

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

2.

OA 841/2025 with MA 1236/2025

Ex Sgt Kundan Kumar Applicant
VERSUS
Union of India and Ors. Respondents

For Applicant : Mr. Raj Kumar, Advocate
For Respondents : Mr. Kumar Gaurav, Advocate
Mr. Pankaj Kumar, DAV Legal Cell

CORAM

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

ORDER
04.04.2025

MA 1236/2025

MA 1236/2025 filed on behalf of the applicant seeking condonation of 927 days delay in filing the present OA for reasons mentioned therein. In the interest of justice, 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 Thr LR. Dhaneshwari Devi Vs Union of India & Ors.* in Civil Appeal No. 022965/2017 arising out of Civil Appeal Diary No. 30073/2017 and the reasons mentioned, the MA 1236/2025 is allowed and the delay of 927 days in filing the OA is thus condoned. The MA is disposed of accordingly.

OA 841/2025

2. Notice of the OA is issued to the respondents and accepted on their behalf. The basic grievance of the applicant is to the

effect that he having joined the Indian Air Force as an Airman on 17.06.2002, took premature retirement on 28.02.2022 at his own request after rendering 19 years 08 months and 14 days of service and as a consequence thereof of his having taken premature retirement, the applicant has been denied OROP benefits.

3. The matter in issue is no more *res integra* in view of the orders of this Tribunal in OA 313/2022 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 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.”

4. Furthermore, vide the verdict of the Hon⁷ble 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),”

and thus there is no necessity of any of the persons seeking similar claims on the aspect that have already been settled and to file applications.

5. In view thereof the prayers made by the applicant, subject to verification of his date of discharge and nature of discharge of the applicant being premature voluntary retirement, the applicant is entitled to the grant of OROP benefits to the extent as permitted vide order dated 31.01.2025 of AFT (PB) New Delhi in *Cdr Gaurav Mehra & Ors. Vs. Union of India & Ors.* in OA 313/2022 which the respondents are directed to grant to the applicant.

6. The OA 841/2025 is disposed of accordingly.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(MS. RASIKA CHAUBE)
MEMBER (A)