

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

19.

OA 543/2025

15472608L Ex Hav Suresh Kumar Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Vivek Bhai & Mr. Sonu
Sharma, Advocates

For Respondents : Gp Capt KS Bhati, SCGSC
Major Satvik Grover, OIC Legal

CORAM

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

ORDER
28.02.2025

The applicant 15472608L Ex Hav Suresh Kumar vide the present OA makes the following prayers:

- (a) *To quash/set aside amend the impugned orders issued by the respondents to the extent of not granting OROP benefits to the personnel those retired as PMR/under Own Request/Own Request on Comp Ground post 01.07.2014 and grant OROP benefits to the applicant.*
- (b) *Set aside/amend the impugned action intimated vide the Department of Pension and Pensioners Welfare Grievance Rejection reply dated 18 November, 2024 in response to the CPGRAM submitted by the applicant vide Registration No.DOPPW/E/2024/0079966 dated 08 November, 2024. .*

- (c) *Set aside/amend the impugned orders issued via Para 4 of GOI,MOD Para 4 of Notification No.12(01)/2014/D(Pen/Pol)Part-II issued by GOI,MOD, Department of Ex-Servicemen Welfare dated 07 November, 2015 and Circular No.555 issued by the PCDA(Pension), Prayagraj, upto the extent of non-granting OROP benefits to PMR/Own Request Retirees post 01.07.2014.*
- (d) *Set aside/amend the impugned orders issued via Para 2.6 of letter No.1(1)/2019/D(Pen/Pol) of the respondent, GOI,MOD, Department of Ex-Servicemen Welfare dated 4th January 2023, and vide GOI MoD ID No.1(1)/2023/D(Pen/Pol)dated 20 July, 2023 and Circular-666 issued by PCDA(Pension), Prayagraj, upto the extent of non-granting OROP benefits to PMR/Own Request Retirees post 01.07.2024.*
- (e) *Set aside/amend the impugned orders issued via Para 2.6 of letter No.1(1)/2019/D(Pen/Pol) of the respondent, GOI,MOD, Department of Ex-Servicemen Welfare dated 10 July 2024; and vide letter No.1(2)/2023/D(Pen/Pol) dated 04 Sept 2024 and Circular No.677 PCDA(Pension), Prayagraj upto to the extent of non-granting OROP benefits to PMR/Own Request Retirees post 01.07.2024.*
- (f) *Expunge the impugned paras and direct the respondents to extend the grant of OROP to the applicant in the same manner as applicable to all retirees, pay him the arrears from the date of his Own Request discharge with an interest @12%p.m. from the date the amount was due till date of his realization.*
- (g) *To award any other/further relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case along with the cost of application in favour of the applicant and against the respondents.*

2. Notice of the OA was issued to the respondents which is accepted on their behalf.

3. The applicant submits that he was enrolled in the **Indian Army** on **09.01.1998** and after serving the Indian Army for a period of about 18 years took pre-mature retirement under Army Rule 13(3) of the Army Rules at his *Own Request on Compassionate Ground* on 31.05.2016. The applicant further submits that he was granted the service pension for the rank of Havildar as per his last pay drawn which has been revised as per the 7th CPC vide PPO No233201600609(e PPO 151201600782) at Rs.20,700/- DA. However, he was not granted the benefits of OROP though he was entitled for the same. The applicant submits that he had raised his grievances(Reg No.DOPPW/E/2024/0079966) dated 08 Nov.2024 for the grant of OROP benefit but the respondents have rejected his plea vide its reply dated 18.11.2024. The applicant submits that the Govt of India, Ministry of Defence, Department of Ex-Serviceman Welfare had announced OROP Scheme by way of Letter No.12(1)/2014/D(Pen/Pol)-Part-II dated 07.11.2015 and as per Para 4 of the said Policy, the 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 Rules, 1954 or equivalent Navy or Air Force Rules, will not be entitled for the benefits of OROP and

it will be effective prospectively. However, the Govt of India, MoD later on made an amendment in the said Policy dated 07.11.2015 vide their letter No.12(1)/2014/D(Pen/Pol) Part-II dated 06.06.2017 and the provisions of Army Rule under which personnel of Defence forces have been discharged had been modified and accordingly, the MoD, Department of Ex-Serviceman Welfare vide their letter No.1(1)/2019/D(Pen/Policy) Vol.II dated 20.01.2023 has issued the policy granting the benefits of OROP-II and thus the applicant comes within the purview of this policy and hence is entitled for the benefits of OROP Scheme, however, he has been denied the benefit only on the ground that he was discharged under clause "at his own request"

4. The applicant further submits that the Para 4 of Policy dated 07.11.2015 is arbitrary and unconstitutional in terms of Article 14 and 21 of the Constitution of India and is discriminatory in nature and the OROP policy creates a different groups between the veterans and disentitles the personnel who opt to discharge at his own request after 01.07.2014 whereas the veterans who got discharge at their own request before 01.07.2014 are entitled for the benefits of OROP. The applicant further relied upon the judgment dated 16.03.2012 of the Hon'ble Supreme Court in *Indian Ex Servicemen Movement & Ors Vs Union of India & Ors* in Writ

Petition(Civil) No.419 of 2016 decided on 16th March 2012 whereby the Hon'ble Supreme Court observed to the effect:

"The Benefit of a new element in a pensionary scheme can be prospectively applied. However, the scheme cannot bifurcate a homogenous group based on a cut-off date".

5. The applicant further relied on the following verdicts of the Hon'ble Supreme Court in cases of"

- i) *D S Nakara & Ors Vs Union of Indi(1983),SCC 305*
- ii) *Col. B J Akkara(Retd) Vs Govt of India(2006) 11 SCC 709*
- iii) *All Manipur Pensioners Association by its Secretary Vs The State of Manipur & Or, Civil Appeal No.10857 of 2016*

submitting that it is a well settled principle of law in *DS Nakara & Ors Vs Union of India & Ors.* that Article 14 of the Constitution of India which condemns discrimination not only by a substantive law but also by a law of procedure and the Hon'ble Supreme Court has held to the effect:

"that all persons similarly circumstanced shall be treated alike both in privilege conferred and liabilities imposed. Equal laws would have to be applied in all the same situation, and there should be no discrimination between one person and another....."

6. The matter in issue is no more *res integra* in view of the orders of this Tribunal in OA 313/2022 whereby vide Paras 83 and 84 thereof 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."

7. 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)"

8. It is apparent thus, that the applicant's case being on identical footing as per guidelines laid down vide order dated 03.01.2025 of the Armed Forces Tribunal(PB) New Delhi in OA 313/2022, the applicant is

entitled to the grant of OROP benefits subject to verification of his date of retirement and of the nature of the retirement being due to the premature voluntary retirement in terms of the directions in OA 313/2022 which the respondents are directed to grant to the applicant.

9. The OA is disposed of accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(Ms. RASIKA CHAUBE)
MEMBER (A)

/CHANANA