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

3.

OA 316/2025

Gp Capt Sudeep Rajan (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Ms. Eti, proxy for
Mr. Ajit Kakkar, Advocate
For Respondents : Mr. Neeraj, Sr. CGSC with
Mr. Sanjay, Advocate

CORAM

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

ORDER
07.02.2025

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

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

2. Notice thereof is issued and accepted on behalf of the respondents.

3. The applicant in the instant case having been commissioned in the Indian Air Force on 18.12.1993 took pre-mature retirement from service on 02.02.2024 and has been denied the grant of the OROP benefits.

4. Vide order dated 31.01.2025 in OA 313/2022 in the case of *Cdr Gaurav Mehra (Retd)* vs *Union of India* and other connected

matters vide paras 67 to 83 thereof it has been observed by the AFT (PB) New Delhi to the effect:-

> *"67. The position, therefore, as on date is that we have three categories of PMR personnel:-*
>
> *(A) Personnel who opted for PMR prior to 01.07.2014 and will get benefit of OROP, and are not affected by issuance of the letter dated 07.11.2015.*
>
> *(B) The second category is of the personnel who opted for PMR and were granted the same between 01.07.2014 to 06.11.2015 and are being denied the benefit of OROP. This is a separate category because in their case, the exclusion clause, denying them the benefit of OROP is brought into force retrospectively after they had opted for PMR between 01.07.2014 to 06.11.2015 and;*
>
> *(C) The third category are the personnel who opted for PMR after 07.11.2015. They have also been excluded from the benefit of OROP.*
>
> *68. As far as the persons contained in category 'B' i.e. between period 01.07.2014 to 06.11.2015 are concerned, in their case apart from the general question of classification in a homogeneous category by fixing a cut off date is involved but at the same time they also stand to be put to disadvantage inasmuch as when they applied for PMR between 01.07.2014 to 06.11.2015, they were under the impression that they are entitled to OROP if they take PMR. The terms and conditions of service applicable to them at the time of opting for PMR did not prohibit them or exclude them from getting OROP and, therefore, in their case the principle of estoppel will apply as they were informed about their exclusion for grant of benefit of OROP much after they had opted for PMR (between 01.07.2014 to 06.11.2015), on the promise given to them to the effect that even if they opt for PMR they will get benefit of OROP. This category is a distinct category which has to be carved out in the facts and circumstances of the case. As far as this category of persons are concerned, in their case, when they opted for PMR before 06.11.2015 and it was granted to them or it was under consideration, they were under the impression that even if they take PMR, they will be entitled to OROP but all of a sudden, after having exercised their option to take PMR, by virtue of the retrospective effect given to the policy dated 07.11.2015, by a combined reading of para 3 and 4 of the said Policy, these persons stand excluded and they are denied the benefit of the OROP after a promise which led them to exercise the option. This, in our view, is clearly unsustainable in law.*

69. The principle of estoppel and the legal principles of taking away the vested right available, by retrospective applicability of a rule or policy squarely applies to this category of persons. Prior to 06.11.2015, a right was available to these employees to seek PMR and even after getting PMR, they were entitled to the benefit of OROP as per the terms and conditions of service but by retrospectively applying the principles of denying the benefit of OROP and excluding person who opted for PMR, the right available to these persons to get OROP benefit is being taken away which is not permissible in law. Therefore, even though this category may substantially falls in the common homogenous category of persons who are being denied benefit of OROP because they opted for PMR, the principle of estoppel and taking away a vested right by retrospective application of a policy or scheme will also apply and this makes the application of the policy to this category of persons unsustainable in law.

70. That having so observed and held, the only question now before us is as to whether excluding all persons who opted for PMR from the benefit of OROP w.e.f. 01.07.2014 by virtue of Para 3 & 4 of the policy dated 07.11.2015, amounts to creating a classification within a homogenous category or class of personnel which is opposed to the principle of discrimination and violative of Article 14 of the Constitution and hit by the principles of law laid down by the Hon'ble Supreme Court in various cases particularly in the cases of D.S. Nakara (supra) and All Manipur Pensioners Association (supra).

71. Before considering to analyse this question, we may take note of the objections canvassed by the applicants with regard to the justification for making the policy not applicable to the personnel who opted for PMR w.e.f.01.07.2014. A perusal of paragraph 4 of the policy dated 07.11.2015, makes it clear that an exclusion category has been carved out by virtue of the provisions of the said policy dated 07.11.2015. Para 3 of the policy was only prescribing the modalities by virtue of which the OROP scheme was to be enforced in future. The purpose of para 3, according to the applicants, was to bridge the gap of the pre-2013 retirees with the pensioners who retire in 2013. The financial benefit to pre-2013 retirees after bridging the gap with those who retire in 2013 was to be given effect to from 01.07.2014. The pension would be refixed for all the pensioners on the basis of average of minimum and maximum pension of personnel refixed in 2013 in the same rank and with the same length of service. If a person was drawing pension above the average it was to be protected and no recovery was to be made. Arrears of pension to pre 2013 retirees were to be made in four equal instalments and family pensioners were to get the arrears in one instalment. In future, pension was to be re-fixed every five years. It was only para 4 of the said policy which

contemplated the exclusion criteria whereas the provisions of para 3 deal only with the modalities of implementing the benefit of OROP Scheme.

72. The contention of the applicants that exclusion criteria has been incorporated in Para 4 of the impugned policy and Para 3 only deals with the modalities of implementing the OROP is correct and therefore, the contention of the respondents that the date of implementation of the OROP is w.e.f. 01.07.2014 is not correct and the implementation of this Policy, if any, can only be from the date of the promulgation of the impugned policy which is 07.11.2015.

73. Be that as it may, the moot issue before us is the mischief created by retrospectively applying the policy and denying the benefit of OROP to retirees who seek premature retirement w.e.f. 01.07.2014 onwards. We need not go into various other issues which were canvassed before us, which in our considered view, are not necessary to be analysed for deciding the issue pending before us in these Applications. Suffice is to say that the respondents have failed to give any reasonable nexus or justification for denying the benefit of OROP to personnel who opt for PMR after the cut off date i.e. 01.07.2014.

74. In our considered view, grant of PMR, as already discussed hereinabove, is not an absolute right available to an employee. Personnel who applies for PMR does not get the PMR merely on his seeking PMR. The respondents have laid down strict regulations/orders/instructions and circulars for considering the cases of PMR and after evaluating various factors primarily the personal need of the personnel, national interest, the human resources aspect of the matter and the financial burden incurred by the Union Govt. in training and equipping the personnel, if it is established that the dispensation of the personnel's service will not affect the interest of the service, then he is granted the benefit of premature retirement. That being so, it can be easily concluded that PMR is granted after taking note of various factors like administrative considerations, national interest, interest of the military, personal requirement of the personnel, service exigencies, the expenditure incurred for training etc. and after taking a conscious decision, he is permitted PMR and once permitted, till coming into this policy personnel discharged on PMR were treated alike other personnel who were granted discharge from service on completing the terms of engagement or on superannuation for pensionary benefits. In fact personnel who are discharged after completing the terms of employment or who are discharged on superannuation and personnel who seek discharge by PMR were all treated as pensioners and there was no difference in calculating or granting their post retiral benefit like pension, gratuity etc. Irrespective of the method of discharge, all personnel receiving pension are treated as a homogenous

class and for all purposes in the matter of granting them post retiral benefits, they were clubbed together and by and large all the rules applicable to them were identical except for certain factors which are not relevant in the present case. For the first time within the category of pensioners a different category of PMR personnel is carved out and even in this homogenous category of PMR persons three different categories are being carved out i.e. the first category is the personnel who got PMR prior to 01.07.2014, second category is the personnel who got PMR between 01.07.2014 to 06.11.2015 and third category are personnel who got PMR on or after 07.11.2015.

75. This, in our considered view, is nothing but a clear violation of the law laid down by the Hon'ble Supreme Court in the case of DS Nakara(supra) and in our considered view cannot be sustained.

76. The respondents also contended that the subject matter of agitation by applicants before this Tribunal falls within the realm of administrative and policy matter and, therefore, it cannot be subjected to judicial review by this Tribunal as it would amount to interfering with policy matters of the Govt. This argument, in our considered view, cannot be sustained in law for the simple reason that even if a statutory power or an executive power, administrative in nature is exercised by the Govt. or its authorities, the policy should meet the requirement of Articles 14 and 16 of the Constitution. In catena of judgments, the Supreme Court has interfered with policy matters when questioned on finding that the policy bifurcates and creates discrimination between various similarly situated persons and groups, it cannot be permitted. The Hon'ble Supreme Court in the case of Union Of India and Ors. v. Tushar Ranjan Mohanty And Ors. (1994) 5 SSC 450 summarizes the law in this respect and holds that even while exercising statutory powers vested rights cannot be taken away and if a policy is brought into force even by an administrative or statutory power retrospectively, the same would not be justified if it is based on arbitrary, illegal consideration, irrational in nature and is based on factors which are not germane to the purpose for which the policy has been enacted. Merely because while implementing the OROP Scheme, the Govt. took a policy decision to exclude certain category of PMR personnel, is a policy matter and is administrative in nature, this Tribunal cannot give its stamp of approval because while considering and implementing the policy, the Govt. has created differentiation in a homogeneous group not only within pensioners but also within PMR personnel without any just cause or reason, in an arbitrary manner and without indicating any rational or nexus behind doing so except pleading financial implications. This, in our considered view, is not permissible and in the garb of same being a policy matter or administrative matter, this Tribunal cannot approve the same.

77. Finally, the last ground canvassed before us by the Respondents was to the effect that the benefit of OROP exclusion has been brought into force prospectively and the applicants were aware that if they opt for PMR they will be denied the benefit of OROP and inspite of being aware of these facts, the applicants knowing fully well the implication of their opting for PMR, chose to opt for PMR and now they cannot turn around and challenge the exclusion as it was their own action which resulted in them being denied the benefit. The respondents further argued that the applicants should have evaluated the better prospects available to them, if they did not opt for PMR and having applied for grant of PMR, the principles of waiver, acquiescence and estoppel will come into force and this denies them the right to challenge the policy dated 07.11.2015 which denies them the benefit of OROP. In this regard, reliance has been placed on various judgments quoted hereinabove, which have been relied upon by learned counsel for the respondents:-

(a) State of Uttar Pradesh v. Karunesh Kumar & Ors. (2022) SCC Online SC 1706

(b) Union of India v. PN Menon & Ors. (1194) 4 SCC 68

(c) State of Rajasthan v. Union of India (1977) 3 SCC 592

(d) State of M.P. v. Narmada Bachao Andolan (2017) 7 SCC 629

(e) Rachna v Union of India (2021) 5 SCC 638

In almost all the judgments cited by the respondents it has been held that where a policy is evolved by the Govt. judicial review thereof is limited.

78. A bare look at the judgments relied upon by the respondents, it may look proper and acceptable but for analyzing this justification given by the respondents, it has to be seen as to whether the effect of the action violates the mandate of Articles 14 and 16 of the Constitution. What are the reasons for classification made between a common group of personnel, whether the classification is based on intelligible differentia, whether it has any reasonable or rational relationship with the object to be achieved and whether creation of a class within a class of PMR personnel is unconstitutional being in violation of the principles of law. It's a well settled principle of law that acquiescence and waiver cannot be pleaded as a ground for perpetuating an illegal or unconstitutional action. The State cannot be absolved of its responsibilities and constitutional obligations in the matter of differential classification in a homogeneous category of personnel and plead acquiescence and waiver to justify their discriminatory action.

79. Even though various judgments have been cited before us in support of the aforesaid contentions, those are general principles applicable in the matter of acquiescence and waiver. In the case of Basheshar Nath v. Commissioner of Income Tax Delhi & Rajasthan and Anr., AIR 1959 SC 149 relied upon by the counsel for the applicants, we find that the issue has been addressed by the Hon'ble Supreme Court in detail. It is a judgment by the Constitution Bench which analysed various aspects in this regard and the question before the Hon'ble Supreme Court in the said case was as to whether breach of a fundamental right founded under Article 14 of the Constitution, can be waived. After taking note of the provisions of Article 14, the learned Constitution Bench in detail discussed various judgments and provisions of the Constitution and comes to the conclusion that the doctrine of waiver has no application in case fundamental rights available under the Constitution are violated.

80. The issue is also considered by a Full Bench of the Kerala High Court in the case of Dr. Saurabh Jain & Ors. v. State of Kerela & Ors. 2010 SCC Online Ker 5050. In the Writ Petition before the Kerala High Court, the issue was as to whether the principles of estoppel and waiver would apply and what would be its effect. After taking note of the doctrine of waiver and its applicability as discussed in the case of Basheshar Nath Vs. Commissioner of Income Tax Delhi & Rajasthan and another (supra) in para 10, 11, 12 and 13, the Hon'ble Kerala High Court refers to various judgments including the Constitution Bench judgment in the case of Olga Tennis & Ors. vs. Bombay Municipal Corporation & Ors. (1985) 3 SCC 545 and came to the conclusion that estoppel or waiver is not a defence available to the State when its action is challenged on the ground of violation of fundamental rights or the provisions of the Constitution. Similarly, in the case of Justice K.S. Puttaswamy (Retd.) Vs. Union of India and Ors. [2019 (1) SCC 1], the issue of waiver of right in the matter of Fundamental Rights has been considered and it has been clearly laid down that there cannot be any waiver of the Fundamental Rights. A combined reading of most of the judgments brought to our notice in this regard clearly hold that violation of Fundamental Rights particularly as mandated by Articles 14 and 16 of the Constitution imposes a binding obligation on the State in the matter of treating people, similarly situated, on equal footing and prohibits discrimination and the State cannot be absolved of its obligation and liability envisaged under Articles 14 and 16 of the Constitution under the garb of acquiescence, waiver or estoppel. Merely because the applicants were aware of their disentitlement to claim OROP in case they opt for PMR, it cannot be permitted to be canvassed that by applying the principle of waiver and acquiescence, the applicants are not entitled to claim any benefit from this Tribunal. The Constitutional mandate

imposes a duty on the respondents to act fairly and equitably.

81. Very recently the Hon'ble Supreme Court in the case of Lombardi Engineering Ltd. Vs. Uttrakhand Jal Vidyut Nigam, 224 4 SCC 341 has dealt with these issues and after taking note of the law laid down in case of Olga Tennis (supra) and Basheshar Nath (supra). In para 84 it has been held as under:-

> *"84. The concept of "party autonomy" as pressed into service by the respondent cannot be stretched to an extent where it violates the fundamental rights under the Constitution. For an arbitration clause to be legally binding it has to be in consonance with the "operation of law" which includes the Grundnorm i.e. the Constitution. It is the rule of law which is supreme and forms parts of the basic structure. The argument canvassed on behalf of the respondent that the petitioner having consented to the pre-deposit clause at the time of execution of the agreement, cannot turn around and tell the court in a Section 11(6) petition that the same is arbitrary and falling foul of Article 14 of the Constitution is without any merit."*

82. One of the counsel representing the petitioners Shri Harbir Singh Gulati had also made similar submissions and his contention was also based on the submissions that have been detailed hereinabove. However, he also argued a ground of legitimate expectation. The doctrine of legitimate expectation in the face of Article 14 of the Constitution and placing reliance on the law laid down by the Honble Supreme Court in the case of The State of Jharkhand & Ors. v. Brahamputra Metallics Ltd. Ranchi and Anr., 2020 SCC OnLine SC 968, the learned counsel tried to argue that receiving the benefit of OROP was a legitimate expectation and cannot be taken away in the manner done. Having analysed various aspects of the matter including the submissions made by learned counsel for the respondents, Shri Karan Singh Bhati and Shri Anil Gautam before us in detail, we find for the reasons and discussions made hereinabove that premature retirees who opted for premature retirement form a homogenous category of persons. Apart from the fact that they form a common homogeneous category of persons, they are also treated as pensioners who on discharge from service are treated like a regular pensioner in the matter of granting benefit of post retirement benefits except the method of calculations of pension based on other factors which are not relevant in this case.

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,*_

thus, thereby granting the benefits of the OROP to persons who have retired even pre-maturely despite the letter dated 07.11.2015 of the Govt of India no. 12(1)/2014/D(Pen/Pol)-Part-II as a consequence of which, vide the said order the cut-off date stipulated in terms of para 4 of the said letter dated 07.11.2015 which para 4 reads to the effect:-

*"4. Personnel who opt to get discharged henceforth on their own request under Rule 13(3)1(i)(b), 13(3)1(iv) or Rule 16B of the Army Rule 1954 or equivalent Navy or Air Force Rules will not be entitled to the benefits of OROP. It will be effective prospectively.",*_

has been held to be unconstitutional and arbitrary.

5. The letter dated 04.01.2023 no. 1(1)/2019/D(Pen/Pol) in relation to implementation thereof vide Clause 2.6 thereof states to the effect:-

"2.6 Personnel who opt to get discharged w.e.f. 01.07.2014 (on or after 01.07.2014) on their own request under Rule 13(3)I(I)(b), 13(3)II(I)(b), 13(3)III(iv) or Rule 16B of the Army Rule 1954 or equivalent Navy or Air Force Rules will not be entitled to the benefits of OROP."

6. Apparently, in view of the order dated 31.01.2025 in OA 313/2022 in the case of ***Cdr Gaurav Mehra (Retd)*** vs ***Union of India*** and other connected matters of this Tribunal, the issue in relation to the grant of OROP benefits to persons who have taken pre-mature retirement is no more *res integra.* Though, we do not intend to analyze the provisions of the letter dated 04.01.2023 no. 1(1)/2019/D(Pen/Pol) in as much as there are several other clauses apart from Clause 2.6 therein, in view of the implicit spirit of the order dated 31.01.2025 in relation to the grant of the OROP benefits to persons retired pre-maturely, it is only in relation to clause 2.6 of the letter dated 04.01.2023 that the applicant can have a grievance.

7. As directed vide judgment dated 09.12.2024 of the Hon'ble Supreme Court in Civil Appeal No 1943 of 2022 in the case of ***Lt Col Suprita Chandel*** vs ***Union of India and Others*** as observed vide para 14 thereof:-

> *"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]",*

it is apparent that persons similarly situated ought to be extended the benefits granted when an issue has been settled when a person is aggrieved by an action of the Govt Department.

8. In view thereof, the OA is disposed of with directions to the respondents to grant the benefit of the OROP Schemes to the applicant

in terms of the order dated 31.01.2025 in OA 313/2022 in the case of *Cdr Gaurav Mehra (Retd)* vs *Union of India* and other connected matters of this Tribunal.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(RASIKA CHAUBE)
MEMBER (A)

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