ms. Jyotsana Kaushik, Advocate
CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

1. Applicant has filed the present Original Application for fixation of pay in the rank of Naib Subedar.

2. At the outset, the Counsel for the Respondents contended that the application deserved to be rejected on the ground that the court lacks territorial jurisdiction. Moreover, the Applicant has not exhausted the remedy available to him under the law. It is further submitted that before filing the Original Application, the applicant has not filed any representation to the Respondents seeking redressal of his grievance.

3. Counsel for the Applicant submitted that no fruitful purpose will be served by making a representation as the competent authorities have not implemented the orders passed in earlier cases on ground that they are specific to the particular case and cannot be applied to all similarly situated cases. Moreover, this policy cannot be applied to

each and every case where no specific order is passed in their favour. In support of his submission he is placing reliance on the speaking order dated 23.08.2018 passed by the Respondents in OA No.701/2018 filed by Ex Hav (Hony Nb Sub Brahma Din Kataria vs. UoI & Ors. in the Principal Bench of AFT.

4. Elaborating on his case further, the counsel for the applicant states that if he makes a representation to the Respondents for redressal of his grievance, necessary directions need to be given to the Respondents to pass appropriate order in a time bound manner and in the light of the judgment passed in ***Union of India & Ors Vs. Virender Singh & Others, SLP (C) CC No.18582 of 2010*** *decided on 13.12.2010 and* ***Civil Appeal No.4677 of 2014,*** *titled* ***Union of India & ors. vs. Subbash Chander Soni, decided on 20.05.2015.***

5. Learned Counsel for the Respondents countered the submission made by the counsel for the applicant but states that they would have no objection to the filing of a representation by the applicant in the light of the aforesaid judgements which shall be given due consideration.

6. That being so, without expressing any opinion regarding jurisdiction of the Tribunal, the Original Application is disposed of with the direction that the applicant should make a representation to the competent authority and in case such a representation is made, same shall be decided by the Respondents within a period of four months by an order in the light of the judgements referred above. Further more, in case the applicant is entitled to the relief sought, the same

be granted to him without insisting the applicant to approach the Tribunal and get an appropriate order.

7. We also take note of the report of the Committee of Experts constituted by the Hon'ble Raksha Mantri for looking into the solutions to reduce litigations concerning the Ministry of Defence and to put in place an efficient mechanism of redressal of grievances related to service and pension matters, had inter alia, recommended as follows :

"Expert committee has recommended that whenever a legal principal is settled by a High Court or the Supreme Court, the same must be universally applied to all similarly placed employees or at least on individual representations after examining the same, rather than forcing them into individual litigation.

In this regard, attention is drawn to D(CMU)'s ID No. 7(9)/2018/D(CMU) dated 26.06.2018 (copy enclosed). However, it is proposed that each case may be decided on its merit, subject to consultation with Department of Expenditure and DOP&T having regard to financial implications."

8. In the light of the above recommendation and our direction given aforesaid, the Original Application is disposed of.

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(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

32.
OA 1526/2016

Ex Rect (OFC) Pilli Sivaiah ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : Mr. Ajit Kakkar, Advocate
For Respondents : Mr. S D Windlesh, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

Respondents have brought original medical record in respect of the applicant. Learned counsel for the respondents is directed to supply a copy of the same to the Bench as well as the counsel for the applicant.

2. Relist on **04.04.2019.**

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp

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

33.
TA 544/2010 with MA 319/2011 & 67/2013
WP(C) 1600/2002

Maj Anand Kumar ... Applicant
Versus
Union of India & Ors. ...Respondents

For Applicant : None
For Respondents : Mr. Ashok Chaitanya, Advocate

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)
HON'BLE LT. GEN. PHILIP CAMPOSE, MEMBER (A)

O R D E R
21.01.2019

None has appeared for the applicant.

2. Under the circumstances, TA is dismissed for non prosecution.

(JUSTICE SUNITA GUPTA)
MEMBER (J)

(LT. GEN. PHILIP CAMPOSE)
MEMBER (A)

21.01.2019/Sp