

**ARMED FORCES TRIBUNAL CHANDIGARH REGIONAL BENCH AT  
CHANDIMANDIR**

**-:-**

**1.**

**OA NO. 1370 of 2011**

**Labh Singh** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

**-:-**

**2**

**OA NO. 2029 of 2011**

**Ajit Singh** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

**-:-**

**3.**

**OA NO. 827 of 2011**

**Kultar Singh** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

**-:-**

**4.**

**OA NO. 1129 of 2011**

**Ramesh Kumar** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

**-:-**

5.

**OA NO. 1254 of 2011****Subey Singh****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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6.

**OA NO. 1331 of 2011****Matu Ram****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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7.

**OA NO. 1332 of 2011****Surat Singh****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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8.

**OA NO. 1405 of 2011****Ajaib Singh****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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9.

**OA NO. 1505 of 2011****Tarlok Singh and another****.... Petitioners****Vs.****Union of India and others.****.... Respondents**

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10.

**OA NO. 1537 of 2011**

**Ram Dhari**

.... **Petitioner**

**Vs.**

**Union of India and others.**

.... **Respondents**

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11.

**OA NO. 1534 of 2011**

**Nek Mohammad**

.... **Petitioner**

**Vs.**

**Union of India and others.**

.... **Respondents**

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12.

**OA NO. 1662 of 2011**

**K.R.Kakar**

.... **Petitioner**

**Vs.**

**Union of India and others.**

.... **Respondents**

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13.

**OA NO. 1663 of 2011**

**Swinder Singh Bomrah**

.... **Petitioner**

**Vs.**

**Union of India and others.**

.... **Respondents**

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14.

OA NO. 1668 of 2011

Bikkar Singh Baath ..... Petitioner

Vs.

Union of India and others. .... Respondents

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15.

OA NO. 1767 of 2011

Balbir Singh and another ..... Petitioners

Vs.

Union of India and others. .... Respondents

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16.

OA NO. 1850 of 2011

Kartar Singh ..... Petitioner

Vs.

Union of India and others. .... Respondents

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17.

OA NO. 1859 of 2011

Ram Singh ..... Petitioner

Vs.

Union of India and others. .... Respondents

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18.

**OA NO. 1860 of 2011**

**Balbir Singh** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

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19.

**OA NO. 1861 of 2011**

**Sher Singh** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

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20.

**OA NO. 1866 of 2011**

**Inder Singh** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

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21.

**OA NO. 1868 of 2011**

**Subh Ram** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

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22.

**OA NO. 1869 of 2011****Gun Pal Singh Pahel****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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23.

**OA NO. 1882 of 2011****Om Parkash****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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24.

**OA NO. 1906 of 2011****Mewa Singh****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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25.

**OA NO. 1910 of 2011****Balbir Singh****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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26.

**OA NO. 2008 of 2011**

**Mandrup** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

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27.

**OA NO. 2009 of 2011**

**R.K.Malhotra** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

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28.

**TA NO. 241 of 2011**

**(arising out of OA No. 286 of 2011)**

**Jai Narayana** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

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29.

**OA NO. 1077 of 2011**

**Sukhbir Singh** .... **Petitioner**

**Vs.**

**Union of India and others.** .... **Respondents**

-:-

30.

**OA NO. 1371 of 2011****Kuldip Singh****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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31.

**TA NO. 141 of 2011****(arising out of CWP No. 11175 of 2008)****Ran Singh****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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32.

**TA NO. 142 of 2011****(arising out of CWP 11324 of 2009)****Hari Om****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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33.

**TA NO. 143 of 2011****(arising out of CWP No. 11669 of 2009)****Tulsi Ram****.... Petitioner****Vs.****Union of India and others.****.... Respondents**

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**ORDER****December 22, 2011**

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**Coram Justice N.P. Gupta, Judicial Member.****Air Marshal (Retd) SC Mukul, Administrative Member.**

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For the petitioner (s): Sarv Shri Navdeep Singh, Samarvir Singh, Ravi Badyal, Surinder Sheoran, B.S. Sehgal, B.S. Rathee, Lakhi Ram, and Brig.(Retd.) P.S. Ghumman, Advocates.

For the respondent(s): Ms. Geeta Singhwal, Sr.PC; Ms. Urmil Gupta, CGC; Ms. Sangeeta Dubey, CGC; Ms. Renu Bala Sharma, CGC; and Ms. Anjali Kukkar, CGC.

Sarv Shri Mohit Garg, CGC; Anant Kataria, CGC; Suveer Sheokand, CGC; Rajesh Sehgal, CGC; Col.(Retd.) M.S. Jaswal, CGC; Vibhor Bansal, CGC; Sandeep Bansal, CGC; Umesh P. Wadhwani, CGC; R.N. Sharma, CGC; and Gurinderjit Singh, CGC.

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**PER N.P.GUPTA, J.**

This bunch of matters, though having different facts, involve a common question, arising in these matters, and, therefore, are being decided by this common order. However, some of the individual cases, involving additionally different points shall be dealt with, in the later part of the order.

For the purpose of comprehending, the central controversy, we may observe, that this bunch comprises of OAs filed before this Tribunal in the year 2011, and at the same time, include some TAs, arising out of Civil Writ Petitions, filed in the High Courts in the years 2008 and 2009, and is also likely to arise in other pending TAs, which arise of regular civil suits, filed in different Courts, at different times, during this decade.

Likewise, the fundamental fact is, that all the petitioners, in all these cases, are individuals, or their next of kin, which individuals have been invalided out i.e. discharged or superannuated or voluntarily retired, or the like, with requisite extent of attributable or aggravated disability, and either having been granted disability pension, or are claiming disability pensions, and have so been invalided out, prior to 01.01.1996. All such persons, for convenience, shall, hereinafter, be referred to as “pre-1996 retirees”.

For convenience, with the consent of all the learned counsel, out of the bunch, we take up the facts of OA No. 1370 of 2011, Labh Singh Vs. Union of India and others.

In Labh Singh’s case, the petitioner was enrolled in 1966, and was discharged in Low Medical Category on 15.01.1985, with 40 per cent disability, and was granted disability pension, for the said disability. However, relying upon a letter of Government of India dated 31.01.2001, read with the judgment of Hon’ble the Supreme Court in **Civil Appeal No. 5591 of 2006, Capt. KJS Bhuttar Vs. Union of India and others, decided on 31.03.2011**, decisions of this Tribunal in **O.A. No. 516 of 2010, Balbir Singh Vs. Union of India and others, again decided on 31.03.2011** and **T.A. No. 1077 of 2010, Jai Singh Vs. Union of India, decided on 06.04.2011**, the petitioner claims the benefit of broad-banding (rounding off) of the disability element, to the prescribed extent. It is pleaded that after the Government’s letter dated 31.01.2001 came to be issued, Government of India issued another letter dated 19.01.2010, in order to remove the anomaly, inasmuch as by Government of India’s letter dated 31.01.2001, the benefit of broad-banding was available only to those persons or individuals, who were in service as on 01.01.1996, with the

result that the benefit was available only to post-1996 retirees, and all individuals being pre-1996 retirees, stood excluded from getting the benefit. This anomaly was removed vide letter dated 19.01.2010, and the benefit was made available to pre-1996 retirees also, but with effect from 01.07.2009, and with certain conditions, including about the individuals, being in receipt of disability pension on 01.07.2009. It is pleaded, that this cut-off date being 01.07.2009, for all purposes, has been struck down by this Tribunal in **Balbir Singh's** case and in all the three judgments, being **KJS Bhuttar's case, Balbir Singh's case and Jai Singh's case**, it has been held that the benefits available under letter dated 31.01.2001 are equally applicable to pre-1996 retirees as well.

The petitioner has alleged that some organisations took up the matter with the Department of Pension and Pensioners Welfare (DOPPW). But, since nothing has been coming out, the petition has been filed.

In some cases, replies have been filed, taking different stands, like the validity of cut off date 01.01.1996, contained in the letter dated 31.01.2001, having been upheld by Hon'ble the Supreme Court, or about the benefit being not available to pre-1996 retirees, or about the individual having been discharged in circumstances, which do not amount to invaliding out, and so on. However, in view of the fact that the scope of expression 'invaliding out' has already been a matter of adjudication by this Tribunal in **OA No. 329 of 2010, Lt. Gen. Vijay Oberoi and others Vs. Union of India and others, decided on 04.08.2010**, this aspect need not detain us. Then, so far as applicability or availability of benefit to pre-1996 retirees, on the ground of the cut off date 01.01.1996, having been given in the letter dated 31.01.2001, also need not detain us in view of the

judgments in **KJS Bhuttar's case, Balbir Singh's case and Jai Singh's case**, apart from the fact, that even de hors these judgments, the Government of India itself, vide letter dated 19.01.2010, in unequivocal terms, extended the benefit of letter dated 31.01.2001 to pre-1996 retirees also, may be subject to certain conditions, which conditions also were struck down in **Balbir Singh's case**. In that view of the matter, the entitlement of the petitioners to the benefit of rounding off or broad-banding, in terms of the letter of Government of India dated 31.01.2001, read with letter dated 19.01.2010, cannot be successfully disputed, and accordingly, the petitioners are held entitled to the benefit of rounding off/ broad-banding, for the reasons given in the judgments in **KJS Bhuttar's case and Balbir Singh's case**.

Then comes the precise controversy, arising in this bunch of cases, and orally raised by the learned counsel for the respondents, being that this Tribunal in **O.A.No. 1204 of 2011, Umesh P. Wadhwani Vs. Union of India and others, decided on 27.09.2011**, after referring to the judgment in **KJS Bhuttar's case**, judgments of Hon'ble the Supreme Court dated **18.01.2007**, passed in **Civil Appeal No. 274 of 2007, Shiv Dass Vs. Union of India**, in **Civil Appeals No. 5151-5152 of 2008, Union of India Vs. Tarsem Singh, decided on 13.08.2008**, and that of Division Bench of Punjab and Haryana High Court in **LPA No. 174 of 2008, Bakhshish Singh Vs. Union of India, decided on 03.07.2009**, directed that the arrears payable to the petitioner, should be restricted to a period of three years prior to filing of the case, and accordingly, did restrict it. Likewise, reliance was also placed on the judgment of the Principal Bench dated 12.08.2010, passed in **T.A. No. 520 of 2010, Major Paramjeet Singh Vs. Union of India**, wherein also the entitlement of disability pension was up-

held, despite the individual having sought voluntary discharge, by referring to **Ajay Wahi's** judgment of Hon'ble the Supreme Court (**Civil Appeal No. 1002 of 2006, Union of India Vs. Ajay Wahi**) decided on 06.07.2010, and then relying upon other two judgments of the Principal Bench being in **T.A. No. 519 of 2010, Brijendra Singh Vs. Union of India, decided on 25.05.2010** and **T.A. No. 176 of 2009, Brig. K.K. Khajuria Vs. Union of India, decided on 04.12.2009**, it was held, that the cut off date will not deprive the persons, who have received disability prior to 01.01.2006. However, the monitory benefits were made applicable from 01.01.2006. Then, reliance was also placed upon the judgment of Delhi High Court in **CWP No. 12596 of 2004, decided on 22.07.2008, Bidhi Singh Vs. Union of India**, wherein, while accepting the petition for grant of disability element, the petitioner was held entitled to arrears for a period of three years, prior to the date of filing of the petition, which was filed on 29.07.2004. Next judgment relied upon was again of Delhi High Court in bunch of cases **decided on 08.02.2008 led by Baldev Singh Vs. Union of India**, wherein the Court was considering matters of pre-1996 retirees, and relying upon judgment of Hon'ble the Supreme Court in **P.K. Kapur's case ( P.K. Kapur Vs. Union of India and others, reported in JT 2007(3) SC 98)** held pre-1996 retirees, to be not entitled to the benefit of broad-banding. It was contended that if this Tribunal finds the petitioners to be entitled to the benefit of rounding off/ broad-banding, which it is consistently finding since passing of the judgments in **KJS Bhuttar's case and Balbir Singh's case**, arrears should be confined to commence from a period of three years, before filing of the original application, or before filing of the writ petition before the High Court, or before approaching the competent Court, in the litigation, which comes to be considered by this

Tribunal, or the date from which the individual is held or found to be entitled to get disability pension, or disability element, which-ever is later.

On the other hand, learned counsel for the petitioners submitted, that it was with acceptance of recommendations of 5<sup>th</sup> Pay Commission i.e. from 01.01.1996, that the aspect of rounding off or broad-banding was carrying attention and was being considered, and had been approved for certain services, though it was intended to be approved for all services, and in that process, letters came to be issued from time to time, and vide letter dated 31.01.2001, which was made applicable to defence personnel also being of the three wings i.e. Army, Navy and Air Force, and thereby it was made applicable with effect from 01.01.1996, there is no rational to restrict the arrears to three years, before initiation of litigation.

Learned counsel for the petitioners referred to the judgments of Hon'ble the Supreme Court in the cases of **S.K. Mastan Bee Vs. The General Manager, South Central Railway, reported in 2003(1) SCC 184** and **Savitri Devi Mehta Vs. Union of India, reported as 2005(10) SCC 325**, in which cases Hon'ble the Supreme Court granted the arrears from the initial date, saying that delay is no bar. Since in **Savitri Devi's case** it was awarded from 1954, while in **Mastan Bee's case** it was awarded from 1969, there is no justification for restricting the arrears to three years.

Learned counsel for the petitioners also submitted, that, of course, there are both sets of judgments, like one being in **Mastan Bee's case** and **Savitri Devi's case**, and the other being in **Shiv Dass's and Tarsem Singh's** cases, and the like, and that no straight-jacket formula can be laid down, but then, it is required to be considered that in cases where the individual is illegally deprived of the legitimate entitlement, the mighty

Government should not be allowed to defeat the rights by such technical pleas. Mr. B.S. Sehgal, Advocate, learned counsel for some of the petitioners, invoking sentiments and emotions, tried to draw distinction between 'pre-right', 'post-right', 'right' and 'existing right', and submitted, that in case of 'right' or 'existing right', the restriction of three years should not be imposed. He placed reliance, with all vehemence at his command, on the judgments in **Mastan Bee's case** and **Savitri Devi's case**.

Thus, the central question which we are called upon to decide in these bunch of cases is, as to whether the arrears should be restricted to a period of three years since before the date of initiation of litigation or not.

In our view, to start with, we may take cases in **Mastan Bee's** and **Savitri Devi's** judgments; in **Mastan Bee's case**, the railway employee had died in harness in 1969, and was denied family pension. On the ground of having been earlier invalided out, claim for family pension was staked in 1991. The High Court restricted arrears from 1992, and Hon'ble the Supreme Court granted it since 1969. While, in **Savitri Devi's case**, the military personnel was invalided out in 1953, with attributable disability, but claim was rejected on the ground of disability being neither attributable to nor aggravated by military service, on 18.03.1954. He died on 29.09.1982. However, on 04.06.1983, intimation was sent for re-examination of the individual by the Medical Board, while, even as per decision taken in 1953, he was to be examined in 1954, and in those circumstances, the disability pension was awarded since 1954, alongwith compensation, which was up-held.

As against this, in **Shiv Dass's case**, the entitlement of disability pension was negated by the High Court, and the matter was carried to

Supreme Court by the individuals, and Hon'ble the Supreme Court did observe, that normally in cases of belated approach, writ petition has to be dismissed. Delay or latches is one of the factors to be borne in mind by the High Courts, when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case, the High Court may refuse to invoke its extra-ordinary powers, if there is such negligence or omission on the part of the applicant to assert his right, as taken in conjunction with the lapse of time and other circumstances. Then, after considering other judgments on the aspect of continuing cause of action, it was observed, that in case of pension, the cause of action actually continues from month to month, but that however, cannot be a ground to over-look delay in filing the petition. It would depend upon facts of each case. If petition is filed beyond reasonable period, say three years, the Court would reject the same, or restrict the relief, which could be granted, to a reasonable period of about three years. With laying down this proposition, the High Court did not examine the matter on merits, and dismissed the writ on the ground of delay. The matter was remitted by Hon'ble the Supreme Court with a direction, that if it is found that the claim for disability pension is sustainable in law, then it would mould the relief, but in no event, grant any relief for a period exceeding three years, from the date of filing of the writ petition. In **Tarsem Singh's case**, again the claim was made for the disability pension, and the High Court granted it, restricting arrears to 38 months prior to filing of the writ petition, and the Division Bench granted it from the beginning, and in appeal by the Union of India, Hon'ble the Supreme Court restricted the relief to a period of three years, prior to the date of filing of the writ petition. In this judgment, **Shiv Dass's case** was referred to and relied upon, and some more judgments



were also considered. However, the principle underlying continuing wrongs and recurring/ successive wrongs were considered. It was observed that a continuing wrong refers to a single wrongful act which causes a continuing injury, while recurring/successive wrongs are those which occur periodically. Each wrong gives rise to a distinct and separate cause of action. Then referring to Section 22 of the Limitation Act it was held, that it is the very essence of a continuing wrong that it is an act which creates a continuing source of injury, and renders the doer of the act, responsible and liable for the continuance of the said injury. If the wrongful act causes an injury, which is complete, there is no continuing wrong, even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character, that injury caused by it itself continues, then the acts constitute a continuing wrong. Thus, a distinction was drawn between the injury caused by wrongful act, and what may be described as the effect of the said injury. Reference was made to judgment in **M.R. Gupta Vs Union of India, reported in 1995(5) SCC 628**, where the grievance was in regard to initial pay fixation, and the principle of continuing wrong was applied, and the relief was restricted to three years. Then the legal position was summarised, to the effect, that a belated service related claim will be rejected on the ground of delay and laches, in case of writ, and limitation in case of approaching the Tribunal, with one of the exceptions, being about the case relating to a continuing wrong, in which case it may be restricted to the specified period.

Examining the question, so far **Mastan Bee's case** and **Savitri Devi's cases** are concerned, they are judgments on their own facts, and on the face of the judgments in **Shiv Dass's case** and **Tarsem Singh's case**, it cannot be said that **Mastan Bee's case** and **Savitri Devi's case**

did lay down a law of universal application in all cases of claim of pension or disability pension.

This is one aspect of the matter.

The other important aspect of the matter is, as to whether this question about restricting the claim to a period of three years before filing of a petition, does at all arise in the present cases. And our answer, straightway, is in the negative.

In all the above cases, whether it be **Mastan Bee or Savitri Devi** or **Shiv Dass or Tarsem singh**, the cases were on different set of facts, inasmuch as in **Mastan Bee's case**, the right to pension did arise on the death of the employee; in **Savitri Devi's case** again, the cause of action arose when the claim for disability pension was rejected in 1954, though, at the same time, he was to be re-examined by the Medical Board in 1954; in **Shiv Dass's case**, the right to claim disability pension did arise, or was claimed to have arisen, on sustaining injury, and being invalided out in 1984; and in **Tarsem Singh's case** also, the right arose to claim disability pension, when he was invalided out in 1983, and the question was examined by Hon'ble the Supreme Court, from the standpoint of accrual of the right, and/or it being a continuing wrong, and different judgments are rendered, while the cases in hand stand on entirely different footing.

In view of the above discussion, to start with, we may observe that pre-1996 or post-1996 retirees apart, the entitlement to broad-banding did come into existence, for the first time, with the issuance of Government of India's letter dated 31.01.2001. Obviously, till that date, there was no occasion for any one, to stake any claim for broad-banding, whether by pre-1996 retiree(s) or by post-1996 retiree(s). And, by this letter of

31.01.2001, the entitlement was made with effect from 01.01.1996, or the date of incurring disability or invalidment, whichever is later, obviously, it was made applicable to the employees who were in service as on 01.01.1996. Since, by that letter, the entitlement was not conferred on pre-1996 retirees, obviously therefore, until and unless their entitlement (entitlement of pre-1996 retirees) to broad-banding came into existence, there was no occasion, either to claim, or to refuse claim, or to initiate litigation. If at all, any litigation could be initiated, then, in that event, it could be only for challenging the restriction contained in the letter dated 31.01.2001, which, obviously, was not initiated, by any of the present petitioners, but by number of other individuals including that in **KJS Bhuttar's case**. However, simply because litigation was initiated by some individuals, to assail the stipulations of letter dated 31.01.2001, by itself also could not entitle any of the petitioners to straightway stake their claim, for broad-banding. It is much later thereafter and during pendency of the above challenges, that by Government of India's letter dated 19.01.2010, produced by Labh Singh petitioner as Annexure A-5, that the President of India was pleased to decide, that the concept of broad-banding of percentage of disability/ war injury, as provided in paragraph 7.2 of the letter dated 31.1.2001, shall be extended to Armed Forces Officers and PBORs, who were invalided out of service, prior to 01.01.1996. It is a different story, that this extension of entitlement, as noticed above, was also made, subject to very many ifs and buts. But then, the entitlement did come into existence, in its own right, for the first time, by this letter dated 19.01.2010, and, therefore, in our view, none of the pre-1996 retirees could, straightway, stake their claim, for broad-banding, before issuance of this communication.

Then the second aspect of the matter is that the restrictions contained in this letter dated 19.01.2010, against the entitlement of broad-banding to pre-1996 retirees, on the anvil of another cut-off date being 01.07.2009, having been incorporated as the date, from which they would be entitled, so also as the date, on which the individual(s) should be in receipt of disability pension etc. did all come to be challenged, in another spate of litigation, which did come to be decided by this Tribunal in **Balbir Singh's case**, in favour of the individuals, wherein, after discussing various judgments of Hon'ble the Supreme Court, these offending parts of the letter dated 19.01.2010, were struck down, being violative of Article 14 of the Constitution of India, and it was held, that pre-1996 retirees will also be entitled to the benefits flowing from the communication dated 31.1.2001, in the same manner, and to the same extent, as flowing to post-1996 retirees.

Thus, in our humble opinion, the entitlement of pre-1996 retirees, to stake the claim for broad-banding, came to be established by judicial pronouncement, on 31.03.2011, with the pronouncement of judgment in **Balbir Singh's case**. We bow before the judgment of Hon'ble the Supreme Court in **KJS Bhutter's case**, which strikes down the offending part of the letter dated 31.01.2001, and did hold the pre-1996 retirees also to be entitled to broad-banding. But then, we may simply observe, that the letter dated 19.01.2010 was not brought to the notice of Hon'ble the Supreme Court, whereby even the Government itself had extended the benefits to pre-1996 retirees. However, the fact remains, that both the judgments in **KJS Bhutter's case** and **Balbir Singh's case** did come to be pronounced on the same day, being 31.03.2011. In that view of the matter, in our view, the start point of cause of action, being the entitlement to get broad-banding of pre-1996 retirees, did come to be recognised by

judicial pronouncements unconditionally, in accordance with the letter dated 31.01.2001, and at par with post-1996 retirees, and did come to be established, for the first time, on 31.03.2011.

It is with pronouncement of these judgments, that according to the consistently established legal position, repeatedly propounded by Hon'ble the Supreme Court in various judgments, that if an authoritative judgment is rendered by the competent Court, the Government cannot be allowed to take the stand that the relief was restricted to the petitioners in that litigation only, if the relief granted is of general nature, so as to compel everyone to approach the Courts, thereby multiplying litigation, and apart from suffering harassment, increase the burden of the Courts. With the result, that it is with passing of the judgments dated 31.03.2011 in **KJS Bhutter's case and Balbir Singh's case**, the respondents came under obligation to give benefit of broad-banding, to the pre-1996 retirees also, to repeat, this is the starting point of cause of action to pre-96 retirees also.

Obviously, therefore, even in the light of the principles propounded in **Shiv Dass's case and Tarsem Singh's case**, this period of three years will be taken to commence from 31.03.2011, and not from any anterior point of time.

In view of the above discussion, we need not detain ourselves on the judgment in **Umesh P.Wadhwani's case** for the simple reason, that we have already found that the circumstances prevailing, in the cases of **Shiv Dass & Tarsem Singh**, so also in **Mastan Bee's and Savitri Devi's cases**, were entirely different, and are not attracted to the present controversy, and since **Umesh P. Wadhwani's case** is predominantly

based on the cases of **Shiv Dass & Tarsem Singh**, for the same reason, this cannot come in the way of the petitioners.

Thus, we hold that the bar of limitation, or the question of restricting arrears to a period of three years prior to initiation of the present litigations, does not arise in the present cases, as the start point of cause of action, is the date of pronouncement of judgments in **KJS Bhutter's case** and **Balbair Singh's case**, being 31.03.2011, and the individuals are entitled to the benefit of broad-banding from the same date as is the entitlement of post-1996 retirees.

Accordingly, the petitions are allowed, and the petitioners are granted the benefit of rounding off, in accordance with the letter dated 31.01.2001, read with letter dated 19.01.2010, further read with the judgment of Hon'ble the Supreme Court in **KJS Bhutter's case** and of this Tribunal in **Balbair Singh's case**, with the exception of the following three cases which we are taking up separately entitling the petitioners to the right of rounding off at par with post-1996 retirees.

With the above over all decision, now we take up those individual cases, which need a different treatment, either ways.

### **OA No. 1254 of 2011**

In this case the petitioner was initially denied the disability pension vide letter dated 26.12.1983. However, he filed an appeal in the year 2008, which belated appeal was entertained by the Appellate Authority, and the petitioner was granted disability pension with effect from 25.10.2005, for a period of two years, upto 24.10.2007. Then he was brought before Re-Survey Medical Board, and was granted disability pension again with effect

from 15.06.2010, for life, taking his disability to be 20 per cent permanent. The petitioner claims disability element for the period 25.10.2007 to 14.06.2010 also, along with the interest, apart from the benefit of rounding off.

In our view, obviously, in view of the Government of India's letter dated 10.11.2010, read with one dated 17.10.2011, the intervening period from 25.10.2007 to 14.06.2010, was also required to be opined about, by the Re-Survey Medical Board. But then, that has not been produced on record even by the respondents. At the same time, the fact remains, that the disability was a fracture, and has now been opined 20 per cent permanent for life, and there being no allegation about improvement of disability during the intervening period, petitioner is entitled to get the disability element for the intervening period also. At the same time, since the present petition has been filed on 25.08.2011, the petitioner is held entitled to actual benefits of disability element for this intervening period, to be restricted only from 25.08.2008 to 14.10.2010. Obviously, for the subsequent period, he is getting, and he would be entitled to the benefit of rounding off, with effect from 25.10.2005, from which date he has been granted disability pension.

### **OA No. 827 of 2011**

In this case, after being given the disability pension to the petitioner, recovery is said to have been made from the petitioner, in view of the letter dated 19.01.2010. Obviously, in view of the conclusions arrived at above, since the petitioner would be entitled to further amounts, the recovery made is quashed, and the respondents are directed to refund back the amount to

the petitioner, along with interest at the rate of 10 per cent per annum, from the date of making recovery till actual payment to the petitioner.

**OA No. 2009 of 2011**

In this case, the petitioner was denied disability pension on the ground of his having taken pre-mature retirement. He took retirement on 01.06.1988. On disability pension being refused, petitioner filed CWP No. 16229 of 2009, Lt.Col (Retd) R.K. Malhotra Vs. Union of India and others, before Punjab and Haryana High Court, which was allowed on 24.10.2009, on the basis of the judgment in the case of **Mahavir Singh Narwal Vs. Union of India** (CWP No. 2967 of 1989, decided on 05.03.2005) by Delhi High Court, as upheld by Hon'ble the Supreme Court in **SLP(Civil) No. 24171 of 2004**. However, the arrears were restricted to three years, since before filing of the writ petition. Thus, the petitioner is getting disability pension, since three years before filing of the writ petition aforesaid.

In that view of the matter, the rounding off will also be restricted to commence from the date he is getting disability pension.

The respondents are directed to make necessary calculations, and actual payment to the petitioner(s), within a period of three months, from the date of receipt of certified copy of this order by learned counsel for the respondents, failing which the amount shall carry interest at the rate of 10 per cent per annum.

**(Justice N.P.Gupta)**

**( Air Marshal (Retd) S.C.Mukul)**

December 22, 2011

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