

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

A.

OA 1009/2015 with MA 969/2015

Maj Indra Chand (Retd)

..... Applicant

VERSUS

Union of India and Ors.

..... Respondents

For Applicant : Mr. V S Kadian, Advocate

For Respondents : Ms. Barkha Babbar, Advocate

CORAM

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

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER
03.04.2024

Vide our detailed order of even date we have allowed the OA 1009/2015. Learned counsel for the respondents makes an oral prayer for grant of leave to appeal in terms of Section 31(1) of the Armed Forces Tribunal Act, 2007 to assail the order before the Hon'ble Supreme Court. After hearing learned counsel for the respondents and on perusal of order, in our considered view, there appears to be no point of law much less any point of law of general public importance involved in the order to grant leave to appeal. Therefore, the prayer for grant of leave to appeal stands declined.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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For Respondents : Ms. Barkha Babbar, Advocate with
Maj A. R. Subhramaniam, OIC, Legal Cell

CORAM :

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

ORDER

The applicant "No. TA-42442A Maj Indra Chand (Retd.)" vide the present OA makes the following prayers:-

"(a) Direct respondents to grant service pension to the applicant with effect from the date of his retirement treating the applicant as "Late Entrant" as he was retired from service on completion of 14 years, 11 months and 27 days by calculating his service as 15 years as per para 18(a) of the Pension Regulations for the Army 2008. And/or

(b) Direct respondent to grant service element of disability pension with effect from his date of retirement. And/or

(c) Direct respondents to grant disability pension for all the four diseases and assess the percentage accordingly. And/or

(d) Direct respondents to grant disability pension to the applicant by giving benefits of broad banding/ rounding off in terms of Govt of India, Min of Defence letter No

1(2) / 97 / D (Pen - C) dated 31.01.2001 and law settled by Hon'ble Supreme Court in Civil Appeal No 418/2012 titled UOI & Ors v. Ram Avtar vide judgement dated 10.12.2014.

(e) Direct respondents to pay the due arrears of service pension/ service element and disability pension with interest @12% p.a with effect from the date of retirement with all the consequential benefits.

(f) Any other relief which the Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case."

2. The applicant was commissioned as Short Service Commissioned officer from 17.03.1979 to 27.04.1984 in the regular Army. He was granted a commission in the Territorial Army (TA) on 14.03.2000 from where he retired wef 31.01.2010 on reaching the age of superannuation. The service details of the applicant as submitted by the respondents vide their counter affidavit dated 01.03.2016 are as under:-

"(a) Regular Army – 05 years, 01 month & 10 days.

(b) Territorial Army:-

(i) Commissioned Service. - 09 years, 10 months & 17 days.

(ii) Embodied Service. - 09 years, 10 months & 17 days.

(c) Total qualifying service for pension - 14 years, 11 months & 27 days."

Thus, accordingly the total qualifying service of the applicant for pension is 14 years, 11 months & 27 days.

3. At the time of retirement, the applicant was assessed to be in low medical category suffering from the disabilities as under:-

- “(a) SIMPLE OBESITY,
(b) DYSLIPIDAEMIA,
(c) PRIMARY HYPERTENSION,
(d) LUMBAR SPONDYLITIS.”***

The disabilities of ‘Primary Hypertension’ and ‘Lumbar Spondyliits’ were opined by the RMB to be aggravated by military service and were assessed @ 45% for life, though the disabilities of ‘Simple Obesity’ and ‘Dyslipidaemia’ were opined to be neither attributable to nor aggravated by military service.

4. On 22.08.2023 on behalf of the applicant learned counsel submitted that he is in receipt of the disability element of pension in relation to the disability of ‘Primary Hypertension’ and ‘Lumbar Spondylitis’ and that thus the prayer at Para 8 (c) of the OA for seeking the grant of disability element of pension in relation to the disabilities of ‘Simple Obesity’ and ‘Dyslipidaemia’ is not pressed and that the prayer made by the applicant now only relates to grant of service pension and arrears in relation thereto.

CONTENTIONS OF THE PARTIES

5. The applicant submits that in terms of Pension Regulation for the Army 2008 Para 34 *“The minimum period of actual qualifying service (without weightage) required for earning pension shall be 20 years (15 years in the case of late entrants)”* and that as the applicant had served for 14 years, 11 months and 27 days of service, his service is required to be accounted as per para 18 (a) of the Pension Regulations for the Army 2008 whereby in calculating the length

of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a complete on half year and reckoned as qualifying service.

6. The applicant submits that in terms of Pension Regulation for the Army 2008 Para 44, there is a provision for condonation of shortfall up to period of 12 months to make a person eligible for grant of service pension, meaning thereby if a person has rendered fraction of a year equal to 3 months and above but less than 6 months shall be treated as a completed one half year. The applicant thus submits that he completed 14 years 11 months and 27 days of service, by counting the said period as per above provisions the applicant service is to be counted as complete 15 years of service.

7. On behalf of the respondents it has been submitted since the applicant retired from reaching the age of superannuation with total service of less than 20 years i.e. 14 years, 11 months and 27 days, the service pension / service element could not be granted to him as per law of existing provisions of their counter affidavit vide para 5.4 & 5.5 dated 01.03.2016 to the effect:-

"5.4 & 5.5 The contents of grounds 5.4 and 5.5 are denied. It is further submitted that the Applicant has made a prayer that his qualifying service of 14 years 11 months and 27 days should be rounded off to 15 years and he should be granted service pension as applicable in the case of Late Entrants. There is no dispute that as per existing provisions of Para 34 of PRA (2008) the embodied service of Applicant for grant of pensionary benefits is to be considered as 15 years. It is further submitted that Para 14 & 15 of PRA (1961) and Para 28 & 34 of PRA (2008) provides for grant of service pension to officers on completion of 15 years of qualifying service. These provisions however, as on date are applicable only to

officers of Regular Army Notwithstanding the same, keeping in view the Hon'ble AFTs Judgments in similar matters the case of the Applicant has been referred to MoD to consider for grant of service pension to the Applicant under Late Entrant Clause as an administrative decision."

Thus respondents themselves submitted that there is no dispute as per existing provisions of Para 34 of PRA (2008) that the embodied service of the applicant for grant of pensionary benefits is to be considered as 15 years. The respondents have also submitted that Para 14 & 15 of PRA (1961) and Para 28 & 34 of PRA (2008) the same provides for grant of service pension to officers on completion of 15 years of qualifying service. However, the respondents submit that these provisions are applicable only to officers of Regular Army.

8. In view of the averments made in Para 5.4 & 5.5 of the counter affidavit of the respondents, vide order dated 17.03.2016 the MoD was directed to take a decision within three months in relation to there submission that he matter had been referred to MoD to consider the grant of service pension to the applicant under late entrant clause as an administrative decision.

9. The respondents vide an affidavit no. 84884/TA-42442/12/LC/TA-4 dated 22.02.2017 submitted as Annexure R-2 the orders of the Competent Authority pursuant to directions dated 17.03.2016 passed in OA 1009/2015 vide Paras 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 are to the effect:-

"7. WHEREAS, TA-42442, Maj Indra Chand (Retd) has claimed that since the combined service rendered by him in TA and Regular Army is 14 years, 11 months & 27 days, he should be granted pension under Late Entrant Clause.

8. WHEREAS, as per provisions of Para 28 of Pension Regulation for the Army (PRA) 2008, Late Entrant Clause is not applicable to TA officers and pension to TA officers can be granted only on completion of 20 years of qualifying (embodied) service as specified at Para 186 of PRA 2008.

9. WHEREAS, total qualifying service for pension rendered by TA-42442, Maj Indra Chand (Retd) is less than 20 years, he does not fulfill the condition of minimum service to earn pension and same cannot be granted to him.

10. WHEREAS, grant of service element of disability pension is governed by Para 81 of PRA 2008. As per this regulations, same is admissible only incase, service personnel is invalided from service on account of a disability which is attributable to or aggravated by military service.

11. WHEREAS, TA-42442, Maj Indra Chand (Retd) was released from service on grounds of superannuation and his minimum service required to earn retiring pension (which is equivalent to service element) is less than 20 years, he cannot be granted service element of disability pension.

12. WHEREAS, as per provisions of Para 53 of PRA 2008, disability element is granted in addition to service pension only for such disabilities which has been recorded by RMB either attributable to or aggravated by military service and the degree of disability has been assessed @ 20% or more.

13. WHEREAS, the RMB conducted at the time of release of TA-42442, Maj Indra Chand (Retd) has opined as under :-

Disability	Attributable to service	Aggravated by service	% of disablement with duration	Composite assessment for all disabilities	Remarks
SIMPLE OBESITY	NO	NO	01-05% for life	45% for life	Being Metabolic disorder
DYSLIPIDEMIA	NO	NO	01-05% for life		Stress and strain of military service
PRIMARY HYPERTENSION	NO	YES	30% for life		
LUMBER SPONDYLOSIS	NO	YES	20% for life		

14. WHEREAS, only two disabilities had been recorded as aggravated to military service and assessed as 20% and more and remaining two disabilities besides being neither attributable nor aggravated by military service were also less than 20%, TA-42442, Maj Indra Chand (Retd) has been correctly granted disability element.

15. *WHEREAS, as per Govt of India, Ministry of Defence letter No 1 (2)/97/1/D (Pen-C) dt 31 Jan 2001, rounding off benefits for disabilities assessed as either attributable or aggravated by military service is granted only in case of invalidment. Since, TA-42442, Maj Indra Chand (Retd) was released from service on grounds of superannuation, benefit of rounding off cannot be granted*

16. *WHEREAS, Govt of India vide Resolution dated 30 Sep 2016 has accepted to extend the benefit of rounding off of disability element in respect of disabilities assessed as either attributable to or aggravated by military service and assessed 20% or more, to service personnel who have been released from service on grounds of Superannuation/ Pre Mature Retirement/ Voluntary Retirement, however, Govt sanction letter/ instructions to the effect are yet to be issued and will take some time. Accordingly, the benefit for disabilities assessed as aggravated by military service will be released immediately on issue of Govt sanction letter/ instructions.*

10. Reliance was placed on behalf of the applicant on the verdict of the Hon'ble Supreme Court in *Indian Bank & Anr vs N. Venkatramani*, Civil Appeal No. 3989 / 2007 (Arising out of SLP (Civil) No. 19062 of 2005 dated 30.08.2007 vide Para 8 to the effect:-

"8. The matter relating to pension is governed by the pension regulations."

and that the provisions of regulations are beneficial in nature and should be construed liberally vide Para 13 thereof which read to the effect:-

"13. It may be true that various provisions of the Regulations as for example Regulations 16, 17, 19, 23, etc. provided for qualifying service. Regulation 18 is not controlled by any of the said provisions. It does not brook any restrictive Interpretation. It only provides for a rule of measurement. An employee, as noticed hereinbefore, was entitled to pension provided he has completed the specified period of service. How such a period of service would be computed is a matter which is governed by the statute. It is one thing to say that a statute provides for completion of fifteen years of minimum service, but if a provision provides for measurement of the period, the same cannot be lost sight of.

Provision of the Regulations which are beneficial in nature, in our opinion, should be construed liberally."

and it has thus been submitted on behalf of the applicant that in as much as Pension Regulations for the Army 2008 do not limit the grant of the benefits of the condonation of shortfall upto period of 12 months as per Para 44 of the Pension Regulations for the Army to a personnel of the regular Army, and do not limit the benefits thereof to PBORs, commissioned officers of the Indian Army and Territorial Army is equally entitled to the benefits thereof.

11. Vide order dated 09.01.2024 after the matter had been reserved vide order dated 22.08.2023, the matter was taken up on 09.01.2024 for direction whereby it was directed it was considered essential that the matter be fixed for re-hearing especially in relation to the issue of the grant of the condonation of shortfall of the period of service in relation to officers.

12. The respondents submitted a letter dated 12.01.2024 of their legal department to submit that condonation is only permissible in the cases of JCO/Ors as provisioned vide MoD letter No 68699/CS/TA-3(COND)/482-B/93/D (GS-VI) dated 19.04.1993 and MoD letter No 4684/DIR(PEN)/2001 dated 14.08.2001 and that however as far as condonation of shortfall in service in r/o TA commissioned officers is concerned, there is no provision for condonation of shortfall in service. Hence, the applicant is not entitled to condonation.

The contents of Para 2 of the letter dated 19.04.1993 are as under:-

"2. Sanction of President is now accorded to condon the deficiency of six months service in respect of JCOs/OR of Territorial Army for eligibility to service pension as applicable to Regular Army JCO/OR vide Regulation No125, Pension Regulation for Army Part I (1931) subject to fulfilment of the requisite conditions laid down therein. The competent authority for condoning the deficiency of service in this case will be the Additional Director General Territorial Army. These orders will be from prospective effect. To arrears of pensice will be payable."

13. The contents of letter dated 14.08.2001 issued by the GoI, MoD relates to sanction accorded in pursuance of MoD ID No. 34(3)/2001/D(O&M) dated 03.08.2001 for delegation of administrative powers in respect of subjects *inter alia* in relation to clause 5 :-

"(a) (i) Division of family pension between eligible family members.

(ii) Initial cases for award of Special Family Pension and ex-gratia for officers with concurrence from PCDA(Pensions), Allahabad or the concerned CDA.

(iii) Recovery from pensionary benefits first charge being Public Fund dues thereafter Non-Public Fund dues from the residual benefits.

(iv) Payment of dues to NOK of Deserters.

(v) Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and upto 12 months.

(vi) Time bar sanction for filing appeals for Ordinary Family Pension, Special Family Pension, disability Pension etc. in respect of officers and PBOR beyond 12 months.

(vil) Grant of ex-gratia award to Cadets on death/disability within the Govt. approved terms and conditions,

(viii) Pensionary award to officers dismissed from Service otherwise than with disgrace/cashiered.

(ix) Perisionary award to officers who are discharged, called upon to resign or are retired.

(x) Grant of pension to PDOR dismissed from Service."

to thus submit there is nothing dealt in the letter dated 14.08.2001 which relates to condonation of shortfall in qualifying service for grant of pension in relation to officers.

14. On behalf of the applicant reliance was placed in Paras 2 and 3 of the order dated 17.01.2024:-

2. *On behalf of the applicant, reliance is sought to be placed on Chapter-1 of Regulation-1 of the Pension Regulations for the Army, 1961 which reads to the effect:-*

“1. Unless otherwise provided, the regulations in this part shall apply to all individuals whose pensions are regulated under Part I of these Regulations.”

to submit to the effect that there is no distinction between PBORs and Officers.

3. *Inter alia, it is submitted on behalf of the respondents that in view of the period that the applicant served with the Territorial Army from 14.03.2000 to 31.01.2010, the Pension Regulations for the Army, 2008(Part-I) would be applicable. In relation thereof on behalf of the applicant, reliance is sought to be placed on the Pension Regulations for the Army, 2008 (Part-I) with specific reliance on Para-18(a) thereof which reads to the effect:-*

“18. (a) In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service. The period of nine months and above would, therefore, be two half years. This shall however not be applicable for completing minimum qualifying service for pensionary awards.”

Reliance was also placed on behalf of the applicant on Para 186 of the Pension Regulations for the Army, 2008 (Part-I) which reads to the effect:-

“186. All Territorial Army personnel (other than civil Government servants and civil pensioners), who have a minimum qualifying aggregate embodied service of 20 years in the case of Officer and 15 years in the case of Personnel Below Officer Rank, shall be eligible for service pension.”

15. Reliance was also placed on behalf of the applicant on the order dated 19.02.2010 of AFT, PB, New Delhi in TA 46/2010 (W. P. (C) No. 2713/03 of Delhi High Court) in the *Maj S D Singh vs UOI & Ors* in which case the contention raised by the respondents that Territorial Army officers never been treated at par with regular commissioned officers and that the benefit of the provision of Regulation 15 of Pension Part-I, 1961 for Army about late entrants cannot be extended to Territorial Army Officers as this Regulation is only applicable to regular commissioned officers only. Reference was made by this Tribunal vide order dated 19.02.2010 in *Maj S D Singh* (supra) to the Govt. orders dated 30.10.1987 and 03.02.1998 which read to the effect:-

“

*No. 1(5) / 87 D (Pension/Services)
Government of India/Bharat Sarkar
Ministry of Defence/Raksha Mantralaya*

New Delhi dated the 30th October 1987

To

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

Sub: Implementation of the Government decisions on the recommendations of the Fourth Central Pay Commission regarding pensionary benefits for the Armed Forces officers and personnel below officer rank retiring or dying in harness on or after 01.01.1986.

Sir,

I am directed to refer to the Government decisions on the recommendations of the Fourth Central Pay Commission as notified vide Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners' Welfare Resolution No.2/13/87-PIC dated 18th March, 1987 and to convey the sanction of the President to the modifications, to the extent specified in this letter, in the rules/regulations concerning pensionary benefits of the Commissioned Officers (including MNS and Territorial Army Officers) and personnel below officer rank (including NCS (E) of the three Services, Defence Security Corps and the Territorial Army) (hereinafter collectively referred to as Armed Forces personnel)

1.2 The provisions of the pension regulations of the three services and various service instructions/Government orders, which are not affected by the provisions of this letter, will remain unchanged.

Part-1 Date of effect and Definitions

2.1 The provisions of this letter shall apply to the Armed Forces personnel who were in services as on 01.01.1986 or joined/join service thereafter.

Definitions

3. Reckonable Emoluments:

4. Average emoluments:

5. Qualifying Service

(a) The term "Qualifying Service" (QS) shall mean:---
(table)

(b) Weightage for the purpose of calculation of pension of commissioned officers will be given below:----- (table)

Notes: (1) There will be no weightage for officers and personnel below officer rank who retire prematurely for permanent absorption in public sector undertakings and autonomous bodies.

(2) There will be no weightage for officers and personnel below officer rank of the Territorial Army.

(3) The above weightage shall not be reckoned for determining the minimum qualifying service specified for admissibility of Retiring/Service Pension i.e. 20 years for service officers (15 years for late entrants), 15 years for personnel below officer rank and 20 years for NCS(E).

(4) Full pre-commissioned service rendered under the Central Government whether in a civil Deptt. or in the Armed Forces, shall be taken into account for working out the qualifying service for earning pensionary benefits subject to fulfilment of other conditions. This will also be counted for determining the minimum qualifying service Indicated in Note 3 above for earning Retiring/Service Pension.

(5) In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed one half year and reckoned as qualifying service.

Part-II Retiring/Service pension/gratuity, Invalid pension/gratuity, special pension/gratuity, ordinary family pension, retirement/death gratuity.

6. Retiring/Service pension

6.1 OFFICERS

(a) The minimum period of qualifying service (without weightage) actually rendered and required for earning retiring pension shall continue to be 20 years (15 years in the case of late entrants).

(b) Retiring pension in respect of the Commissioned Officers of the three services, including MNS and TA officers, shall be calculated at 50% of the average of emoluments reckonable for pension as defined in paras 3 and 4 above. The amount so determined shall be subject to a maximum of Rs 4,500/ per month and shall be the retiring pension for 33 years of reckonable qualifying service as defined in para 5 above; for lesser years of reckonable qualifying service, this amount shall be proportionately reduced.

.....

.....

.....

30. Pension regulation of the three services will be amended in due course.

31. This issue with concurrence of the Finance Division of the Ministry vide their u.o. no. 286-Pension of 1987.

32. Hindi version will follow.

Yours faithfully



Addl Secy to the Govt of India

It was observed vide Paras 7, 8, 9, 10 and 11 to the effect:-

"7. The order dated 30th October, 1987 was for the implementation of the recommendations of the Fourth Central Pay Commission and order dated 3rd February, 1998 was issued for implementation of the Government decision on the Fifth Central Pay Commission. Relevant portion of order dated 3rd February, 1998 reads as under :-

*No. 1(6) 98 D (Pension/Services)
Government of India/Bharat Sarkar
Ministry of Defence/Raksha Mantralaya*

New Delhi dated the 3rd Feb 1998

To

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

SUB: IMPLEMENTATION OF THE GOVERNMENT DECISIONS ON THE RECOMMENDATIONS OF THE FIFTH CENTRAL PAY COMMISSION REGARDING PENSIONARY BENEFITS FRO THE ARMED FORCES OFFICERS AND PERSONNEL BELOW OFFICER RANK (PBOR) RETIRING OR DYING IN HARNESS ON OR AFTER 01.01.1996.

Sir,

.....

5(2) In case of TA personnel aggregate of qualifying embodied service shall count for service pension. Aggregate qualifying embodied service may be continuous or rendered in broken spells. For calculating the total embodied service, the breaks in embodied service due to disembodiment will be treated as condoned but the period of breaks itself will not be treated as qualifying service for pension. Where qualifying embodied service has been rendered in broken spells, five per cent cut will be

imposed on the pension of those JCOs/ OR who have completed 15 years or more of aggregate embodied service but have not completed 20 years of aggregate embodied service.

.....

5(b) Notes: (3) The above weightage will not be reckoned for determining the minimum qualifying service specified for admissibility of Service Pension i.e. 20 years for service officers (15 years for late entrants) and 15 years for PBOR and 20 years for NCs(E).

6.1 (a) The minimum period of qualifying service (without weightage) actually rendered and required for earning retiring pension will be 20 years. In the case of late entrants (i.e. an officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years commissioned service qualifying for pension but whose total service is less than 20 years, the minimum period of qualifying service (without weightage) actually rendered and required for earning retiring pension will continue to be 15 years.

8. These two orders make it explicitly clear that the persons from the Territorial Army will be governed by the necessary pensionary Regulations which are applicable to Army also. There are no two opinions in the matter and there is no room for doubt. The Government orders dated 30th October, 1987 for implementation of Fourth Central Pay Commission and 3rd February, 1998 for implementation of Fifth Central Pay Commission make it abundantly clear that that the persons working in the Territorial Army will be governed by the Indian Army Pensionary Regulations for the purposes of working out their pensions.

9. It may be relevant to reproduce Regulation 292 of Pension Regulations for the Army for Territorial Army and same is reproduced as under:-

"The grant of pensionary awards to members of the territorial Army shall be governed by the same general regulations as are applicable to the corresponding personnel of the Army except where they are Inconsistent with the provisions of regulations in this chapter."

10. A similar case came before us i.e. Lt. Col. I.K. Talwar Vs. Union of India & Others (T.A. No. 771/2009) and we

have also held that the personnel of the Territorial Army for the purposes of pension shall be treated at par with Army officer. We have been shown the minutes of the note sheet of the Defence Ministry and CGDA (pension). We regret to say that there is not at all proper application of mind in this case. They are all obsessed with same concept of late entrants and the personnel of the Territorial Army stands differently for the purposes of pension. But the intention of the Government and two orders which have been issued in pursuance of the implementation of Fourth Pay Commission and Fifth Pay Commission leaves no room for doubt.

11. After going through the files we record our great displeasure the way in which the case has been dealt and total non application of mind and this is the complete derogation of the policy decision of the Government. Despite the fact that the Government has already decided on 30th October, 1987 and 03 February, 1998 still there is a doubt lurking in the mind of CGDA (pension) and so much so the Defence Ministry who has issued this circular after consultation with the Department of Personnel did not stick to that and wade away by the observations of CGDA (pension). At least Ministry should have themselves examined orders issued by them on 30th October, 1987 and 03rd February, 1998. Therefore, we are of the opinion that the order passed by the Government dated 10.01.2003 is set aside and respondents are directed to work out the arrears of pension of petitioner and release the same and pay the same with interest @ 12% per annum."

16. Reliance was also placed on behalf of the applicant on the order dated 19.07.2012 in OA 17/2011 of the AFT, PB, New Delhi in the case of **Major H.S. Khokhar vs UOI & Ors** in which case the applicant thereof belongs to territorial Army and he was commissioned on 28.09.1960 and retired on 31.12.1997 after putting in 15 years, 02 months and 14 days of service and sought the benefit as was given to the **Maj S D Singh** (supra) submitting that persons from the territorial Army are also governed by the Pension Regulation for the Army. Para 15 of the said regulation referred therein reads as under:-

"15. For purposes of the regulations in this Chapter, a 'late entrant' is an officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years commissioned service (actual) qualifying for pension but whose total qualifying service is less than twenty years (actual)."

It was observed vide para 4 of the said order by this Tribunal to the effect:-

"4. It requires that there should be an actual 15 years commissioned service qualifying for pension for the late entrants. There is no dispute that Petitioner is a 'late entrant' as he has entered in the territorial army and his date of birth is 13th November 1928 whereas he retired on 31st December 1977 attaining the age of more than 49 years as he was retired prematurely. Therefore, he is not entitled to the benefit of pension as he has not put in actual 15 years of qualifying service. Other Issues we have already dealt with in detail in the case of S.D. Singh (supra) and we have already held that a person belonging to territorial army is also entitled to pension as an Army Officer but whether Petitioner has put in actual 15 years of service or not is the question in hand. Learned counsel for the Petitioner has invited our attention to Annexure A-1 which is a certificate issued by Territorial Army Directorate and in that actual service of the Petitioner has been given 13 years 8 months and 21 days and he has also appended a certificate from the Indian Air Force where he has said to have served for 1 year and 262 days. Therefore, according to Petitioner, he has put in more than 15 years of qualifying service but learned counsel for the Respondents has submitted that he has put in 14 years 10 months and 15 days of service. Therefore the only question is that in case we accept the statement of the Petitioner then he has completed more than 15 years of service and if we accept the statement of Respondents then he has completed 14 years 10 months and 15 days of service. Be that as it may, the fact remains that even calculating his service according to the Respondents, he has put in 14 years 10 months and 15 days of service and he is, therefore, short by one and a half month only for qualifying a service. Looking into the facts of this case we find that 10 months may be rounded up to 12 months that will make it 15 years. Since he has already put in 14 years 10 months and 15 days of service and he has been denied only because he is short of one and a half month of actual service. Therefore, we round up 10 months to 12 months and that will enable the Petitioner to qualify service of 15 years and consequently allow the petition and pension due

to Petitioner may be released to him accordingly. No costs."

On behalf of the applicant thus it has been submitted that in the said case the applicant thereof short of one and a half month of qualifying service which was directed to be rounded off to enable the applicant to qualify service of 15 years.

ANALYSIS

17. At the outset, it is essential to observe that there is an typographical error in the order dated 17.01.2024 wherein Regulation-1 of the Pension Regulations for the Army, 1961 of Chapter 1 has been reproduced to the effect:-

"1. These Regulations shall be called the Pension Regulations for the Army, Part-I (2008) and shall come into force with effect from 1st July 2008."

18. It is equally essential to advert to Annexure R-3 of the counter affidavit filed by the respondents which is the Govt of India, MoD letter no. 1 (2) / 97 / I / D (Pen-C) dated 31.01.2001 which reads to the effect:-

"SUBJECT: Implementation of the Government Decisions on the recommendations of the Fifth Central Pay Commission regarding Disability Pension/ War Injury Pension/ Special Family Pension/ Liberalised Family Pension/ Dependent Pension/ Liberalised Dependent Family Pension for the Armed Forces Officers and Personnel Below Officer Rank retiring invaliding or Dying in harness on or after 1-1-96."

and states to the effect:-

"Sir,

The undersigned is directed to state that in pursuance of Government decisions on the recommendations of the Fifth Central Pay Commission, sanction of the President is hereby accorded to the modification, to the extent

specified in this letter, in the rules/regulations concerning above mentioned pensionary benefits of the Commissioned Officers (including MNS) and Personnel Below Officer Rank (PBOR) including NCS (E) of the three Services, Defence Security Corps and the Territorial Army (here in after collectively referred to as Armed Forces Personnel.)

1.2 The provision of the Pension regulations of the three Services and various Service instructions/Government orders which are not affected by the provisions of this letter, will remain unchanged.”

Significantly, Para 7.2 thereof provides to the effect:-

“7.2 Where an Armed Forced personnel is invalided out under circumstances mentioned in Para 4.1 above, the extent of disability or functional Incapacity shall be determined in the following manner for the purposes of computing the disability element:-

<i>Percentage of disability as assessed by invaliding medical board</i>	<i>Percentage to be reckoned for computing of disability element</i>
<i>Less than 50</i>	<i>50</i>
<i>Between 50 and 75</i>	<i>75</i>
<i>Between 76 and 100</i>	<i>100</i>

which relates to the percentage of disability element as assessed by the Invaliding Board.

19. The respondents vide their affidavit dated 23.02.2017 had submitted on record a letter dated 22.02.2017 in which vide para 16 already adverted to hereinabove in para no 9 it has been stated specifically to the effect that Govt. of India vide Resolution dated 30.09.2016 accepted to extend the benefit of rounding off of disability element in respect of disabilities assessed as either attributable to or aggravated by military service and assessed @ 20% or more,

to service personnel who have been released from service on ground of Superannuation/ Pre-Mature Retirement/Voluntary Retirement. Thus it has been observed hereinabove in para no 18 vide letter dated 31.01.2001 as applicable to Commissioned Officers (including MNS) and Personnel Below Officer Rank (PBOR) including NCS (E) of the three Services, Defence Security Corps and the Territorial Army (here in after collectively referred to as Armed Forces Personnel.)

20. The contention sought to be raised on behalf of the respondents that the provisions of Para 14 & 15 of the Pension Regulations for the Army 1961 and Para 28 and 34 of PRA (2008) are applicable only to officers of Regular Army cannot be countenanced and has been expressly not accepted by this Tribunal vide order dated 19.02.2010 in *Maj S D Singh* (supra) and it has been expressly laid down in *Maj S D Singh* (supra) that the Government orders dated 30.10.1987 for implementation of Fourth Central Pay Commission and 03.02.1998 for implementation of Fifth Central Pay Commission make it abundantly clear that the person working in the Territorial Army will be governed by the Indian Army Pensionary Regulations for the purposes of working out their pensions. The order dated 18.01.2010 of this Tribunal in TA 771/2009 in the case of Lt *Col I K Talwar vs UOI & Ors* wherein it was held that the personnel of the Territorial Army for the purposes of pension shall be treated at par with Army Officer.



21. Vide order dated 26.05.2010 of the AFT, PB, New Delhi in OA 164/2010 in the case of *Major P C Gupta vs UOI & Ors* the applicant thereof was commissioned on 20.07.1964 as a 2nd Lieutenant in the Territorial Army and superannuated on 31.12.1986 on completion of 52 years of age and had put in 18 years and 05 months of service. He was denied pension because he had not put in 20 years of qualifying service and in view of the *Maj S D Singh* (supra) the applicant thereof was allowed and held that officers who are later entrants for that the qualifying service for pension is 15 years and that applicant was held to the grant of the pensionary benefits.

22. The order dated 13.08.2018 of this Tribunal in OA 332/2016 in the case of *Lt Col Charanjit Singh (Retd) vs UOI* relates to an applicant who was a Short Service Commissioned (SSC) officer from 26.08.1982 to 17.11.1987 and subsequently after a period of about 15 years, he joined the Territorial Army (TA) on 19.05.2003 where he superannuated on 31.05.2015 after 12 years and 10 days of embodied TA service. He added up to a total of 17 years, 03 months and 13 days of qualifying service for pension however he was denied pension by the respondents on the ground that he had not completed 20 years of service despite the contention put forth by the applicant that he was a 'late entrant' as per provisions of the Pension Regulations which only required 15 years of qualifying service of pension. The observations in Paras 10 to 15 of this order reads as under:-

"10. We find that the issues before this Court are (a) Whether a TA commissioned officer is entitled to the same pensionary benefits as a regular commissioned Army Officer, (b) Whether the total service of the applicant adds upto 17 years, 3 months and 13 days, as claimed by the applicant, and (c) whether the applicant can claim status as a 'late entrant', which would then qualify him for service pension, as he would have more than 15 years of qualifying service for pension.

11. We find that Para 292 of Chapter V of the Pension Regulations of the Army 1961, which deals with the Territorial Army, clearly states that grant of pensionary awards to members of the Territorial Army shall be governed by the same general regulations as are applicable to the corresponding personnel of the Army, except where they are inconsistent with the provisions of regulations in this Chapter. This aspect has been clarified subsequently by Govt. of India vide its policy letters with regard to implementation of Fifth and Sixth Central Pay Commission recommendations, vide its letters of 30.10.1987 and 03.02.21998, whereby TA officers have been clubbed with regular commissioned Army officers.

12. We also find that the total service of the applicant works out to 17 years, 3 months and 13 days, as admitted by the respondents in their counter affidavit, and stated in IHQ of MoD (Additional Directorate General Territorial Army) letter No. 07.11.2006.

13. Counsel for the applicant has argued that, the term 'late entrant' is essentially meant for TA officers as they are the only officers who are commissioned at a higher age and are more liable to superannuate without completing full qualifying period for earning service pension. Respondents, on the other hand, contend that the provisions of Chapter II of the Pension Regulations of the Army (PRA) as mentioned in Para 14 and Para 26), are only applicable to regular commissioned officers and officers of the Military Nursing Service, and thus are not applicable in entirety to officers of the Territorial Army, who are covered by Chapter V of the PRA 1961. Para 292 of PRA 1961 refers to exceptions in equality of pension regulations between the TA and Regular Army when it stipulates "where they are inconsistent with the provisions of regulations in this Chapter". The respondents thus argue that the provision of late entrant' is only applicable to regular commissioned officers of the Indian Army and the Military Nursing Service, but not to the officers of Territorial Army.

14. We find the arguments put forth by the respondents on this aspect quite fallacious, keeping in view the catena of judgments by various Benches of this Tribunal since 2010. In fact, the Hon'ble Apex Court has, on one occasion, declined to allow leave to appeal' to the respondents against such a judgment of the Tribunal, i.e. Order of 29.11.2013 by the Hon'ble Supreme Court in the case of **Union of India Vs. B.D. Mishra [Civil Appeal D. No. 28183 of 2013 (for preliminary hearing)]**. The point which clearly stands out in favour of the applicant is that, if this provision of 'late entrant' is not applicable for a TA officer, then, who else is it meant for? Thus, we find that the applicant is entitled to the categorization of 'late entrant', and consequent pensionary benefits.

15. Accordingly, the OA bears merit and is allowed. The applicant is granted service pension with effect from 01.06.2015. Arrears will be paid to him within a period of four months, failing which, he will be entitled to interest @ 8% per annum."

23. The order dated 20.10.2011 of this Tribunal in OA 18/2011 in the case of **Major B. D. Mishra vs UOI**, in which case the applicant was allowed in view of the **Maj S D Singh** (supra), the prayer for leave to appeal against the same was declined vide order dated 29.11.2013 by the Hon'ble Supreme Court in CA Diary no. 28183/2013.

24. Vide order dated 07.01.2020 of this Tribunal in OA 433/2017 in the case of **Lt Col D. M. Dafedar (Retd.) vs UOI & Ors**, the applicant thereof was a TA officer, who superannuated in the rank of Lt Col with over 15 years of qualifying service and had filed the OA seeking the grant of pension in his capacity as a 'late entrant' wef 01.05.2014 the date after his superannuation from service and he had completed 15 years and 23 days of embodied service and was thus not granted pensionary benefits by the respondents submitting to the effect that provisions of late entrant clause apply only to permanent regular

commissioned officers and not to TA officers. The observations of this Tribunal vide Paras 9, 10 and 11 thereof reads to the effect:-

"9. Counsel for the applicant has argued that, the term late entrant' is essentially meant for TA officers as they are the only officers who are commissioned at a higher age and are more liable to superannuate without completing full qualifying period for earning service pension. Respondents, on the other hand, contend that the provisions of Chapter II of the Pension Regulations of the Army (PRA) (as mentioned in Para 14 and Para 26), are only applicable to 'regular commissioned officers of the Indian Army and the Military Nursing Service', and thus are not applicable in entirety to TA officers of the Territorial Army, who are covered by Chapter V of the PRA 1961. Para 292 of PRA 1961 refers to exceptions in equality of pension regulations between the TA and Regular Army when it stipulates 'where they are inconsistent with the provisions of regulations in this Chapter'. The respondents thus argue that the provision of late entrant' is only applicable to regular commissioned officers of the Indian Army and the Military Nursing Service, but not to the officers of Territorial Army.

10. We find the arguments put forth by the respondents on this aspect quite fallacious, keeping in view the catena of judgments by various Benches of this Tribunal since 2010. In fact, the Hon'ble Apex Court has, on one occasion, declined to allow leave to appeal' to the respondents against such a judgment of the Tribunal, Le. Order of 29.11.2013 by the Hon'ble Supreme Court in the case of Union of India Vs. B.D. Mishra [Civil Appeal D. No. 28183 of 2013 (for preliminary hearing). The point which clearly stands out in favour of the applicant is that, if this provision of 'late entrant' is not applicable for a TA officer, then, who else is it meant for? Thus, we find that the applicant is entitled to the categorization of late entrant', and consequent pensionary benefits.

11. Accordingly, the OA bears merit and is allowed. The applicant is granted service pension with effect from 01.05.2014. Arrears will be paid to him within a period of four months, failing which, he will be entitled to interest @ 6% per annum."

25. The order dated 02.06.2022 of this Tribunal in OA 1403/2020 in the case of **Col Nandu Kumar BN (Retd) vs UOI & Ors**, in which case the applicant

who was commissioned on 03.06.1994 in the Territorial Army as Second Lieutenant and superannuated on 31.05.2020 after rendering 18 years 11 months and 24 days of Embodied Reckonable Service but was not granted service pension after his retirement though sought condonation of shortfall to be covered under the 'Late Entrant' policy of the respondents which was rejected by the respondents vide letter dated 12.06.2020 stating that only those TA officers who have completed qualified service of 20 years are eligible for the service pension with further contention having raised on behalf of the respondents there is no policy for condonation of delay in shortfall of service of a Commissioned Officer and have also contended that the Late Entrant provision is applicable only to Regular Officers vide Regulation 34 of Pension Regulations for the Army, 2008 (Part I). Vide paras 8, 9 and 10 it was observed to the effect:-

"8. It is pertinent to extract Para 14 of the Tribunal Order in the case of Lt Col Charanjit Singh Vs Union of India (supra):

14. xxxx xxxx xxxx The point which clearly stands out in favour of the Applicant is that, if this provision of late entrant' is not applicable for a TA Officer, then, who else it is meant for? Thus, we find that the Applicant is entitled to the categorization of 'late entrant' and consequent pensionary benefits."

9. The Tribunal explained the underlying principle with regard to Pensionary benefit as enunciated both in Pension Regulations for the Army, 1961 and 2008 wherein despite the differences in terms of service between the Regular Army and other elements like TA and DSC the qualifying parameters for Pension remained the same. If this parameter is not in dispute then denying the benefit of Late

Entrant Clause only to Officers of the TA wherein all other qualifying requirements remain the same would indeed be untenable as also go against the principles of natural justice. The Learned Counsel for the Respondents conceded that all these aspects had been considered in the case of Lt Col Charanjit Singh Vs Union of India (Supra).

10. In view of the aforesaid, we are of the considered opinion that the Applicant is eligible for Pensionary Benefits from the date of superannuation from the Territorial Army w.e.f. 01 June 2020. Arrears be paid within 12 weeks of date of this Order falling which interest @ 6% p.a. will be payable to the Applicant."

and that applicant was held eligible for the grant of pensionary benefits from the date of superannuation from the Territorial Army.

26. The order dated 31.07.2023 of this Tribunal in OA 1161/2022 in the case of **Col Jaspal Singh Anand (Retd) vs UOI & Ors**, in which case the applicant thereof a retired Colonel in the Territorial Army who was commissioned on 22.08.1994 in the Territorial Army (TA) and superannuated w.e.f 31.05.2016 and had served in the regular Army from 12.03.1983 to 11.11.1991 prayed for condonation of shortfall of service and to be covered under the "Late Entrant" policy for grant of service pension which was rejected by the respondents vide letter dated 25.07.2017 stating that only those TA officers who have completed qualifying service of 20 years are eligible for service pension. A contention was raised by the respondents that no policy for condonation of shortfall of service of a commissioned officer exists and the Late Entrant Provision was applicable only to Regular Officers vide Regulation 34 of Pension Regulations for the Army, 2008 (Part 1). The observations of this Tribunal in Para 10 to Para 14 thereof are to the effect:-

"10. We have heard the arguments of both the parties and perused the documents placed on record, the main issues that needs to be decided are:

(a) Whether a TA commissioned officer is entitled to the same pensionary benefits as a regular commissioned Army officer?

(b) Whether the applicant can claim the status as a late entrant which would then qualify him for service pension?

11. Before delving in the issue, it would be relevant to reproduce the relevant Regulations of the Pension Regulation for the Army 2008, Part 1 and extracts of the relevant policies.

Chapter-IX Territorial Army

Extent of Application 182. The grant of pensionary awards to the service personnel shall be governed by the same general Regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of Regulations in this chapter.

These Regulations shall not apply to those who are :

(i) Civil Government servants holding permanent appointments, and

(ii) Retired Civil Government Servants."

Minimum Qualifying Service for Earning Retiring Pension.

34. The minimum period of actual qualifying service (without weightage) required for earning a retiring pension shall be 20 years (15 years in the case of late entrants).

Explanation: For purpose of the Regulations in the Chapter, a 'late entrant' is an Officer who is retired on reaching the prescribed age limit for compulsory retirement with at least 15 years of service (without weightage) qualifying for pension but whose total qualifying service is less than 20 years (without weightage)."

12. Regulation 182 of Chapter IX of the Pension Regulations of the Army 2008, which deals with the Territorial Army, clearly states that grant of pensionary awards to members of the Territorial Army shall be

governed by the same general regulations as are applicable to the corresponding personnel of the Army, except where they are inconsistent with the provisions of regulations in this Chapter. This aspect also stands clarified by Govt. of India vide its policy letters with regard to implementation of Fourth and Fifth Central Pay Commission recommendations, vide its letters of 30.10.1987 and 03.02.1998, whereby, TA officers have been clubbed with regular commissioned Army officers.

13. This Hon'ble Tribunal in the case of **Lt Col Charanjit Singh Vs. Union of India and Ors.**, (OA 332 of 2016), have upheld the argument that the term 'late entrant' is essentially meant for TA officers as they are the only officers who are commissioned at a higher age and are more liable to superannuate without completing full qualifying period for earning service pension. In this judgement, the Tribunal explained the underlying principle with regard to pensionary benefit as enunciated both in Pension Regulations for the Army, 1961 and 2008 wherein despite the differences in terms of service between the Regular Army and other elements like TA and DSC the qualifying parameters for pension remained the same. Therefore, this Tribunal is relying on the Hon'ble Supreme Court's judgement in the case of **Union of India Vs. B.D. Mishra** [Civil Appeal D. No.28183 of 2013] which upheld the provision of 'late entrant' is applicable to TA officers.

14. The learned counsel for the respondents conceded that all these aspects had been considered in the case of **Lt Col Charanjit Singh Vs. Union of India** (supra). Therefore, we are of the considered opinion that the applicant is eligible for pensionary benefits from the date of superannuation from the Territorial Army w.e.f. 31.05.2016."

27. It is essential to observe further that vide judgment dated 17.12.2021 of the Hon'ble Supreme Court in **Pani Ram vs UOI & Ors** in CA 2275/2019, it was observed vide paras 13 to 16, 20 and 21 are thereof to the effect:-

"13. It will be relevant to refer to sub-section (1) of Section 9 of the Territorial Army Act, 1948:

"Sec. 9. Application of the Army Act, 1950. (1) Every officer, when doing duty as such officer. and every enrolled person when called out or embodied or attached to the Regular Army, shall, subject to such adaptations and modifications as may be made

therein by the Central Government by notification in the Official Gazette, be subject to the provisions of the Army Act, 1950, and the rules or regulations made thereunder in the same manner and to the same extent as if such officer or enrolled person held the same rank in the Regular Army as he holds for the time being in the Territorial Army .."

14. It could thus be seen that every such officer or enrolled person in Territorial Army when holds the rank, shall be subject to the provisions of Army Act, 1950 and the rules or regulations made thereunder, equivalent to the same rank in the Regular Army.

15. Chapter 5 of the Pension Regulations for the Army. 1961 deals with Territorial Army. The Regulation No. 292 of the Pension Regulations for the Army, 1961 read thus:

"292. The grant of pensionary awards to the members of the Territorial Army shall be governed by the same general regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of regulations in this Chapter"

16. It could thus be seen that the grant of pensionary awards to the members of the Territorial Army shall be governed by the same rules and regulations as are applicable to the corresponding persons of the Army except where they are inconsistent with the provisions of regulations in the said chapter.

17...

18....

19.....

20. It is thus clear that the ETF is established as an additional company for 130 Infantry Battalion of Territorial Army. It is not in dispute that the other officers or enrolled persons working in the Territorial Army are entitled to disability pension under Regulation No. 173 read with Regulation No. 292 of Pension Regulations for the Army. 1961. When the appellant is enrolled as a member of ETF which is a company for 130 Infantry Battalion (Territorial Army), we see no reason as to why the appellant was denied the disability pension. Specifically so, when the Medical Board and COI have found that the

injury sustained by the appellant was attributable to the Military Service and it was not due to his own negligence.

21. In case of conflict between what is stated in internal communication between the two organs of the State and the Statutory Rules and Regulations, it is needless to state that the Statutory Rules and Regulations would prevail. In that view of the matter, we find that AFT was not justified in rejecting the claim of the appellant."

28. Vide order dated 19.09.2023 of this Tribunal in OA 428/2016 in the case of *Ex Nk (TA) Amrita Nand Badola vs UIO & Ors* and in OA 429/2016 in the case of *Ex Nk (TA) Dev Bahadur Thapa vs UIO & Ors* respectively wherein both the applicants thereof had filed the OAs being aggrieved by the rejection of their pension and gratuity due to them for their service in a Territorial Army (Ecological) Battalion, it was observed vide Paras 17 to 32 to the effect:-

"17. Having heard both the sides at length, the issue to be decided is

(a) Whether both the applicants are eligible for second service pension on being discharged from TA Bn (Eco) with 15 years or more of embodied service.

(b) Whether the deficiency of less than one year in embodied service in the case of the applicant in OA 428/2016 can be condoned for grant of pensionary benefits?

(c) Whether the applicants are eligible for retirement gratuity?

18. The second service pension of the applicants for their service in TA Bn Ecological has been denied by the respondents on the strength of the provisions of MoD letter no. 38974 / GS / TA - 3(a) dated 15.10.2003 and MoD (Army) letter no. 68640/127 / R / 2 Addl Coy / TA - 2/248 / US / D (GS-III) (ii) dated 31.03.2008.

19. To decide the issue in hand, it will be relevant to reproduce Important letters referred to by the respondents and provisions In relation to Territorial Army Personnel.

20. The letter dated 15.10.2003 states that no agreement has been signed by MoEF to grant service pensions to re-enrolled ex-servicemen for the service rendered in TA. The letter is extracted below:

Addl Dte Gen Territorial Army
General Staff Branch
Army Headquarters
'L' Block, Church Road New Delhi-110001

No.38974/GS/TA-3(a)

15 Oct, 2003

The Garhwal Rifles
Lands down (UA)
746 155

REVISED TERMS AND CONDITIONS FOR TA ECO
TASK FORCE UNITS

1. Reference your letter 2407/124/R/9P dt 26 Sep 03
2. Ex-servicemen are employed only on contractual basis and that too they are employed for eight months only. Moreover, no agreement has been signed by MoEF to grant service pensions to re-enrolled ex-servicemen for the service rendered in TA. Therefore, they are not entitled for second pension after the completion of 15 yrs of service. The State Govt and MEF is funding the project and as such pension if any has to be paid by State/ MOEF and not by MOD.
3. As per the existing order there is no pension for TA pers enrolled in Eco.

(PK Upmanyu)
Lt Col
GSO-1 TA-3
For Addl Dir (Gen TA)

21. Further the relevant extracts of the letter dated 31.03.2008 are extracted below:

No.68640/127/R/2 Addl Coy/TA-2/248/US/D(GS-III) (II)
Government of India

New Delhi the dated 31 March, 2008

The Chief of the Army Staff
EMBODIMENT DISEMBODIMENT OF TWO
ADDITIONAL COMPANIES FOR 127 INFANTRY
BATTALION (TA) ECOLOGICAL UNDER BUDGETARY
SUPPORT FROM STATE GOVT. OF UTTARAKHAND

Sir,

1. I am directed to convey the sanction of the President of India to raising two additional companies for 127 Infantry Battalion (territorial Army) (Ecological under rule 33 of Territorial Army Act Rules 1948 (Revised Edition 1976), under terms and condition as given in proceeding paragraphs:

Xxxx xxxxxx xxxxxxxx xxxxxxxx

(d) Pay and Allowances; territorial Army personnel on the roll of this unit/company will be governed by the provisions as given below:

(i) All Territorial Army personnel, not on permanent staff, will be entitled to only the minimum basic pay of their rank and service group in which they are employed in Ecological units. Appropriate percentage of dearness allowance as admissible from time to time will also be admissible in addition.

(ii) Under the revised terms and conditions, no Increment will be admissible to ex-servicemen Irrespective of their length of service in the Ecological Task Force othr than TA personnel on permanent stff.

(iii) Other allowances like Compensation In lieu of Quarter, Children Education Allowance, Hill compensatory allowance, High Altitude allowance, house Rent Allowance and Road Mileage Allowance will continue to be admissible where applicable as hither-to-fore till further orders.

(v) Pension entitlement of Territorial Army personnel earned for the earlier regular Army service will remain untouched and will be ignored in fixing their pay and allowances.

(v) The Individuals will not be entitled to any pensionary benefit for the service rendered in the Ecological Task Force of Territorial Army.

Xxxx

xxxxxx

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Xxxxxx

Sd/-

22. Section 9 of Territorial Army Act, 1948, specifies that Territorial Army Personnel are subject to Army Act, 1950. The aforesaid Para is reproduced below:-

"9. Every officer, when doing duty as such officer, and every enrolled person when called out or embodied or attached to the Regular Army, shall, subject to such adaptations and modifications as may be made therein by the Central Government by notification in the Official Gazette, be subject to the provisions of the Army Act, 1950, and the rules or regulations made thereunder in the same manner and to the same extent as if such officer or enrolled person held the same rank in the Regular Army as he holds for the time being in the Territorial Army."

23. In terms of Regulation 182 of Pension Regulations for the Army, 2008 (Part-1), Territorial Army personnel are governed by the same general regulations as applicable to the regular Army. The aforesaid Section is reproduced as under:-

"182. The Grant of pensionary awards to the service personnel shall be governed by the same general regulations as are applicable to the corresponding personnel of the Army except where they are Inconsistent with the provisions of regulations in this chapter. These regulations shall not apply to those who are:-

(i) Civil Government servants holding permanent appointment.

(il) Retired Civil Government servants."

24. Further, Regulation 186 of Pension Regulations for the Army, 2008 (Part-1) provides that Territorial Army personnel below officer rank are eligible for grant of service pension after completion of 15 years embodied service. The aforesaid Para is reproduced as under:-

"186. All Territorial Army personnel (other than civil government servants and civil pensioners), who have a minimum qualifying aggregate embodied service of 20 years in the case of officer and 15 years in the case of personnel below officer rank, shall be eligible for service pension".

25. Regulation 187 (b) of Pension Regulations for the Army, 2008 (Part-1) provides that service pension shall be calculated for actual qualifying service in the same manner as in Regulation 50 for regular personnel below officer rank of army. The counsel for the applicant relied on Regulation 49 of the Pension Regulations for the Army, 2008, (Part-1), to condone the shortfall in embodied service. However, Regulation 44 provides for condonation of up to three months to earn service pension in a particular rank. This Tribunal by order dated 23.08.2017 in **OA 1038 of 2017, Ex JWO Krishna Moorthy K & Others Vs. UOI and Ors**, held that an applicant is entitled to service pension of the last rank held irrespective of length of service. Therefore, Regulation 49 of the Pension Regulations for the Army, 2008, (Part-I), will have no applicability to the present case. Moreover, the rank in which the applicants retired from the TA Eco Bn is not in dispute here.

26. In fact, Regulation 125 of the Pension Regulations for the Army, 1961, provides for condonation of deficiency up to six months by the Respondents, meaning thereby that a person with 14 years and 6 months of service could be granted pension by condoning the shortfall for 6 months. This condonation was exercisable by the respective Record Offices. Further, MoD vide Letter No. 4684/DIR(PEN)/2001 dated 14.08.2001, enhanced the condonable period up to one year (12 months) by providing the following:

Sanctioned is hereby accorded in pursuance of MOD ID No. 34(3)/2001/D(O&M) n dated 03.08.2001 for delegation of administrative powers with the approval of Raksha Mantri to the Service HQrs in respect of the subjects indicated below:-

(i) ***

(v) Condonation of shortfall in Qualifying Service for grant of pension in respect of PBOR beyond six months and up to 12 months.

27. Thereafter, Regulation 44 of the Pension Regulations for the Army, 2008, (Part-1), provides that the deficiency in service for eligibility pension/gratuity may be condoned up to 12 months. Moreover, this Tribunal in catena of orders and more recently the Full Bench of this Tribunal by its order dated 01.10.2019, In **O.A. No. 1238 of 2016 Smt. Shama Kaur Vs. UoI** dealt with the question of condonation of deficiency of service as applicable to Army personnel in terms of MoD letter dated 14.08.2001 and

Para 44 of the Army Pension Regulations for grant of second service pension to DSC personnel, or are they to be dealt with in terms of MoD letter dated 20.06.2017. The Tribunal held that DSC personnel were fully entitled to condonation of deficiency of service for their second spell of service at par with other Army personnel. Similarly, we have no hesitation in upholding that the same benefits will be applicable to TA personnel as well, in terms of Regulation 182 of Pension Regulations for the Army, 2008 (Part-I).

28. Further, the Hon'ble Supreme Court of India in **UoI Vs Ashok Kumar Aggarwal**, AIR 9 (2013) 16 SCC 147 upheld the primacy of statutory provisions. The operative portion of the aforesaid judgment is as under:-

"It is settled law that in the event of an inconsistency or conflict between a statutory provision and an executive instruction, the former must be given effect. Memorandums or executive instructions issued by the govt can be used only to supplement the statutory rules but not to supplant them."

29. Moreover, in **Pani Ram Vs UoI & Ors**, 2021 SCC On Line SC 1277, the Hon'ble Apex Court has held-

"16. It could thus be seen that the grant of pensionary award to the members of the Territorial Army shall be governed by the same rules and regulations as are applicable to the corresponding persons of the Army except where they are inconsistent with the provisions of Regulations in the said chapter."

xxxxx

21. In case of conflict between what is stated in internal communication between the two organs of the State and the Statutory Rules and Regulations, it is needless to state that the Statutory Rules and Regulations would prevail. In that view of the matter, we find that AFT was not justified in rejecting the claim of the appellant."

30. Although, the judgement of **Pani Ram** (supra) pertains to disability pension but a conjoint reading of Para 16 of the judgement In **Pani Ram** (supra) and the above mentioned statutory rules and regulations makes it clear that; firstly, Territorial Army personnel are subject to Army Act, 1950 and Rules made for regular Army personnel are applicable to Territorial Army personnel as well. Secondly,

Para 186 of aforesaid Regulations clearly lays down that Territorial Army personnel are eligible for grant of service pension after completion of 15 years of service.

*31. Similarly, the judgements of the Hon'ble Supreme Court in **Union of India Vs. Ashok Kumar Aggarwal** (supra) and **Pani Ram** (supra) make it abundantly clear that in the event of an inconsistency or conflict between a statutory provision and internal communication between the two organs of the State, the Statutory Rules and Regulations would prevail. Since Pension Regulations for Army-2008 (Part-I) are Statutory Regulations, executive instructions through letters dated 05.10.2003 and 31.03.2008 as referred to by the respondents cannot supersede the provisions of Pension Regulations for Army-2008 (Part-I) wherein as per Regulation 182 of Pension Regulations for the Army, 2008 (Part-I), person below officer rank of TA personnel are entitled to pension on completion of 15 years of embodied service. Moreover, TA personnel are also entitled to condonation of up to one year in qualifying service in terms of Regulation 44 of Pension Regulations for the Army, 2008 (Part-I).*

32. In the light of the above analysis, we are of the view that PBOR of TA Bn (Eco) are entitled to pension on completion of 15 years of embodied service. The applicant in OA 428/2016 is entitled for condonation of less than one year shortfall in qualifying service. Resultantly, both the applicants are entitled to service pension.

29. It is apparent thus through the Section 9 of the Territorial Army Act 1948 that every personnel of the Territorial Army is subject to provisions of the Army Act 1950 and rules or regulations made thereunder in the same manner and to the same extent as if such officer or enrolled person held the same rank in the Regular Army as observed by the Hon'ble Supreme Court vide para 14 in **Pani Ram** (supra).

30. The Pension Regulations for the Army 2008 (Part-I) Chapter IX thereof which relates to Territorial Army vide Para 182 thereof expressly provides to the effect:-

"182. The grant of pensionary awards to the service personnel shall be governed by the same general Regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of Regulations in this chapter. These Regulations shall not apply to those who are -

- (i) Civil Government servants holding permanent appointments and*
- (ii) Retired Civil Government servant. "*

Para 186 of the said regulations provides to the effect:-

186. All Territorial Army personnel (other than civil Government servants and civil pensioners), who have a minimum qualifying aggregate embodied service of 20 years in the case of Officer and 15 years in the case of Personnel Below Officer Rank, shall be eligible for service pension.

Regulation 182 of the Pension Regulation 2008 of Chapter IX thus clearly states that grant of pensionary awards to the service personnel shall be governed by the same general Regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of Regulations in this chapter.

31. This Tribunal in *Lt Col Charanjit Singh* (supra) has held that the term 'late entrant' is essentially meant for TA officers as they are the only officers who are commissioned at a higher age and are more liable to superannuate without completing full qualifying period for earning service pension has been

observed by this Tribunal vide Para 13 in *Col Jaspal Singh Anand* (supra) adverted to hereinabove in para 26.

32. The order of this Tribunal in *Maj S D Singh* (supra) in TA 46/2010 likewise stipulates categorically vide para 8 already adverted to that the persons from the Territorial Army will be governed by the necessary pensionary Regulations which are applicable to the Army. In *Major H S Khokhar* (supra) this Tribunal condoned the shortfall of one and a half month of actual service in case of Territorial Army Commissioned Officer in view of the applicable pension regulations for the Army. Likewise, in *Major P C Gupta* (supra) this Tribunal has condoned the period where the applicant thereof had denied pension as he had not put in 20 years in the Territorial Army in view of the order in *Major S D Singh* (supra).

33. This Tribunal in *Col Nandu Kumar BN (Retd)* (supra) has observed vide para 9 thereof to the effect that denying the benefit of Late Entrant Clause only to Officers of the Territorial Army wherein all other qualifying requirements remain the same would indeed be untenable as also go against the principles of natural justice. In *Lt Col D. M. Dafedar (Retd.)* (supra) wherein total service the applicant completed was 15 years and 23 days and he had not completed 20 years of service in terms of para 15 of the Pension Regulations for the Army 1961 it was observed that the late entrant clause related to officers of the

Territorial Army and that applicant was held entitled to the grant of pensionary benefits.

34. On a consideration of the verdicts of the Hon'ble Supreme Court in *Pani Ram* (supra) and in *Indian Bank & Anr vs N. Venkatramani*, (supra), it is essential to observe that the provisions of the pension regulation which are beneficial in nature have to be construed liberally and the person should not be deprived of the benefits there from. There is no provision expressly provided in the Pension Regulation for the Army 2008 as applicable in the instant case to make pension regulation and benefits thereof as applicable to person employed in the Territorial Army in whatever capacity be they PBORs, or Commissioned officers and rather the orders of this Tribunal in *Major H.S. Khokhar* (supra), *Major B. D. Mishra* (supra), *Maj S D Singh* (supra), *Lt Col D. M. Dafedar (Retd.)* (supra), *Col Nandu Kumar BN (Retd)* (supra), *Lt Col Charanjit Singh (Retd)* (supra), *Major P C Gupta* (supra) and *Col Jaspal Singh Anand* (supra) all relate to officers of the Territorial Army.

35. This contention raised on behalf of the respondents that there is no provision for shortfall in service in relation to TA commissioned officers despite the existing provisions for condonation of shortfall of service as applicable in the pension regulation for the Army 2008 cannot be accepted. As observed by us hereinabove the GOI resolution dated 30.09.2016 to extend the

benefit of rounding off of the disability element has been extended to the personnel of the Territorial Army as already directed in *Pani Ram's* case.

36. In case of *Col Jaspal Singh Anand (Retd)* (supra) in OA 1161/2022, the shortfall in service of that applicant has been condoned vide observations in Paras 10 to 13 thereof whilst allowing the OA. Thus, in the instant case the applicant qualifies as 'late entrant' in terms of Regulation 34 of Pension Regulation for the Army, 2008 (Part 1) in view of para 182 of Pension Regulation for the Army, 2008 (Part 1) whereby the grant of pensionary awards to the service Territorial Army personnel shall be governed by the same general Regulations as are applicable to the corresponding personnel of the Army except where they are inconsistent with the provisions of Regulations in Chapter IX which has been clarified by the GOI vide its policy for implementation of the recommendations of the Fourth CPC and Fifth CPC vide letters dated 30.10.1989 and 03.02.1998 whereby as observed vide para 12 thereof of this Tribunal in OA 1161/2022, TA officers have been clubbed with regular commissioned Army Officers.

37. Thus, in the instant case as averred vide counter affidavit of the respondents dated 01.03.2016 vide paras 5.4 and 5.5, the embodied service of the applicant for grant of pensionary benefits has to be considered as 15 years and the only reason why the respondents chose to not grant the same to the applicant as stated vide para 5.5 of their counter affidavit dated 01.03.2016 was

to the effect that these provisions were applicable only to officers of the Regular Army in relation to which as observed by us hereinabove vide the catena of orders of this Tribunal upheld by the Hon'ble Supreme Court in **BD Mishra** (supra), the pension regulation for the Army in paras 28 to 34 are clearly applicable to TA commissioned officers as well. Thus, the applicant is held entitled to the grant of condonation of shortfall of period of 3 days of embodied service in the Territorial Regular Army which is 14 years, 11 months and 27 days which in terms of Para 18 (a) of the Pension Regulation for the Army, 2008 (Part 1) has to be held to be constituted as completed 15 years of service and thus entitled to the service element of pension from the date of his retirement.

CONCLUSION

38. During the course of submission made on behalf of the applicant it has been already submitted that he is in receipt of the disability element of pension in relation to the disability of 'Primary Hypertension' and 'Lumbar Spondylitis' at 50% for life.

39. In view thereof, the respondents are directed to condone the shortfall of 03 days of his total service rendered in the Regular Army and the embodied service in the Territorial Army which is directed to be rounded off to 15 years and the applicant is held entitled to the grant of service pension wef the date of his retirement, however the arrears in the circumstances of the instant case, shall

be confined to commence for a period of three years prior to the institution of the OA, in view of the verdict of the Hon'ble Supreme Court in the case of *UOI & Ors vs Tarsem Singh* reported in 2008 (8) SCC 648.

40. The respondents are directed to issue the corrigendum PPO with directions to the respondents to pay the arrears within a period of three months from the date of receipt of a copy of this order, *failing which*, the respondents would be liable to pay interest @ 8% p.a. on the arrears due from the date of this order.

41. No order as to costs.

Pronounced in the Open Court on the 3 day of April, 2024.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/