

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

6.

OA 1013/2025 with MA 1571/2025

Ex Hav Shiv Bahadur Singh Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Sukhbir Singh, Advocate

For Respondents : Mr. Jagdish Chandra, Advocate
with Ms. Sunanda Shukla, Advocate
Maj Satvik Grover, OIC Legal

CORAM

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

HON'BLE LT GEN C. P MOHANTY, MEMBER (A)

ORDER

16.04.2025

MA 1571/2025

This is an application filed under Section 22(2) of the Armed Forces Tribunal Act, 2007 seeking condonation of delay of 1865 days in filing the present OA. In view of the judgments of the Hon'ble Supreme Court in the matter of *UoI & Ors Vs Tarsem Singh* (2008) 8 SCC 648 and in *Ex Sep Chain Singh Vs Union of India & Ors* in Civil Appeal 22965/2017 arising out of Civil Appeal Diary no 30073/2017 and the reasons mentioned, the MA 1571/2025 is allowed, and the delay condoned.

OA 1013/2025

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

“(a) grant benefits of One Rank One Pension and issue PPO of revised pension. And

(b) Direct respondents to pay the due arrears of OROP with interest @12% p.a from the date of retirement with all the consequential benefits.

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

3. Notice thereof is issued to the respondents. The applicant's grievance is to the effect that he having been enrolled in the Indian Army on 21.02.1998 was discharged from service on 31.01.2019 at his own request after rendering 20 years, 11 months and 10 days of service, and as a consequence of his having sought premature voluntary retirement he has been denied the grant of OROP benefits.

4. The applicant places reliance on the order dated 31.01.2025 of this Tribunal of the AFT (PB), New Delhi in OA 313/2022 in the case of *Cdr Gaurav Mehra (Retd.) and 113 others vs. UOI & Ors.* to submit to the effect that the grant of the OROP benefits cannot be declined to the premature retirees.

5. On behalf of the respondents whilst accepting notice, it is submitted to the effect that they seek to file their counter to this OA submitting to the effect that RA 9/2025 has been filed titled *Union of India & Ors. vs. Capt (TS) Pulapaka VS Satish (Retd.) (03201-ZS) & Ors.* that is in OA 426/2023 one of the cases disposed of vide the

common order dated 31.01.2025 of the AFT (PB), New Delhi alongwith OA 313/2022 in all the connected matters.

6. In reply to a specific Court query, it has been submitted on behalf of the respondents by the OIC Legal Maj Satvik Grover that there has been no stay of the operation of the order dated 31.01.2025 in OA 313/2022 by the AFT (PB), New Delhi when the said RA 9/2025 in OA 426/2023 was taken up for consideration on 15.04.2025.

7. In the circumstances, in view of the verdict of the Hon'ble Supreme Court in *Union Territory of Ladakh and Ors. vs. Jammu & Kashmir National Conference and Anr.* 2023 SCC Online SC 1140 with observations in para 35 thereof, which read to the effect:-

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a

reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”,

which have been adhered to by the Hon'ble High Court of Delhi in WP(C) 14446/2024 vide judgment dated 06.12.2024 in *Maj (Retd) Dr. Rajesh Kumar Bhardwaj vs. UOI through its Secretary Ministry of Defence & Ors.*, vide observations in Paras 13, 14, 15 and 16 thereof, to the effect :-

“13. The only limited issue to be adjudicated by us in the present petition is as to whether the learned AFT has committed an error in adjourning the adjudication of the Review Application sine die only on the ground that an appeal raising a similar issue is pending adjudication before the Supreme Court, wherein the order passed by the Larger Bench of the learned AFT has been stayed.

14. In our view, the answer to the above is in the affirmative.

15. Only because an issue of law is pending adjudication before the Supreme Court, in our view, the learned AFT should not have refused to exercise its own jurisdiction to adjudicate on that issue. Refusal of the learned AFT to adjudicate on the issue would, in fact, amount to refusal to exercise jurisdiction vested in it by law. Guidance in this regard may be taken from the judgment of the Supreme Court in Union Territory of Ladakh (supra), where the Supreme Court reiterated that the High Courts cannot refrain from deciding cases merely because a leading judgment of the Supreme Court is either referred to a Larger Bench or a Review Petition relating thereto is pending. The Court held the High Courts must proceed to decide the matter on the basis of the law as it stands. Unless specifically directed by the Supreme Court, it is not permissible to await the outcome of a Reference or a Review Petition. We quote from the judgment as under:-

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide

matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."

16. The above view has been followed by this Court in its judgments in Indian Council of Agriculture (supra) and in Rajiv Chana (supra).,

it apparent that this Tribunal has to adhere to the law and decide matters on the basis of the law as it stands as observed vide observations in Para 35 of the verdict of the Hon'ble Supreme Court in *Union Territory of Ladakh and Ors. (Supra)* refer to hereinabove in para 7.

8. In terms of Section 14(5) of the AFT Act, 2007, this Tribunal is to adjudicate the service matters on the basis of law and facts before

it. In view of the settled law laid down by the Hon'ble Supreme Court in *Union Territory of Ladakh and Ors. (Supra)* and the observations of the Hon'ble High Court of Delhi in *Maj (Retd) Dr. Rajesh Kumar Bhardwaj (Supra)* and the factum that there has been no stay granted of the operation of the common order dated 31.01.2025 in OA 313/2022 by the AFT (PB), New Delhi in RA 9/2025 in OA 426/2023, seeking a stay of the operation of the same, the matter in issue in the present OA is no more res-integra in view of observations in Paras 83 and 84 of the order of this Tribunal in OA 313/2022 in the case of *Cdr Gaurav Mehra (Retd.) vs. Union of India & Ors.*, whereby it has been observed to the effect :-

"83. Pensioners form a common category as indicated in detail hereinabove. PMR personnel who qualify for pension are also included in this general category. The pension regulations and rules applicable to PMR personnel who qualify for pension are similar to that of a regular pensioner retiring on superannuation or on conclusion of his terms of appointment. However, now by applying the policy dated 07.11.2015 with a stipulation henceforth, the prospective application would mean that a right created to PMR pensioner, prior to the issue of impugned policy is taken away in the matter of grant of benefit of OROP. This will result in, a vested right available to a PMR personnel to receive pension at par with a regular pensioner, being taken

away in the course of implementation of the OROP scheme as per impugned policy. Apart from creating a differentiation in a homogeneous class, taking away of this vested right available to a PMR personnel, violates mandate of the law laid down by the Hon'ble Supreme Court in various cases i.e. Ex-Major N.C. Singhal vs. Director General Armed Forces Medical Services (1972) 4 SCC 765, Ex. Capt. K.C. Arora and Another Vs. State of Haryana and Others (1984) 3 SCC 281 and this also makes the action of the respondents unsustainable in law.

84. Even if for the sake of argument it is taken note of that there were some difference between the aforesaid categories, but the personnel who opted for PMR forming a homogenous class; and once it is found that every person in the Army, Navy and the Air Force who seeks PMR forms a homogenous category in the matter of granting benefit of OROP, for such personnel no policy can be formulated which creates differentiation in this homogeneous class based on the date and time of their seeking PMR. The policy in question impugned before us infact bifurcates the PMR personnel into three categories; viz pre 01.07.2014 personnel, those personnel who took PMR between 01.07.2014 and 06.11.2015 and personnel who took PMR on or after 07.11.2015. Merely based on the dates as indicated hereinabove, differentiating in the same category of PMR personnel without any just cause or reason and without

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

and in view of the judgment dated 09.12.2024 in Civil Appeal no. 1943/2022 in *Lt Col Suprita Chandel vs. UOI & Ors.* whereby it has

been observed by the Hon'ble Supreme Court vide Paras 14 and 15 thereof, to the effect :-

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

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

"19. The writ petitions and the appeals must succeed. We set aside the impugned judgments of the Single Judge and Division Bench of the Kerala High Court and direct that each of the three transferee banks should take over the excluded employees on the same terms and conditions of employment under the respective banking companies prior to amalgamation. The employees would be entitled to the benefit of continuity of service for all purposes including salary and perks throughout the period. We leave it open to the transferee banks to take such action as they consider proper against these employees in accordance with law. Some of the excluded employees

have not come to court. There is no justification to penalise them for not having litigated. They too shall be entitled to the same benefits as the petitioners.”

(Emphasis Supplied)”,

It is thus apparent that the applicant herein is entitled to the grant of relief prayed by him in terms and to the extent of the order dated 31.01.2025 in OA 313/2022 of the AFT (PB), New Delhi.

9. Thus, subject to verification of the date of discharge of the applicant and subject to verification of the aspect of the discharge of the applicant being only due to premature voluntary retirement, the applicant is held entitled to the grant of the benefits of the OROP to the extent granted vide order dated 31.01.2025 of the AFT (PB), New Delhi in OA 313/2022 and 113 other connected matters.

10. The OA is disposed of, accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(LT GEN C. P. MOHANTY)
MEMBER (A)

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