

COURT NO. 1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA 313/2022 with MA 415/2022 & MA 416/2022

Cdr Gaurav Mehra (Retd) & 113 Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri S.S. Pandey, Advocate

**For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC
Shri Anil Kumar Gautam, Sr. CGSC
Shri Ajit Kakkar, Advocate**

WITH

OA 361/2022 with MA 446/2022 with MA 447/2022

Lt Col Udit Joshi (Retd) & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri S.S. Pandey, Advocate

**For Respondents : Shri V. Pattabhi Ram, Advocate
Shri Ajit Kakkar, Advocate**

WITH

OA 847/2022 with MA 1126/2022

Wg Cdr Abhishek Matiman (Retd) & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri S.S. Pandey, Advocate

**For Respondents : Dr. Vijendra Singh Mahndiyan,
Advocate
Shri Ajit Kakkar, Advocate**

WITH

OA 2213/2022

Col (TS) Vivek Chadha (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri S.S. Pandey, Advocate

For Respondents : Shri Arvind Kumar, Advocate

WITH

OA 961/2018

Col Sanjay Dilwaria (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri S.S. Pandey, Advocate

**For Respondents : Dr. Vijendra Singh Mahndiyan,
Advocate**

WITH

OA 426/2023 with MA 644/2023 with MA 4518/2023

**Capt (TS) Pulapaka VS Satish (Retd)
& Ors. ... Applicants**

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri S.S. Pandey, Advocate

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

OA 432/2023 with MA 2486/2023

Hav Sreenivasulu Reddy R L (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri S.S. Pandey, Advocate

For Respondents : Shri K.K. Tyagi, Sr. CGSC

WITH

OA 427/2023 with MA 645/2023 with MA 1495/2024

Wg Cdr Hembrut Walia (Retd) & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri S.S. Pandey, Advocate

**For Respondents : Dr. Vijendra Singh Mahndiyan,
Advocate**

WITH

OA 429/2023 with MA 646/2023

Brig Salil Kumar Tiwari (Retd) & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri S.S. Pandey, Advocate

For Respondents : None

WITH

OA 3651/2023

Cdr Gurpreet Singh Oberoi (Retd) & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri S.S. Pandey, Advocate

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

OA 3683/2023

JWO Sanjeev Kumar Sharma (Retd) & Ors. ...

Applicants

Versus

Union of India & Ors. ...

Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Satya Ranjan Swain, Advocate

WITH

OA 3684/2023

**GP Capt Mahesh Kumar Yadav
(Retd) & Ors. ... Applicants**

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

OA 3685/2023

Col Abraham Cherian (Retd) & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri Harbir Singh Gulati and

Shri Ashok Chauhan, Advocates

For Respondents : Shri Neeraj, Sr. CGSC

WITH

OA 3686/2023 with MA 1620/2024

Hav Venkataraju VA (Retd) ... Applicant

Versus

Union of India & Ors. ... Respondents

For Applicant : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Prabodh Kumar, Sr. CGSC

WITH

OA 3704/2023

Ex Sub Marriappan PM & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

OA 3705/2023

Brig Hemant Paliwal (Retd) & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Neeraj, Sr. CGSC

WITH

OA 3706/2023

Brig Ajoy Menon (Retd) & Ors.

... Applicants

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

OA 3707/2023

**Wg Cdr Rajan Krishnamurti
(Retd) & Ors.**

... Applicants

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Anil Gautam, Sr. CGSC

WITH

OA 3708/2023

Sgt H Kailash (Retd) & Ors.

... Applicants

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Harish V. Shankar, Advocate

WITH

OA 3709/2023

Cdr Deepak Bhaskaran (Retd) & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

OA 3710/2023

Wg Cdr Jay Mitra (Retd) & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Anil Gautam, Sr. CGSC

WITH

OA 3711/2023

Gp Capt Rakesh Singh (Retd) & Ors. ... Applicants

Versus

Union of India & Ors. ... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

OA 3687/2023

Cdr Y Phanindra (Retd) ... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Neeraj, Sr. CGSC

WITH

OA 219/2024 with MA 275/2024

**Cmde Devesh Kumar Singh
(Retd) & Ors.**

... Applicants

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri S.S. Pandey, Advocate

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

OA 266/2024

Brig Chaitanya Limaye (Retd) & Ors. **... Applicants**

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri S.S. Pandey, Advocate

For Respondents : Shri Anil Gautam, Sr. CGSC

WITH

OA 865/2024

Lt Col Lokesh Singh (Retd) **... Applicant**

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri S.S. Pandey, Advocate

For Respondents : Shri Harish V. Shankar, Advocate

WITH

OA 616/2024

EX JWO Sreenivas

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Y.P. Singh, Advocate

WITH

OA 633/2024 with MA 757/2024

Wg Cdr Kozhikode Dinesh (Retd) & Ors. ... Applicants

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

OA 634/2024 with MA 758/2024

**Wg Cdr Pankaj Kumar Nandrajog
(Retd) & Ors.**

... Applicants

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Neeraj, Sr. CGSC

WITH

OA 1056/2024

Cdr Pratik Sinha (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Anil Gautam, Sr. CGSC

WITH

OA 1055/2024

Lt Col Suneet Abrol (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Shri Jagdish Chandra, Advocate

WITH

OA 1035/2024

**Cdr Veeravalli Purna Srinivas
(Retd) & Ors.**

... Applicants

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Harbir Singh Gulati and
Shri Ashok Chauhan, Advocates

For Respondents : Ms. Sunanda Shukla, Advocate

WITH

OA 1549/2023

Wg Cdr Swapnil Kumar Nigam (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Pradeep Kumar Pillai, Advocate

For Respondents : Gp Capt Karan Singh Bhati, Sr. CGSC

WITH

OA 1574/2023

Wg Cdr MS Mathew (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Shri Pradeep Kumar Pillai, Advocate.

For Respondents : Shri Anil Gautam, Sr. CGSC

WITH

OA 1570/2023

Wg Cdr Amit Majumdar (Retd)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicants : Shri Pradeep Kumar Pillai, Advocate

For Respondents : Shri Neeraj, Sr. CGSC

CORAM :

**HON'BLE MR. JUSTICE RAJENDRA MENON,
CHAIRPERSON**

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

Since common questions pertaining to non-grant of
benefits of the One Rank One Pension (OROP) arise for

consideration in these cases, the same are being disposed of by this order. Since OA 313/2022 is the lead case of the bunch of 35 cases having same or similar facts and circumstances, pleadings and documents on the record of OA No.313/2022 are being referred to herein under.

O.A. No. 313 of 2022

2. Invoking the jurisdiction of the Tribunal under Section 14 of the Armed Forces Tribunal Act, 2007 (hereinafter referred to as 'AFT Act'), the applicants have filed this OA jointly and the reliefs claimed in Para 8 thereof read as under: .

"a) Call for the records based on which the Respondents have incorporated Para 4 of the illegal policy dated 07.11.2015 whereby the service personnel who have proceeded on premature retirement on or after 07.11.2015 have been excluded from the benefit of OROP including the Applicants and thereafter quash all such orders including Para 4 of the said policy to the extent the same excludes post 07.11.2015 for Pre-Mature Retiree from the benefit of OROP.

- (b) *Direct the Respondents to extend the benefits of OROP to the Applicants in the same manner as applicable to all retirees including pre mature retirees prior to issuance of the impugned policy dated 07.11.2015 and pay the same to the Applicants as and when they are entitled for the same along with arrears.*
- (c) *Issue any other/direction as this Hon'ble Tribunal may deem fit in the facts of the case.*

BRIEF FACTS

3. The facts of the present case, in brief, are that the applicants, 114 in numbers, having been found fit in all respects, were commissioned in the Indian Navy in various branches on different dates. These applicants proceeded on premature retirement (PMR) on different dates, the details of which are as follows:

O.A. No. 313 of 2022

Sl. No.	Name of the Applicants	Date of Retirement
1	Cdr Gaurav Mehra (Retd)	15/07/2017
2	Sug Cdr Piyush Joshi (Retd)	13/02/2017
3	Cdr Sandeep Kamalakar Puranik (Retd)	15/07/2017
4	Cdr Pratesh Gandhi (Retd)	31/07/2016

5	Cdr Rakesh Kumar (Retd)	19/09/2016
6	Cdr Bikramjeet Singh (Retd)	30/04/2018
7	Cdr N P Deshpande (Retd)	31/12/2017
8	Cdr Nitin Madhavan (Retd)	31/12/2018
9	Cdr Sanjay Gopinath (Retd)	31/12/2017
10	Cdr Vikas Sood (Retd)	30/04/2018
11	Cdr Arun Kumar Mahapatra (Retd)	01/01/2021
12	Cdr Rajeev Shukla (Retd)	04/08/2017
13	Cdr Mukesh Sharma (Retd)	31/03/2017
14	Cdr Sougata Maitra (Retd)	31/08/2018
15	Cdr Achal Sharma (Retd)	31/07/2019
16	Cdr V S Prabhakar (Retd)	03/03/2018
17	Cdr Ashok Bijalwan (Retd)	31/07/2016
18	Cdr Vishal Bhargava (Retd)	31/12/2017
19	Cdr Gurkeerat Singh Sekhon (Retd)	30/04/2016
20	Cdr Amit Singh (Retd)	11/03/2016
21	Cdr Anil Kumar Sharma (Retd)	01/06/2018
22	Cdr V Kishore (Retd)	25/05/2016
23	Cdr Vijayasimha Shivaswamy (Retd)	30/04/2019
24	Cdr A G Geevarghese (Retd)	05/07/2018
25	Cdr Rajesh Prabhullan (Retd)	10/04/2018
26	Cdr Navneet Patial (Retd)	31/01/2019
27	Cdr R Jaikumar (Retd)	05/07/2018
28	Cdr Vishal Vatsa (Retd)	31/05/2018
29	Cdr Prakash Akhouri Atul (Retd)	31/03/2018
30	Cdr Gautam Nath (Retd)	31/03/2018
31	Cdr Chitta Anand Mohan (Retd)	31/07/2017
32	Cdr D K Mishra (Retd)	01/04/2019
33	Cdr V Vinod Mani (Retd)	11/07/2019

34	Cdr G V Anil Kumar (Retd)	31/03/2019
35	Cdr Rahul Kapoor (Retd)	30/04/2017
36	Cdr R S Ramesh (Retd)	31/03/2018
37	Cdr Jajati Mohanty (Retd)	30/11/2017
38	Cdr Saurabh Jain (Retd)	19/07/2017
39	Cdr Varun Agrawal (Retd)	01/07/2019
40	Cdr Umesh Goraik Rathaur (Retd)	15/11/2017
41	Cdr Richie Roshan Cherian (Retd)	15/07/2018
42	Cdr Sandesh Pathak (Retd)	31/03/2019
43	Cdr Neil Jose Manjooran (Retd)	29/02/2020
44	Cdr Nishant Sharma (Retd)	05/07/2018
45	Cdr Arun Kotharamath (Retd)	31/05/2018
46	Cdr Yogesh Mahani (Retd)	05/01/2018
47	Cdr Srikant Koduri (Retd)	28/06/2019
48	Cdr Navneet Nagi (Retd)	10/05/2018
49	Cdr Aparnesh Mitra (Retd)	15/07/2019
50	Cdr Aditya Raturi (Retd)	21/12/2020
51	Cdr Manan Sinha (Retd)	31/01/2019
52	Cdr Sachin Sharma (Retd)	24/09/2018
53	Cdr Shaikh Fairoz Hussain (Retd)	16/07/2018
54	Cdr Shubharangshu Guha (Retd)	03/01/2019
55	Cdr Ranjit Kumar Singh (Retd)	01/06/2017
56	Cdr Santosh Biradar (Retd)	01/03/2020
57	Cdr Sunil Joy Chungath (Retd)	31/12/2019
58	Cdr Santha Kumar Prem (Retd)	31/12/2019
59	Cdr Amit Bhadkamkar (Retd)	31/05/2019
60	Cdr Jim Mathew (Retd)	31/05/2019
61	Cdr Ravi Kumar Sharma (Retd)	01/01/2019
62	Cdr Rana Sudhir Dutt (Retd)	11/01/2020

63	Cdr Anshul Sharma (Retd)	31/12/2020
64	Cdr Rajesh Raveendran Nair (Retd)	29/02/2020
65	Cdr Hari Vijay Pala (Retd)	15/07/2020
66	Cdr Amit Batra (Retd)	16.04.2018
67	Cdr R K Lakra (Retd)	31/12/2018
68	CDR/E Kanumalla Venkata Narsimham (Retd)	31/01/2019
69	Capt Bharat Tyagi (Retd)	17/04/2019
70	Cdr Subhash Singh Ahlawat (Retd)	31/01/2017
71	Cdr Aditya Dhand (Retd)	10/01/2019
72	Cdr Ambuj Kumar (Retd)	31/08/2018
73	Cdr Shashwat Raizada (Retd)	31/07/2017
74	Cdr Asheesh Datt Bhandari (Retd)	15/07/2019
75	Capt Avaneesh Jain(Retd)	28/02/2018
76	Capt Sanjay Kumar (Retd)	31/08/2017
77	Capt V R K Tiwari (Retd)	31/03/2016
78	Capt Anshuman Chatterjee (Retd)	17/07/2017
79	Capt Satyendra Shreenivas Vaidya (Retd)	12/04/2018
80	Capt Harsh Kumar Singh (Retd)	30/09.2016
81	Capt Sandip Kapoor (Retd)	15/06/2018
82	Cdr Pavan Kumar Varma (Retd)	17/07/2016
83	Cdr Venkateshwaran Ranganathan (Retd)	10/04/2018
84	Cdr Kartik V (Retd)	31/07/2017
85	Cdr Hitesh Goel (Retd)	30/04/2018
86	Cdr Rishi Raj Singh (Retd)	31/12/2017
87	Cdr Pallav Prakash (Retd)	29/07/2016
88	Cdr Thomas Thomas (Retd)	31/12/2016
89	Cdr Asim Tarafder (Retd)	31/07/2017
90	Cdr Amit Rajora (Retd)	30/04/2017
91	Cdr Chirag Sonu Gupta (Retd)	30/09/2017

92	Cdr Anand Khandelwal (Retd)	15/03/2017
93	Cdr Rupesh Sharma (Retd)	30/06/2017
94	Cdr Rahul Malik (Retd)	31/07/2016
95	Cdr Kartik Gopal (Retd)	31/05/2017
96	Cdr Manoj Madaiya (Retd)	31/01/2016
97	Cdr Rahul Jadhav (Retd)	07/03/2016
98	Cdr Mahendra Singh (Retd)	14/02/2017
99	Cdr Arnab Ghosh (Retd)	31/07/2016
100	Cdr Kesavan Baskaran (Retd)	01/06/2017
101	Cdr S I Hussain (Retd)	15/05/2017
102	Cdr Vikrant Jairath (Retd)	15/09/2017
103	Cdr Harbir Singh Chahal (Retd)	16/08/2017
104	Cdr Ameet Kadyan (Retd)	15/12/2017
105	Cdr Sameep Krishnaraj Kunja (Retd)	01/11/2016
106	Cdr Karnam Prasant Rao (Retd)	30/11/2017
107	Cdr Abhijeet Tripathi (Retd)	31/07/2017
108	Cdr Anupam Singh Dhillon (Retd)	31/07/2016
109	Cdr S Satish Kumar (Retd)	15/07/2017
110	Cdr Praveen Varma (Retd)	01/01/2018
111	Cdr Sundeep Thapa (Retd)	31/10/2016
112	Cdr Ranjan Bhattacharya (Retd)	31/07/2016
113	Cdr Ganapathi Subramanyam (Retd)	30/11/2016
114	Cdr Parasuram Ramakrishna Prasad (Retd)	30/04/2016

4. The learned counsel for the applicants have described the officers, who took PMR, falling in three categories viz. Category 'A', 'B' and 'C'. Category 'A' comprises of Pre-Mature Retirees (PMR) pensioners retired

before 01.07.2014 who have been included for grant of OROP and have no grievances; Category 'B' includes PMR pensioners retired between 01.07.2014 and 07.11.2015 and Category 'C' which includes PMR pensioners retired after 07.11.2015. The applicants herein mentioned above fall in Category 'C' of the PMR.

5. The applicants giving the background of the issue of 'One Rank One Pension' (OROP) stated that till 1973, Armed Forces personnel had the parity of pension irrespective of date of retirement in a particular rank with same length of service popularly known as 'One Rank One Pension (OROP)' but the same was discontinued from the 3rd Pay Commission from 1973 onwards. After the discontinuance of the scheme of OROP, due to disparity in pension, the Ex-servicemen started ventilating their grievances and the government was compelled to look into the issue. It is the case of the applicants that from 1987-2000, despite the reference of OROP in the 5th and 6th Central Pay Commissions, nothing substantial was done; the Government promised to bring into effect the OROP in 2004, however, it later declined to grant OROP in 2008

which led to the widespread protest and the war-veterans even returned their medals in support of the cause of the ESMs in 2009; that such protest finally compelled the Govt. to constitute a ten-member Parliamentary Committee under the Chairmanship of Shri Bhagat Singh Koshiyari known as '**Koshiyari Committee**' and the Committee submitted its report in December, 2011. This was followed by the statement on the floor of the House by the Finance Minister on 17.02.2014 and 10.07.2014 on OROP and the minutes of the meeting convened by the Defence Minister on 26.02.2014 which mentioned about the Govt.'s intention to implement the OROP. The Govt. thereafter took a decision to apply the principles of OROP prospectively from the financial year 2014-2015 and the same was notified vide MoD letter No.12(01)/2014-D (Pen/Pol) dated 26.02.2014.

6. Thereafter, on 07.11.2015, Respondent No.1 issued a policy to implement 'OROP', however, vide Para 4 of the said policy, premature retirees (PMR) of a certain category were made ineligible for grant of OROP. The respondents also clarified that premature retirees retired on and after

01.07.2014 onwards will not be granted OROP as per GoI, MoD, Department of Ex-Servicemen Welfare letter No. 12(1)/2014/D(Pen/Pol)-Part-II dated 07.11.2015 and letter No. 1(1)/2019/D(Pen/Pol) dated 04.01.2023.

7. It is the case of the applicants that on 14.12.2015, the Govt. constituted a judicial Commission under the Chairmanship of a retired Chief Justice of the Patna High Court to look into the anomalies of OROP, however, there was no reference about the issue of exclusion of one category of the premature retirees getting the benefit of OROP made to the said committee for its adjudication, although all outstanding issues were supposed to be referred to the Commission.

8. The applicants submit that thereafter, even though the exclusion of one category of the PMR officers was not sent for resolution to the Judicial Commission, however, the applicants were hopeful that the exclusion of one category of PMR retirees from the benefit of OROP based on a cut-off date retirement being a serious anomaly will be resolved by the Govt. In the meantime, the applicants learnt about the matters where issue of denial of 'OROP'

benefit was also pending consideration before the AFT in 2021 and thus in such matters related to policy issued by Respondent No.1, the applicants having no right to submit a statutory representation and having retired from service, they are not entitled to make any such complaint without any direction from the Tribunal. Aggrieved by all this, the applicants have filed the instant original applications seeking the reliefs as prayed for.

CONTENTIONS OF THE PARTIES

9. The learned counsel for the applicants made his submissions to the effect that from 1980 onwards, the Ex-servicemen have realized the fact that there is wide spread pay disparity in the same rank with same length of service only due to date of retirement whereas most of the civil servants who were in receipt of pension till 2004 before introduction of the contributory pension scheme were not facing any such problems.

10. It has been contended by the applicants relying upon the observations of the Hon'ble Supreme Court in Para 17.2 of the **Indian Ex Servicemen Movement & Others Vs. Union of India & others** [(2022) 7 SCC 323]

(hereinafter referred as 'OROP Judgment'), the OROP Scheme which existed till 3rd Pay Commission was discontinued and thereafter the Government finally decided to implement the OROP Scheme to fulfil the long standing demand of the Armed Force Personnel and the Ex-servicemen with an express objective *"to ensure uniform Pension should be paid to Armed Forces Personnel retiring in the same Rank with the same length of service, irrespective of date of retirement where any future enhancements in the rates of pension were to be automatically passed on to the past pensioners"*. The learned counsel submitted that the intention, aim or object of the scheme was to bridge the gap between the rate of pension of current pensioners and the past pensioners.

11. The learned counsel further submitted that the actions of the respondents of inserting an exclusionary clause i.e. Para 4, in the impugned order of implementation of 'OROP' for the Armed Forces Personnel (Army/Navy/Air Force) for post-01.07.2014 Pre-Mature Retirees is illegal, arbitrary, discriminatory, unreasonable and against the existing policy instructions issued by the

Respondents themselves as well as against the basic spirit of the Constitution protecting the legitimate rights of the Armed Forces personnel.

12. The learned counsel submitted that the 'One Rank One Pension (OROP)' was applicable for the Armed Forces Personnel till 3rd CPC and by implementing the same, the Govt. has only corrected the historical wrong done to the Armed Forces Personnel. Therefore, any exclusion only on the basis of a cut-off date to divide an otherwise homogenous class i.e. Pre-Mature Retirees amounts to making a class within a class and thus legally impermissible being clearly violative of Articles 14 and 16 of the Constitution. The learned counsel submitted that the cut-off date has been fixed to categorise one set of employees who have taken Pre-Mature Retirement by making a sub classification by prescribing all those who have proceeded on PMR prior to 01.07.2014 shall be extended the OROP benefit while those proceeding on such PMR on or after 01.07.2014 shall be excluded from it. This categorization/segregation of the class within a class on the basis of cut-off date would hit by the mandate of

Articles 14 and 16 unless it passes the test of reasonable classification (twin test) i.e. firstly the distinction so made should be based on classification founded on *intelligible differentia* and secondly it has a rationale relationship with the just objective sought to be achieved. The learned counsel contended that the Hon'ble Supreme Court, High Courts and even this Tribunal in series of cases have held that any classification based on cut-off date which divides a homogenous class would be legally unsustainable and it is not open for the state to resort to such classification in view of the negative covenant of Articles 14 and 16.

13. In support of the above contentions, the learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in case of **D.S. Nakara and others Vs. Union of India, [AIR 1983 SC 130]**, wherein the Apex Court held that those who are retired after or before the cut-off date prescribed i.e. 01.04.2010 form a homogeneous class; insofar as receiving the pension is concerned, giving them different treatment would amount to invidious discrimination. The learned counsel

reproduced the extracts from the aforesaid judgment as below :

“65.....With the expanding horizons of socio-economic justice, the Socialist Republic and Welfare State which the country endeavours to set up and the fact that the old men who retired when emoluments were comparatively low are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, by introducing an arbitrary eligibility criteria, “being in service and retiring subsequent to the specified date” for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and being wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, the eligibility for liberalised pension scheme of “being in service on the specified date and retiring subsequent to that date” in the memoranda, violates Article 14 and is unconstitutional and liable to be struck down....”

14. The learned counsel submitted that as reiterated in several subsequent judgments of Hon'ble Apex Court including the judgment of the Hon'ble Apex Court dated 31.03.2011 in the case of **Capt. K J S Buttar Vs. Union of India and Ors. [Civil Appeal No. 5591/2006]** wherein

it was held that if the restriction of the benefit has been removed without any new element same cannot be denied to similarly situated persons just on the basis of the cut-off date of retirement. The learned counsel argued that the OROP is not a new element but just a method of calculation of pension which certainly cannot be denied to one class of premature retirees.

15. The learned counsel further added that the actions of denying the benefits of OROP to the applicants on the part of the respondents is an attempt to create **'a class within class'** and to create three different entities; firstly, the service personnel, who took PMR prior to 01.07.2014, secondly, those Pre-Mature Retirees who have retired between 01.07.2014 and 06.11.2015 and thirdly, who took PMR after the issuance of letter dated 07.11.2015, and out of these three categories mentioned, the last two categories of Pre-Mature Retirees have been excluded from the 'OROP' scheme when no such differentiation was ever made by the Respondent No.1 initially at the time when the notification for grant of OROP for the Ex-servicemen was issued giving effect to OROP from 01.07.2014 itself. The learned counsel

argued that such flawed differentiations which harm the basic principles of Right to Equality ought to be interfered with by this Tribunal not only to impart justice to the applicants but also to protect their basic Right of Livelihood.

16. The learned counsel further submitted that although as per Para 5 of the letter dated 07.11.2015, it is mentioned that the anomalies arising out of the implementation of OROP are currently under scrutiny before a Judicial Committee appointed for it, report of which was to be submitted within a period of six months, however, the instant issue has still been left unaddressed as to on what grounds should the benefits of OROP be restricted to the individuals who took PMR prior to 01.07.2014 only and not to the ones who sought PMR on or after 01.07.2014.

17. The learned counsel contended that the sole object of implementation of 'OROP Policy' in the Armed Forces was to remove the cut-off date as a barrier causing widespread disparity in grant of pension amongst those service personnel who had retired in same rank with same

number of years of service but were not getting equal pension because of different dates of retirement which is just an incidence of service; moreover, the 'OROP Policy' was a relaxation of the conditions which were affecting the payment of pension at the uniform rate to equally placed service personnel due to different dates of retirement and, therefore, such creation of layers to deprive a class on the basis of an arbitrary date of proceeding on Pre-Mature Retirement is neither a valid classification, nor it has any rational basis to achieve the object for which the OROP was brought and to the contrary, such classification as a matter of fact is against the declared objective of or the rationale of OROP to bring uniformity in payment of pension amongst the Armed Forces Personnel which has been severely impacted due to sole reason of implementation of cut-off date of retirement by various pay commissions.

18. It has been further submitted by the learned counsel of the applicants that all the applicants retired from service after a long service of 20 years or more, thus, the benefits of OROP ought to be given to all such personnel without

any discrimination of applications of policy prior to or post 01.07.2014 Pre-mature retirees and that this discrimination is sheer abuse of the powers on the part of the respondents as if it continues, the same shall cause serious financial loss to the applicants to which they are entitled and thus the action of the respondents is illegal, arbitrary and unsustainable.

19. The learned counsel contended that this Tribunal has passed several judgments/orders even when the subject matter of challenge is under the realm of policy if it has been found that such policy instructions are hit by any illegality, irrationality, rule of fairness or constitutional validity. The learned counsel made reference to the order of this Tribunal dated 07.02.2012 in OA No. 336/2011 in the case of **Maj (Retd) Rajesh Kumar Bhardwaj Vs. Union of India & Ors. [O.A. No. 336/2011]**, which was upheld by the Hon'ble Supreme Court wherein the Tribunal has set-aside Para 3 of the policy dated 29.09.2009 where a cut-off date was prescribed for grant of disability element to the Pre-Mature Retirees by excluding those Personnel who proceeded on such PMR before

01.01.2006, and submitted that, therefore, there cannot be any dispute that in a given case wherever this Tribunal when the subject matter is the policy decision of the Govt. has found that such policy is legally unsustainable, same has been set aside. Reliance has been placed on the judgment of the Hon'ble Supreme Court in case of **Indian Ex-Servicemen Movement & Others Vs Union of India & Others** (supra) where the subject matter of challenge was the equalisation methodology and as evident from the judgment itself even though subject matter of adjudication was the same policy dated 07.11.2015 of the OROP and the parties have not raised any dispute regarding the constitutional validity of exclusion of any category of personnel on the basis of the cut-off date, yet the Hon'ble Supreme Court had clearly adjudicated that the benefit of a new scheme in a pensionary scheme can be prospectively applied, however, the scheme cannot bifurcate a homogenous class based on a cut-off date as observed in Paras 58 and 70.2 of the said judgment.

20. The learned counsel for the applicants submitted that in the present cases the applicants proceeded on PMR

after issuance of the policy dated 07.11.2015 which prescribed prospective exclusion, such exclusion is discriminatory and arbitrary as the respondents are supposed to be fully aware of the implication of the scheme on the applicants seeking Pre-Mature Retirement and thus after having permitted the applicants exercised the choice to proceed on PMR well knowing that they will be excluded from the benefit of OROP, is it open to the applicants to question the validity of the policy; and, therefore, the learned counsel for the applicants has contended that such objection of the respondents is fallacious for two reasons; firstly, the said objection has no relevance in respect of the applicants who proceeded on Pre-Mature Retirement before 07.11.2015 when the OROP Scheme was for the first time brought in the public domain and notified by the Govt., Para 4 of the said policy reads as under:

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

Therefore, the question that the Pre Mature Retirees who proceeded on PMR prior to 07.11.2015 does not arise as they had already proceeded on PMR when the Policy was issued and their cases were identical to the pre-01.07.2014 retirees. The learned counsel submitted that the contention of the respondents to apply the wavier and acquiesces in the matter *qua* pre-07.11.2015 retirees does not need any consideration.

21. The learned counsel for the applicants further submitted that in so far as the applicants who retired after 07.11.2015 are concerned, the bifurcation of a homogenous class on the basis of cut-off date is violation of Articles 14 and 16 for the reasons that such classification is not based on any intelligible differentia or it has no reasonable or rationale relationship with the object to be achieved by such scheme, in that case such creation of class within a class of PMR Pensioners who have gone for PMR prior to 01.07.2014 or those who have gone before 01.07.2014 will be unconstitutional and, therefore, once the same is held to be unconstitutional under Article 14 and 16 of the Constitution, all such

argument that the officers were aware of the implications of the said policy or that they chose to proceed on PMR well-knowing that they will be excluded from OROP etc. will amount to absolving the state from their constitutional obligations to treat a homogenous class equally; and in other words, the State is claiming that by proceeding on PMR, the subject has waived their right to be treated equally which is not permissible in law.

22. The learned counsel for the applicants, with regard to the above submissions, relied upon the following judgments:-

- (a) **Bashesar Nath Vs. Commissioner of Income Tax Delhi & Rajasthan and another Model Knitting Industries Ltd., UP and others [(1959) 35 ITR 190]**
- (b) **M/s. Motilal Padampat Sugar Mills Col Ltd. Vs. State of Uttar Pradesh and others [(1979) 2 SCC 409]**
- (c) **UOI & Ors. Vs. Tushar Ranjan Mohanty and others [(1994) 5 SCC 450]**
- (d) **Dr. Saurabh Jain & Ors. Vs. State of Kerala & Ors. [2010 SCC OnLine Ker 5050] (Full Bench judgment of Kerala High Court)**
- (e) **Lombardi Engineering Limited Vs. Uttarakhand Jal Vidyut Nigam Limited [(2024) 4 SCC 341]**

(f) **Justice K.S. Puttaswamy (Retd) and Anr. Vs. UOI & Ors. [(2017) 10 SCC 1.**

23. The learned counsel for the applicants further contended that the assumption of the respondents that the applicants were aware of the policy is factually incorrect so far as all pre- 07.11.2015 PMR Pensioners are concerned as the policy was notified on 07.11.2015 and by that time they had already proceeded on PMR and, therefore, there is no difference whatsoever between them and the pre-01.07.2014 retirees; further, even for post-07.11.2015 PMR Pensioners, the respondents cannot even proceed on assumption that the applicants were aware of such stipulation because they were neither notified nor they were given any choice to reconsider as most of them have got their PMR sanctioned before the policy dated 07.11.2015 was issued and that they could not have sought cancellation of the same once the same was already approved. That the respondents themselves have set up the judicial commission to remove the anomaly and the applicants even if assuming to be aware of the said policy was under a bonafide belief that such discrepancy will be

sorted out by the time they will be considered for OROP which admittedly did not affect them at all as the letters issued from time to time was to give equaliser to the past pensioners as per the details below :-

Policy letter	Applicable for the Pensioners	To bring them at par with the Pensioners	Benefit to be applicable from
07.11.2015	Pre 2013 Pensioners	2013 Pensioners	01.01.2014
04.01.2023	Pre 2018 Pensioners	2018	01.07.2019
04.09.2024	Pre 2024	2024	01.07.2024

24. Based on the contentions raised above, the learned counsel for the applicants submitted that not only the policy instruction dated 07.11.2015 which contains the exclusion of the class of PMR Personnel who retired after the cut-off date of 01.07.2014 is legally unsustainable but all subsequent policies dated 03.02.2016, 04.01.2023 and 04.09.2024 which had perpetuated the illegalities of exclusion of the PMR Personnel retired from service after the cut-off date of 01.07.2014 are liable to be set aside and quashed to the extent cut-off date has been applied to exclude them from the benefit of OROP with further direction to consider the case of all the PMR Personnel for extending the benefit of the OROP irrespective of the date

of their retirement and grant them the benefit from the date it was due to them with arrears along with interest @12 percent per annum.

25. The respondents have filed their counter affidavit. The learned counsel for the respondents briefly touched upon the historical perspective of the OROP and added that the Central Govt. has always deliberated on improving the financial status of the retired personnel and there are constant efforts by the Govt. to give certain incentives to their employees at regular intervals. The learned counsel submitted that the MoD letter No. 12(1)/2014/D(Pen/Pol)-Part II dated 07.11.2015 on OROP has the approval of the Union Cabinet; that there are different stages of decision-making in the Government and whenever a policy or an issue of significance having huge financial implications like OROP is involved, it is finalized by the Government, by deliberating upon it at various levels and the final policy orders are issued only after receiving the approval of the Competent Authority who is competent to approve the policy of immense significance by way of Inter-Ministerial consultations.

26. The learned counsel added that extensive consultations were held keeping in view the magnitude and complexity with experts and ex-servicemen to deliberate on the issue of implementation of OROP and after extensive consultation, it was considered practical and feasible to revise pension under OROP every five years. It was further submitted that it was decided to revise the pension (under OROP) for all pensioners retiring in the same rank with the same length of service as the average of minimum and maximum pension in calendar year 2013 as OROP has been implemented w.e.f. 01.07.2014 and those drawing pension above the average have been protected; that it was also decided that personnel who opt to get discharged on their own request under various provisions of the Army Rules 1954 or equivalent Navy or Air Force Rules up to 30.06.2014 will be entitled to the benefits of OROP under the provisions of MoD letter dated 07.11.2015, however, personnel who opt to get discharged on their own request on or after 01.07.2014 will not be entitled for the benefit of OROP; that the OROP order has been issued following due procedure for formulating a policy in the Government after

the approval of the competent authority and, therefore, there is no wrongful action taken by the Government by issuing OROP order.

27. The learned counsel for the respondents added that the use of word 'Henceforth' in policy letter dated 07.11.2015 means that the letter is effective from 01.07.2014. The learned counsel also stated that letter dated 04.01.2023 pertains to implementing the first revision of the OROP and does not, in any manner, change the policy on OROP dated 07.11.2015 and Para 2.6 of the letter dated 04.01.2023 regarding omission of benefit of OROP for PMR officers w.e.f. 01.07.2014 simply reiterates the position of the policy letter dated 07.11.2015. The learned counsel further argued the use of word 'Henceforth' in policy letter dated 07.11.2015 needed proper legal interpretation and harmonious construction of both the letters issued by the MoD is important. The learned counsel added that the cut-off date is a well-thought out decision of the Govt. to exclude a class of PMR personnel who do not want to serve any longer in the armed forces due to their own personal reasons.

28. It was submitted by the learned counsel that the instant lead OA has been filed by 114 applicants joined together and most of the applicants retired between 2016 and 2019, whereas the policy letter under challenge was issued on 07.11.2015, while the applicants were still in service and were well aware of the policy letter and despite knowing that if they choose to take premature retirement (PMR) the benefit of OROP will be denied to them, they still chose to take PMR and hence now cannot complain of OROP being denied to them.

29. The respondents submit that the applicants have referred to pay disparity of various ranks in the Armed Forces personnel, which issue is addressed by the Central Pay Commission, an expert body set up by the Central Government periodically to look into the pay, pension, and other service-related issues of Central Government employees; the recommendations made by the Central Pay Commission are implemented if the same are accepted by the Govt. of India. The learned counsel further submitted that the Rajya Sabha Petition Committee which was chaired by Shri Bhagat Singh Koshyari in its 142nd Report

laid on the Table of the House wherein it was stated that the Government should implement One Rank One Pension in the Defence Forces across the board at the earliest and further stated that for future, the pay, allowances, pension, family pension etc. in respect of the defence personnel should be determined by a separate Commission so that their peculiar terms and conditions of service, nature of duties they are required to perform, etc. which are quite different from the civilian work force, are duly taken into account while taking decision on the same, however, the report of the committee on OROP was not accepted by the Govt. and is not binding on the Govt.

30. The learned counsel for the respondents further submitted that the final decision of the Government on OROP is contained in MoD letter dated 07.11.2015 which has the approval of the Union Cabinet and therefore, the contention of the applicants that OROP order was notified vide MoD letter dated 26.02.2014 is incorrect and is misleading.

31. It has been further submitted by the learned counsel for the respondents that as per the approval of the Union

Cabinet, the Govt. had appointed One Member Judicial Committee (OMJC) headed by Justice L. Narasimha Reddy, Retd. Chief Justice of Patna High Court, to look into anomalies, if any, arising out of implementation of OROP, however, the OMJC was not supposed to discuss issues with respect to non-grant of OROP benefit on the basis of the cut-off date to PMR personnel.

32. It has been reiterated by the respondents that OROP policy was issued following the due procedure for formulating a policy in the Government after the approval of the competent authority and, therefore, the contention of the applicants that inserting an exclusionary clause in MoD order dated 07.11.2015 for post-01.07.2014 premature retirees are illegal, arbitrary, discriminatory, unreasonable and against the existing policy issued by the Government is incorrect and baseless.

33. The learned counsel for the respondents submitted that the decision of the Hon'ble Supreme Court in the case of **DS Nakara (supra)** cannot be relied upon to cover within it all the claims made by the premature retirees and the facts of the instant case are totally different and the

case of **DS Nakara (supra)** is clearly distinguishable. The learned counsel relied upon Para 70.3 of the verdict of the Hon'ble Supreme Court in the case of **Indian Ex-Servicemen Movement Vs. Union of India (supra)**, which reads as under :

"70.3 The judgment of the Constitution Bench in D.S. Nakara cannot be interpreted to read the one rank one pension rule into it. It was only held that the same principle of computation of pensions must be applied uniformly to a homogenous class."

34. The learned counsel for the respondents further submitted that as opposed to the factual matrix in **DS Nakara Case (supra)**, where the liberalised pension scheme was not made applicable to employees who had retired prior to the cut-off date, in the present case, the OROP principle is applicable to all retired army personnel, irrespective of the date of retirement; the cut-off date is only prescribed for determining the base salary used for computing the pension while the cut-off dates for implementation of any scheme lies within the ambit of policy decisions of the Govt. which principle has been

recognized by the Hon'ble Supreme Court in a number of cases.

35. The learned counsel for the respondents submitted that the Govt. has been regularly issuing orders for improvement in the pension of the past pensioners by bringing their pension at par with the recent retirees who may be drawing higher pension than them and vide OROP letter dated 07.11.2015, the pension of past pensioners drawing below the average was increased to the average pension which has benefited the past defence pensioners financially and the pension of those drawing pension above the average has been protected; that the amount of financial benefit may vary depending upon the rank and length of qualifying service, thus no past pensioners has been put to any disadvantage; and that each and every Government decision is implemented from a cut-off date due to financial or implementation feasibility constraints, etc.; and the policy for premature retiree for grant of pension is different from those who do not opt for premature retirement and superannuation from service.

36. The learned counsel for the respondents submitted that OROP is a new concept and never existed before and it was further averred that OROP is not a case of grant of pension but only a methodology to calculate pension. The learned counsel further added that pension is a service condition and pension is not an absolute right and cited the example of New Pension policy of the Govt. for Central Govt. employees, which was brought into force in 2004. The learned counsel submitted that the implementation of the OROP is a policy decision of the Govt. and there should not be any judicial interference in policy matters and judicial review can only be done on constitutional parameters.

37. The learned counsel for the respondents submitted that the applicants cannot invoke the doctrine of ***legitimate expectation*** in the present case(s) merely on the deliberations held at the Ministerial level or assurance made by the State functionaries/Minister of Union Govt. as these did not translate into policy decision of the Govt. The learned counsel for the respondents submitted that the doctrine of ***promissory estoppel*** also cannot be

invoked by the applicants as there was no concrete Govt. policy in existence prior to 07.11.2015 on OROP.

38. The learned counsel for the respondents relied upon the following judgments in support of the submissions made :

(a). **KL Rathee Vs. UOI, [SLJ 1997 (30 207)]**

(b). **Suchet Singh Yadav Vs UOI [(2019) 11 SCC 520]**

39. The learned counsel for the respondents, therefore, prayed that the applicants are not entitled to any relief and the OA is therefore devoid of any merit and deserves rejection.

40. In conclusion, the learned counsel for the applicants submitted that with regard to NPS Scheme, the scheme was introduced by the Central Government to help the retiring government servants to have income in the form of pension to take care of their retirement needs; the Pension Fund Regulatory and Development Authority (PFRDA) regulates and administers NPS under the PFRDA Act, 2013. The learned counsel added that as per the Ministry of Finance Notification bearing No.5/7/2003-ECB-PR

dated 22nd December 2003, NPS is mandatory for Central Government employees, who joined service on or after January 1, 2004, except for those in the armed forces and is also extended to the employees of Central Autonomous Bodies from the said date; that it is also available to all State Government employees/employees of State Autonomous Bodies, if the respective State/UT opted for it. Hence it is made applicable to those who have entered into Govt. Service after 2004 (After implementation of policy) and not to those who entered the service prior to 2004.

41. The learned counsel for the applicants, with respect to the contention of the respondents that OROP is a new concept and never existed earlier, reiterated that OROP was in vogue till 1973 and the 3rd Pay Commission discontinued with it and the genesis of the OROP has been detailed in the Koshiyari Committee report and hence the contention of the respondents that OROP is a new concept is not correct.

42. The learned counsel for the applicants submitted that the action of the respondents to use the factum that PMR which was sanctioned by the respondents on merit

after considering all the relevant aspects which is also a tool of cadre management for vacancy at a higher level as also to keep the younger profile of the armed forces cannot be used to deny the benefit of fixation of pension under OROP which is nothing but a step towards correction of historical wrong which the armed forces personnel were subjected to after 3rd CPC. The learned counsel for the applicants thereafter prayed for the relief as sought in Para 1 of this order.

ANALYSIS

43. Having heard learned counsel for the parties, it is clear that the relief sought herein pertains to the validity of the Policy and communication dated 07.11.2015 and para 4 thereof by which premature retirees who opted for the same on or after 01.07.2014 have been excluded from the benefit of OROP. We have heard submissions of learned counsel on behalf of both the parties and carefully perused the material placed before us and thereafter, we frame the following issues for our adjudication:

- (i) As to whether the aforesaid policy and the exclusion contained in para 4 of the Policy letter dated 07.11.2015 is tenable in law;

(ii) Whether by the said policy in the matter of extending the benefit of OROP to service personnel who have proceeded on premature retirement, a differentiation has been created within a homogeneous class, thereby violating the mandate of Article 14, the Equality Clause incorporated in the Constitution;

(iii) Whether the premature retirees who opt for discharge on or after 01.07.2014 are also entitled to the benefit of OROP as claimed for in the applications;

(iv) any other relief or direction in the facts and circumstances of the case.

44. As far as issue (i) is concerned or for that matter the main issue is concerned, a perusal of the material that has come on record clearly indicates that the policy for grant of One Rank One Pension (OROP) is a policy whereby a uniform pension is to be paid to members of the Armed Forces retiring in the same rank with the same length of service irrespective of their date of retirement. That apart, whenever any future enhancement in the rate of pension is brought into force that is required to be automatically passed on to

the past pensioners: The scheme was being implemented till 1973 when the Third Central Pay Commission took a decision to revoke it.

45. It is also an admitted position that the demand made by Ex-servicemen of the Defence Forces for grant of OROP was examined in 2010-2011 and in March, 2011, the Rajya Sabha constituted the Koshyari Committee which presented its 142nd report in December 2011 on the petition praying for grant of OROP to the Armed Forces personnel. According to the Report of the Committee, OROP implies that a “uniform pension be paid to the armed forces personnel retiring in the same rank with the same length of service irrespective of their date of retirement and any future enhancements in the rate of pension to be automatically passed on to the past pensioners”. The concept, according to the Report implied “bridging the gap between the rate of pension of the current pensioners and the past pensioner”. The Committee strongly recommended that Government should implement OROP in the Defence forces across the board at the earliest and further that for future, the pay, allowances, pension, family pension, etc. in respect of the Defence personnel should be

determined by a separate commission so that their peculiar terms and conditions of service, the nature of duties they are required to perform, etc., which are quite different from the civilian work force, are duly taken into account while taking decision on the same.

46. These facts were noted by the Hon'ble Supreme Court while considering certain issues that came up before the Hon'ble Supreme Court for consideration in a petition filed under Article 32 of the Constitution wherein the provisions of the policy dated 07.11.2015 were under challenge. Consideration was made in the case of ***Indian Ex-servicemen Movement and Others v. Union of India and Others*** (2022) 7 SCC 323.

47. The history and the sequence on the basis of which the impugned communication dated 07.11.2015 was issued have been narrated in detail by us while taking note of the facts of the case and it need not be again reproduced. The material and various documents available on record clearly show that the OROP was a scheme for payment of uniform pension that was to be paid to personnel who were retiring

in the same rank with the same length of service as detailed hereinabove.

48. The sequence of events as made out from the records and the observations made by the Hon'ble Supreme Court in the case of **Indian Ex-servicemen Movement and Ors.**(supra) clearly indicate that the OROP always entailed an automatic revision of the rates of pension to bridge the gap in the pension being received by past and current pensioners. However, as canvassed before us in this Application while ventilating their grievance before the Hon'ble Supreme Court in the case of **Indian Ex-servicemen Movement**(supra), it was the case of pensioners therein that the letter dated 07.11.2015 introduced a revised definition of OROP where the revision between the past and current rates of pension was to take place at periodical interval.

49. The petitioners referring to the definition of OROP contended that deviation from the automatic revised rates of pension to revision at periodical intervals, changed the accepted meaning of OROP. It was the contention of the petitioners before the Hon'ble Supreme Court that a

Committee headed by Justice (Retd.) L. Narasimha Reddy had made certain recommendations and highlighting the said recommendations it was submitted by the petitioners to the Defence Minister that the respondents should revert to the original definition of OROP where the pension of past pensioners would be automatically revised pursuant to any future enhancement.

50. Various submissions were also made before us with regard to the said case but the Hon'ble Supreme Court in the said case took note of various aspects of the matter and the issue discussed in the said case was with regard to the method of calculation of pension and the issue of periodical revision of pension between past and present pensioners. As far as the present dispute is concerned, the grievance of the applicants is that the implication of para 4 of the communication dated 07.11.2015 results in carving out a class within a homogeneous class of premature retirees and this classification is based on the date when premature retirement is granted to the personnel. According to the petitioners, this fixation of cut off date to grant benefit of OROP to one class of applicants who took premature

retirement prior to a particular date is arbitrary, violates the principles of equality as enshrined in Articles 14 and 16 of the Constitution, the classification is unconstitutional, unfair and is unsustainable in law. The petitioners also contend that the issue of cut off date was neither challenged in the Indian Ex-Servicemen Movement case nor was taken note of by the Hon'ble Supreme Court whilst deciding the said case.

51. Learned counsel for the applicants heavily relied on the judgment rendered by the Hon'ble Supreme Court in the case of **D.S. Nakara v. Union of India** (1983) 1 SCC 305 which has also been referred in the judgment of the Hon'ble Apex Court in **Indian Ex Servicemen Movement** case. For the said purpose, it is pointed out before us that the category of premature retirees who seek such retirement after completion of qualifying service for pension in terms of the rules and regulations applicable to the three services, namely, the Army, Navy and the Air Force before 01.07.2014 are being treated separately. It is said that denying the benefit of OROP to post 01.07.2014 premature retirees, according to the applicants, is unsustainable in law and,

therefore, the moot question before us would be as to whether denying benefits of OROP to the petitioners who prematurely retired on or after 01.07.2014 can be sustained in law.

52. A perusal of the judgment in the case of **Indian Ex-Servicemen Movement**(supra) clearly indicates that the OROP scheme was brought into force with the intention of paying uniform pension to Armed Forces personnel retiring in the same rank with the same length of service irrespective of the date of retirement and where any future enhancement in the rate of pension were to be made, it was to be automatically passed on to all the retirees.

53. The law with regard to reasonable classification based on the mandate of Articles 14 and 16 has been the subject of challenge in various cases before the Hon'ble Supreme Court right from the case of **DS Nakara** (supra) onwards or even before that and applicants before us have relied upon various judgments in support of their contentions. As is detailed in the written arguments submitted by Shri S.S. Pandey, learned counsel for the applicants and learned

counsel Shri Harbeer Singh Gulati before us, we will refer to these judgments as and when required.

54. A perusal of these judgments clearly indicate that the consistent view of the Hon'ble Supreme Court based on the classification theory has been to find out as to whether the classification challenged is based on any intelligible differentia between two sets or group of people who even though entitled to be clubbed together are being treated differently and is there any reasonable or rationale nexus which could be achieved by making such a classification and when the classification has been found to be irrational and not based on any facts or reasons which has direct nexus or rational with the object to be achieved, such classification has been held as invalid and contrary to the mandate of Articles 14 and 16 of the Constitution.

55. Based on the aforesaid principles, we are required to analyze as to whether the so called classification of premature retirees who retired before 01.07.2014 and those who retired thereafter is in accordance with the theory approved and accepted by the Hon'ble Supreme Court.

56. It is clarified that the premature retirees who are applicants in this case are those premature retirees who are qualified in all other respects for grant of retiring pension/service pension as per the pension Rules/Regulations of the Army, Navy and the Air Force.

57. It is an admitted position that premature retirement to officers and PBOR in the Army, Navy and Air Force is granted based on the provisions of the Army Act, Navy Act and Air Force Act and the rules framed thereunder and specific policies framed for premature retirement by the respective services. The principles of law governing grant of premature retirement is also well settled. Premature retirement cannot be claimed as a matter of right. It is granted based on the discretion available to the Govt. and claiming premature retirement is not an unqualified right under Article 19 of the Constitution. No member of the Armed Force has a right to leave the service at his own sweet will. The interest of service is given paramount importance while granting premature retirement (PMR) to any personnel who seeks it. A balance is to be sought to be drawn between interest of service and the request for grant of premature

retirement whilst granting premature retirement to any personnel from the armed forces. The principles in this regard have been very well laid down and defined by the Hon'ble Supreme Court in the case of ***Amit Kumar Roy vs. Union of India and Ors.*** (2019) 7 SCC 369. It is, therefore, clear that whenever a person of Armed Forces seeks premature retirement, its grant is not automatic. Policies, instructions, statutory rules and regulations have been formulated in the matter of considering the request for premature retirement and the same is granted only if the requirement of rules and regulations read along with the administrative consideration and service regulations and exigencies of service are evaluated by the service.

58. It is also important to notice that paramount consideration is given to the interest of service and the requirement of the personnel to man the post/service based on various administrative consideration and, therefore, it is only after the department concerned or the Union of India is satisfied about the claim of a person to seek premature retirement that his request is accepted and granted premature retirement. Judicial notice can be taken note of

the fact that in many cases, on administrative consideration and in the interest of service, requests for premature retirements have been denied and as a matter of right nobody is entitled to claim premature retirement.

59. That being so, it is not a position where merely by seeking PMR, a person gets premature retirement and leaves service at his own sweet will. That apart when premature retirement is granted and the personnel fulfills the requirement for grant of regular pension and other service benefits just like a personnel of the force who retires on completion of his terms of appointment or superannuation, both the categories of employees i.e. a regular retiree and a premature retiree, stand on the same pedestal and are treated alike for the purpose of grant of post retiral benefits. Pension and various other monetary benefits granted to them are based on a common set of Rules and Regulations. Even a premature retiree gets his pension, like a regular retired person and the post retiral benefit granted to both the categories is based on the rank, the total length of service and the rules applicable, i.e. pension regulations etc. This being the factual position, this Tribunal is required to

examine the tenability of the action impugned before us particularly with regard to fixing a cut off date in the matter of grant of OROP benefit to premature retirees who have taken premature retirement on or after 01.07.2014.

60. After the judgment rendered by the Hon'ble Supreme Court in the case of **D.S. Nakara**(supra), in the case of **All Manipur Pensioners Association v. State of Manipur and Ors.** (2020) 14 SCC 625, the issue has been dealt with at length and it has been held that when a cut off date for pre 1996 and post 1996 pensioners for grant of pension was challenged, it was averred that all pensioners fall into one category as the object of granting enhanced pension is to tide over the escalation of the cost of living and any classification, based on the date of retirement, would be arbitrary and cannot be held as reasonable for the purpose of achievement of the scheme. In paragraphs 8 and 9 of the aforesaid judgment, the Hon'ble Supreme Court considered the issue in detail and it is indicated that all the pensioners both pre and post 1996 form one class and are entitled to the same pension as per rules which is also a requirement of Article 14 of the Constitution. In the said paragraphs, the

Hon'ble Supreme Court dealt with the issue in the following manner:-

“8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes, viz., one who retired pre1996 and another who retired post1996, for the purpose of grant of revised pension, In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form a one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a very classification must be based on a just objective. The result to be achieved by the just objective presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cutoff date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination, therefore must necessarily be satisfied.

8.1 xxx xxxxx xxx

8.2 xxx xxx xxx

9. In view of the above and for the reasons stated above, we are of the opinion that the controversy/issue in the present appeal is squarely covered by the

decision of this Court in the case of D.S. Nakara (supra). The decision of this Court in the case of D.S. Nakara (supra) shall be applicable with full force to the facts of the case on hand. The Division Bench of the High Court has clearly erred in not following the decision of this Court in the case of D.S. Nakara (supra) and has clearly erred in reversing the judgment and order of the learned Single Judge. The impugned judgment and order passed by the Division Bench is not sustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. The judgment and order passed by the learned Single Judge is hereby restored and it is held that all the pensioners, irrespective of their date of retirement, viz. pre1996 retirees shall be entitled to revision in pension at par with those pensioners who retired post1996. The arrears be paid to the respective pensioners within a period of three months from today.”(Emphasis Supplied)

61. So far as the case of premature retirees who retired before 01.07.2014 and those premature retirees who retired on or after 01.07.2014 are considered, it would be clear that in pursuance to para 4 of the communication dated 07.11.2015, the expression ‘henceforth’ and ‘prospectively’ are used which mean that all premature retirees prior to 01.07.2014 would get the benefit of the policy from the date it came into force i.e. after 01.07.2014 and the subsequent pre-mature retirees would not get the benefit and while doing so, there is another class of premature retirees who retired between 01.07.2014 to 06.11.2015. These are the

premature retirees who prior to issuance of the letter dated 07.11.2015 also would be deprived of the benefit even though when they took premature retirement between 01.07.2014 to 07.11.2015, as they were not aware of the fact that they will not get the benefit of OROP if they took premature retirement. This is a category of pensioners who were unaware of the changes in OROP policy/scheme which came into force on 07.11.2015 when the policy with an exclusion clause in para 4 of the impugned order/policy was enforced retrospectively w.e.f. 01.07.2014, and this category of premature retirees were unaware of the adverse consequence of seeking premature retirement.

62. As already indicated hereinabove, the object of granting OROP is to give better pension to Armed Forces Personnel due to increase in the cost of living which was always considered as a welfare measure by the Govt. and now by denying the benefit of OROP to a specific class of premature retired pensioners only because they took premature retirement after a certain cut off date, according to the applicants, is discriminatory in nature.

63. To analyze the arguments of discrimination and creating a class within a homogeneous class, the justification given by the respondents for doing so has to be considered and a perusal of the objections of the respondents and its analysis indicate that the new scheme is being introduced for the first time and therefore, the Govt. is entitled to prescribe a cut off date having regard to the consideration of financial constraints etc. and, therefore, the law laid down in the case of **D.S. Nakara** (supra) will not apply.

64. Learned counsel for the applicants and in particular Shri S.S. Pandey, at the time of hearing had challenged this objection on two grounds; firstly, it was argued that in para 20 of the judgment rendered in the case of **Indian Ex-servicemen** (supra), it is clearly observed that the OROP Scheme was applicable till 1973 when the Govt. discontinued it with the implementation of Third Central Pay Commission and, therefore, the Govt. has not revised the pension of the past pensioners on OROP principle but after implementing the reports of successive Pay Commissions,

the benefit was also extended to past pensioners. It is to be taken note of that whenever enhancement of pension to past pensioners took place, there has never been exclusion of the premature retirees from grant of the benefit of subsequent pay revisions. Secondly, the OROP scheme now introduced is not a new scheme but was only a scheme formulated for adopting certain methodology for calculation of pension, however, while implementing such a scheme, there cannot be bifurcation of a homogeneous class. This seems to be a justifiable ground for holding the Scheme to be discriminatory. We would advert to consider this submission in detail.

65. It was also argued before us by the respondents that in the case of **Indian Ex-Servicemen** (supra), the entire scheme of OROP contained in the letter dated 07.11.2015 was examined in detail and the Hon'ble Supreme Court did not find any infirmity in the same. In our considered view, this argument should not detain us any longer for the simple reason that the Hon'ble Supreme Court in the said case was not required to consider the discrimination involved in grant of OROP benefit to PMR personnel based on the cut off date

fixed i.e. para 4 of the letter dated 07.11.2015. It was submitted by Shri Pandey that in the case of **Indian Ex-servicemen** (supra), the Hon'ble Supreme Court proceeded under the assumption that OROP Scheme contained in the policy dated 07.11.2015 has not bifurcated any homogenous group based on the cut off date. We need not dwell into this aspect of the matter any further as we see that the issue before us was not specifically adverted to or considered by the Supreme Court in the aforesaid case.

66. It is the justification given by the respondents for excluding certain categories of PMR personnel with a particular cut off date on the ground that retrospective exclusion of PMR personnel who proceeded on PMR on or after 01.07.2014 is proper as the scheme was put in place w.e.f. 01.07.2014 as contemplated in para 3 of the policy dated 07.11.2015 and, therefore, the provisions of para 4 incorporated in the policy dated 07.11.2015, is required to be read harmoniously to reconcile it with the aid of para 3 of the said policy. It may be taken note of that PMR is granted and discharge permitted to personnel on own request under Rule 13 or Rule 16 B of the Army Rules 1954 and the

equivalent provisions contained in the Indian Navy and Air Force Rules. The effect of the policy and the stipulation contained in para 4 would be that those persons who opt for PMR on or after 01.07.2014 will not be entitled to the benefit of OROP as the OROP benefit and scheme is now being implemented in accordance with the policy dated 07.11.2015. Meaning thereby, that after issuance of the said letter any personnel who opts for PMR will be excluded from the benefit of OROP, in view of the words used in the policy quoted hereinabove whereby the policy and the stipulation contained in the letter dated 07.11.2015 is being implemented prospectively. The issue before this Tribunal, under these circumstances, would be as to whether fixing of the cut off date of 01.07.2014 and excluding personnel who take PMR on or after 01.07.2014 is in accordance with the requirement of law particularly the mandate of Article 14 of the Constitution and the legislative intent which weighed with the department and the Govt. in implementing the OROP scheme. By virtue of para 3 of the Policy as stated by the respondents, the cut off date is shifted to 01.07.2014 thereby resulting in exclusion of certain category of

personnel who had proceeded on premature retirement much prior to the issuance of the policy dated 07.11.2015 i.e. between 01.07.2014 to 06.11.2015 and they are also before us and this category of personnel assailed the policy on the ground that it was first time disclosed to them by virtue of the policy dated 07.11.2015 that those who have opted for PMR between 01.07.2014 to 06.11.2015 are also falling in the excluded category. It is also clear from the arguments and written submissions submitted by the respondents that in view of the letter dated 03.02.2016 issued by the Under Secretary to the Govt. of India wherein in para (4) under titled "Applicability" it was reiterated that the policy of OROP will be applicable on those personnel who are in receipt of pension as on 01.07.2014.

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 re-fixed 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 Kerala & 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 **Bashesar 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

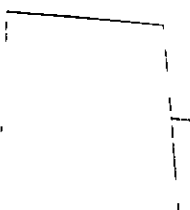
his contention was also based on the submissions that have been detailed hereinabove. However, he also argued a ground of legitimate expectation. The doctrine of legitimate expectation in the face of Article 14 of the Constitution and placing reliance on the law laid down by the Honble Supreme Court 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.

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.

85. MA(s) pending, if any, shall stand disposed of.

86. Pronounced in open Court on this 21st day of January, 2025.

[JUSTICE RAJENDRA MENON]
CHAIRPERSON

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

/ng/vb/