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

4.

OA 4219/2024

Wg Cdr Suresh Kumar Sharma (Retd) ..... Applicant
VERSUS
Union of India and Ors. ..... Respondents

For Applicant : Mr. Ajit Kakkar, Advocate with
Ms. Eti, Advocate
For Respondents : Mr. Jagdish Chandra, Advocate

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HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE LT GEN C.P. MOHANTY, MEMBER (A)

ORDER
01.04.2025

The basic grievance of the applicant is to the effect that he having joined the Indian Army on 21.06.1993, took premature retirement on 31.12.2017 at his own request and as a consequence thereof having taken premature retirement, the applicant has been denied OROP benefits. Counsel for the applicant submits to the effect that the prayers made through the present OA are confined to seeking the grant of OROP benefits as permitted to the extent vide order dated 31.01.2025 of the AFT (PB) New Delhi in OA 313/2022. It is essential also to observe that vide order dated 07.02.2025 in OA 316/2025 in the case of ***Gp Capt Sudeep Rajan (Retd)*** vs. ***Union of India & ors.*** where there were identical prayers as made in the present OA, it has been observed vide Para 6 thereof to the effect:-

"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."

2. It is essential to observe that the matter is no more *res integra* as the prayer made on behalf of the applicant being confined to the grant of OROP benefits to the extent as permitted vide order dated 31.01.2025 in OA 313/2022 in the case ***Cdr Gaurav Mehra (Retd.) & Ors.*** Vs. ***Union of India & Ors.*** of the AFT (Principal Bench) New Delhi, vide Paras 83 and 84 thereof, 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 thereinafter 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."

3. Furthermore, vide the verdict of the Hon'ble Supreme Court in ***Lt. Col. Suprita Chandel*** vs. ***Union of India*** (Civil Appeal No. 1943/2022) whereby vide Paras 14 and 15, it has been directed to the effect:-

"14. It is a well settled principle of law that where a citizen is 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),"

there is no necessity of any of the persons seeking similar claims on the aspects already settled in law and to file applications and seek redressal.

5. It is thus directed that the applicant is held entitled to the grant of OROP benefits to the extent as permitted vide order dated 31.01.2025 in OA 313/2022 in the case of ***Cdr Gaurav Mehra (Retd.) & Ors.*** Vs. ***Union of India & Ors.*** of this Tribunal which the respondents are directed to grant to the applicant.

6. The OA 4219/2024 is disposed of accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

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

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