

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 57 of 2018

Monday, this the 29th day of July, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

1. 14490-G Gp Capt Vijay Suman Sharma (Retd)
S/o Shri Sita Ram
R/o 3G 405, Gurjinder Vihar, Sector CHI II
Greater Noida, UP – 201312
2. 14476-S Gp Capt SP Goyal (Retd)
S/o Shri Sita Ram Goel
R/o Flat No. D/1124B, Gaur Green Vista
Indirapuram, Ghaziabad, UP
3. 14476-S Gp Capt Manoj Kumar Mishra (Retd)
S/o Late Sarat Chandra Mishra
Flat No. BX-315, Tower-3, AshianaUpvan,
Ahinsa Khand-2, Indirapuram
Ghaziabad, UP-201014
4. 14698-K Group Capt Anil Kumar Srivastava (Retd)
S/o Late Shri Brij Nandan lal
R/o J-57-B, Sector-25,
Noida, U.P. – 201310
5. 14954-R Group Capt Rajesh Kataria (Retd)
S/o Shri Ishwar Chander Kataria
2A, Nilgiri-III, Sector-34,
Noida – 201307
6. 15240-N, Gp Capt Rajiv Kumar Sharma (Retd)
S/o Shri Ved Prakash Sharma
R/o Flat No. Q-537, Jalvayu Vihar
Greater Noida, UP

7. 14991G, Group Capt Rakesh Chaddha (Retd)
S/o Shri S R Chaddha
C001, Victoria, Grand Omaxe, Sector 93B,
Noida – 201304
8. 14709-L, Group Capt H V Singh (Retd)
S/o Late Shri Vijay Singh
A-11, Sector 61, Noida,
Gautam Buddha Nagar, UP
9. 14945 Gp Capt Ravi Sharma (Retd)
S/o Late Shri K R Sharma
R/o Flat No. B/68 Jal Vayu Vihar
Greater Noida UP

.....Applicants

Ld. Counsel for : **Shri Abhishek R Shukla &**
the Applicant **Shri Harshvardhan, Advocates**

Versus

1. Union of India, Through the Secretary,
Ministry of Defence,
DHQ PO New Delhi - 110011.
2. Chief of the Air Staff,
Air HQ, Vayu Bhawan, JDPO, RC,
New Delhi – 110011.
3. Air Officer-in-Charge Personnel,
Air HQ, Vayu Bhawan, JDPO, RC,
New Delhi – 110011.

.....Respondents

Ld. Counsel for the : **Shri Yogesh Kesarwani,**
Respondents **Ld. Counsel for Central Govt.**

ORDER

“Per Hon’ble Air Marshal BBP Sinha, Member (A)”

1. The instant Original Application has been filed by the applicants under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the following reliefs have been sought:-

- “(a) To call for records on the basis of which the Respondents have formulated the policy instruction dated 12.03.2005 whereby the Respondents have fixed the age of superannuation in respect of the Applicant at 54 years by which he was made to retire from the service.*
- (b) To further direct the Respondents to grant all consequential benefits at par with the Selection Grade Group Captain by extending the benefit of the judgment dated 02.05.2013 passed in TA No. 385 of 2009 in WP (C) No. 7811 of 2009 titled Gp Capt Atul Shukla vs. Union of India &Ors and the judgment/final order dated 26.11.2014 of Gp Capt (Retd) B S Chillar & Ors passed on OA 350 of 2013 and Gp Capt (Retd) Ajit Singh &Ors in OA No. 351 of 2013 as the case of the Applicant is strikingly similar to the said case considering deemed service for 3 years after the date of retirement.*
- (c) Pass such and other orders, as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”*

2. Stated briefly, all the nine applicants were commissioned in the Indian Air Force between 1976 and 1977 and have retired from service between 2007 and 2009. Seven of the applicants belonged to the Administrative Branch of Indian Air Force (for short IAF), and the remaining two belonged to one each from Logistics and Accounts branch of IAF. The facts of this case are linked to the promotion policies and retirement policies of the IAF. Being a pyramidal organization, promotion in Armed Forces is based on time scale criteria for initial part of the service and thereafter it is based on competitive merit for the limited and reducing vacancies in middle and higher ranks. Retirement age in Armed Forces is linked to last

rank held and hence missing on promotions automatically results in relatively early retirement. The Armed Forces also have a system whereby if an officer misses his first merit based promotion, in three consecutive promotion boards, then he is given that promotion as a time scale promotion, after completing certain specified years of service. This time scale promotion will be his last promotion till his retirement. All the applicants in this case have been promoted as Group Captain (Time Scale) and have retired on specific orders of respondents at the age of 54 years instead of 57 years of age i.e. the specified age of retirement for Group Captain rank. In this case the respondents had issued a policy letter in the year 2005 which clearly specified that Group Captain (Time Scale) will retire as per retirement age as applicable to the lower rank of a Wing Commander i.e. 54 years of age and only Group Captains (Select) will retire at the age of 57 years. This discriminatory policy of retiring Group Captain (Time Scale) at the age of 54 years was initially challenged by Group Captain Atul Shukla and others in Hon'ble Delhi High court which subsequently got transferred to Armed Forces Tribunal (Principal Bench) New Delhi and was registered as TA No. 385 of 2009. In this case the AFT (PB) New Delhi vide its order dated 02.05.2013 quashed the discriminatory policy of respondents and ruled that for the purpose of retirement, Group Captain (Time Scale) and Group Captain (Select) are 'one and the same' rank and therefore Group Captains (Time Scale) are entitled to retire at the age of 57 years. This order of the AFT (PB) was challenged by the respondents but the Hon'ble Apex Court dismissed the Government appeal and upheld the

AFT (PB) order vide its judgment dated 24.09.2014. The applicants in the present OA are primarily aggrieved on two counts; firstly, introduction of discriminatory and unreasonable retirement policy for officers holding the rank of Group Captain (Time Scale) by the respondents and, secondly; displaying of gross negligence by the respondents in correcting their mistake and not passing the due benefits to the applicants despite their discriminatory retirement policy being set aside by AFT (PB) and the same being upheld by Hon'ble Apex Court vide its order dated 24.09.2014.

3. After hearing both the sides and after considering the relevant facts specific to this case, the delay in filing this OA has been condoned.

4. It was admitted by the parties that till 2004, time scale promotion in Indian Air Force (IAF) was restricted up to the rank of Sqn Ldr and that similar policy existed in Army and Navy also. The first select rank based on competitive merit in IAF till 2004 was Wing Commander (Wg Cdr) and that similar policy existed in other two services also. However after Kargil conflict, the Government set up a Committee to bring operational and functional improvements in the Armed Forces. This Committee was headed by Mr. Ajai Vikram Singh, the then Secretary, Ministry of Defence, Government of India, (hereinafter referred to as the AVSC Committee). The AVSC Committee submitted its report to the Ministry of Defence in January 2003 focusing besides other issues, on the restructuring of the Officer Cadre of the Army, but it was made applicable in almost equal

measures to the Navy and Air Force. There appears no necessity to refer to all the details of the recommendations made by the AVSC Committee, as we are confined to the controversy involved in the present matter i.e. parity between Group Captain (Select) and Group Captain (Time Scale) pertaining to their age of retirement. It appears that in order to provide more promotional avenues and motivation to the Service Officers, the AVSC Committee, inter alia, recommended that promotions up to the rank of Wg Cdrs be made time bound and those Wg Cdrs who could not be promoted to the first select rank of Group Captain, after availing the three merit based selection opportunities, will be promoted as Group Captain (Time Scale) in substantive capacity on completion of 26 year of service as per the guidelines to be formulated separately. Thus, as a result of this new policy which was implemented w.e.f. 16.12.2004, all promotions in IAF up to the rank of Wg Cdr were done on time scale criteria. Under this new policy the Group Captain rank which was earlier merit based select rank, was divided in two sub categories i.e. one Group Captain (Select) and the other, Group Captain (Time Scale). The rank of the Group Captain (Select) was being filled up by the Wg Cdrs on the basis of a selection which was exclusively based on competitive merit. On the other hand the rank of the Group Captain (Time Scale) was being filled from amongst Wg Cdrs who had missed merit based promotion as Group Captain (Select) and had completed 26 years service as Wg Cdr and were also meeting certain other eligibility criterion in accordance with the policy laid down by the Government

of India, Ministry of Defence vide the letter No. 2(2)/US (L)/D(Air.III)/04 dated March 12, 2005.

5. In this background, learned counsel for the applicants submitted that the fact that the discriminatory dual policy of retirement by respondents was bad in law and was a violation of Articles 14 and 16 of the Constitution of India, has already been well established by a catena of pronouncements by the Hon'ble Apex Court. He emphasised that the Hon'ble Apex Court in its judgement, has specifically mentioned that this kind of discrimination in retirement age was not there in IAF between the erstwhile Wg Cdrs (Time scale) and Wg Cdrs (Select). It has further noted that after introduction of new promotion policy as per AVSC report, the Army has not discriminated between the retirement age of Colonel (Select) and Colonel (Time Scale). He lamented that the respondents have washed off their hands from a grossly wrong policy decision they had taken in the year 2005. He further stated that the respondents have unfairly decided to extend the benefits of Hon'ble Apex Court order on this matter only to those Group Captains (Timescale) who have retired on or after 02.05.2013. He vehemently pleaded that all the applicants have retired a few years before 02.05.2013 and by not extending any benefit to them, the respondents have displayed gross indifference and injustice towards the applicants. He pleaded that besides suffering three years' reduction in the length of service and the proportionate loss in terms of salary, it has also resulted in reduced leave encashment, reduced commutation and reduced monthly pension for no fault on the part of applicants. He further

submitted that the loss suffered by applicants is not just a onetime financial loss but it is of a recurring nature and the applicants will continue to suffer this recurring loss for the entire duration of their lives. He explained that pension revision of a military officer is based on two main factors i.e. last rank held and the years of service rendered. Thus, besides a recurring loss in monthly pension, the applicants will continue to lose out in every five yearly OROP revision (as applicable to military officers) and in every ten yearly revision of pension after a new pay commission, primarily because they will always be short of the three years of service as compared to other officers of same class i.e. Group Captain (Time Scale). He vehemently pleaded for justice to the applicants and for consequential benefits of the applicants at par with Group Captain (Select) in line with a catena of Hon'ble Apex Court judgements on this subject giving benefit to similarly placed officers vide Civil Appeal D. No. 4717-4719 of 2013 vide order dated 24.09.2014, Civil Appeal D. No. 15339 of 2015 vide order dated 19.09.2016 and in Civil Appeal D No. 17556 of 2017 vide order dated 21.07.2017.

6. **Per contra**, the learned counsel for respondents admitted that the policy of dual retirement age for the rank of Group Captain has been quashed by AFT (PB) New Delhi in 2013 and the same has been upheld by the Hon'ble Apex Court in 2014. He, however, submitted that the respondents have done their duty by extending the benefits of this judgement from the date of AFT (PB) judgement i.e. w.e.f. 02.05.2013 to all Group Captain (Time Scale). He claimed that the applicants are not entitled to the benefits as pronounced by Hon'ble

Apex Court because of delay and laches in their claims. He claimed that the applicants were not vigilant for their rights and did not move a court of law within a reasonable time to challenge the impugned order of the respondents. He claimed that the applicants have filed this OA three years after the final judgement was passed by Hon'ble Apex Court on 24.09.2014 and after about 08 years of their retirement, hence their claim should be dismissed on grounds of inordinate delay and laches. In support of his argument he claimed that similar delayed applications by Group Captain (Time Scale) have been dismissed by AFT (PB) New Delhi in OA No 515 of 2017 and OA No 523 of 2017 on grounds of inordinate delay and laches. He further mentioned that on similar ground of inordinate delay and laches, AFT Regional Bench Kochi has also dismissed MA Nos 611, 612, 613 and 614 of 2014. He concluded by stating that this OA by the applicants should be dismissed on the grounds of inordinate delay and laches.

7. We have heard both the parties at length and perused the record. We have also perused the judgements of AFT (PB) New Delhi and AFT Regional Bench Kochi vide which certain cases have been allowed and certain cases have been rejected. We have also gone through a catena of judgements on this subject delivered by the Hon'ble Apex Court.

8. Following facts of this case are absolutely clear to us:

- (a) That the new rank of Group Captain (Time Scale) was introduced for the first time in IAF w.e.f. 16.12.2004.

(b) That the decision of Respondents to retire Group Captain (Time Scale) at the age of 54 years instead of 57 years, has been quashed by AFT (PB) New Delhi as bad in law and violative of Articles 14 and 16 of the Constitution. This decision of AFT (PB) dated 02.05.2013 has been upheld by the Hon'ble Apex Court vide its order dated 24.09.2014.

(c) That after the judgement from Hon'ble Apex Court, the respondents have changed their policy and w.e.f. 02.05.2013 and now the Group Captains (Time Scale) are being retired at the age of 57 years.

(d) That the respondents despite being a responsible Government department, are totally silent on the rights and relief required to be granted, for those Group Captains (Time Scale) who were illegally ordered to retire at the age of 54 years instead of 57 years between 16.12.2004 and 02.05.2013.

(e) In fact the decision of respondents to restrict relief provided by the Hon'ble Apex Court judgement, only to those Group Captains (Time Scale) who retired on or after 02.05.2013 and ignored those who retired before this date, resulted in creating a sub class within the same class of equals.

(e) In all court cases moved by aggrieved pre-02.05.2013 retired Group Captains (Time Scale) officers, the only defence offered by respondents is that the applicants have slept over their rights and woken up late to challenge the wrong order of

respondents, hence their cases should be dismissed on grounds of inordinate delay and laches.

(f) It is absolutely clear that due to incorrect orders of respondents to retire the applicants at the age of 54 years instead of 57 years, the applicants have missed three years of service and consequently missed three yearly increments in salary. This has directly resulted in reduced last pay and consequently resulted in a reduced pension on a monthly basis. In addition, it is also clear that since pension revision of Armed Forces personnel is primarily based on twin factors of last rank held and total years of service rendered, therefore these applicants will continue to suffer financial losses in future also after every pension revision due to OROP revision and new Pay Commission revisions.

9. In the above backdrop and circumstances, we have observed that the Armed Forces Tribunals in many cases have allowed benefits to Group Captains (Time Scale) on lines of AFT (PB) judgement of 02.05.2013. However, in all cases where benefits have not been allowed by the Tribunals, the only reason is the limitations imposed due to delay and laches. In view of this clear situation, the only question which we need to answer is straight and simple i.e. are the applicants eligible for relief within the existing frame work of laws on delay and laches?

10. In this context we find that reference can be made to the decision of Hon'ble Apex Court in *Union of India & Ors vs Tarsem*

Singh (Civil Appeal No 5151-5152 of 2008 decided on 13.08.2008).

In this case their Lordships of the Hon'ble Apex Court have examined the question of limitation and continuous cause of action, and observed as under:-

“To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

11. When we look at the present case of applicants in light of the Hon'ble Apex Court judgement on in **Union of India & Ors vs Tarsem Singh (Supra)**, it is clear that the action of respondents to order retirement of applicants at the age of 54 years, when they were holding the rank of Group Captain (Time Scale) and were required to retire at 57 years of age was a clear violation of the right to equality before law. In this case the main prayer of the applicants is for granting consequential benefits at par with Group Captains (Select) and since no promotion issues or third party issues are involved, the only issue, which needs consideration, is consequential benefits in terms of Pay, Gratuity, Leave Encashment, Commutation and

Pension. In all these consequential benefits, the only benefit which is of a recurring nature and fits into the category of continuing wrong is 'Pension'. As far as pension is concerned, it is also very clear that the wrong and illegal action of respondents to retire the applicants three years before their scheduled date of retirement, has resulted in a continuing wrong to the applicants, in that they will not only get less pension every month, but will also lose out in all future revisions of their pension in terms of OROP revision every five years (as applicable to military officers) and a new pay commission related revision every ten years. Thus it is amply clear that the present case is a clear case of continuing wrong because it relates to the pension of the applicants.

12. The law on the point of continuing wrong has been amply clarified once again by the Hon'ble Apex Court in the case of *Ex Sep Chain Singh Thr Lr vs Union of India* in Civil Appeal Diary No 30073 of 2017 in which their Lordships of the Hon'ble Apex Court has held as under:-

“The Tribunal vide impugned judgment dated 16.05.2017 rejected the said O.A. No 156 of 2017 filed by the appellant for the grant of disability pension. The main ground for rejecting the said O.A. was that the appellant had approached the Tribunal belatedly and there was no sufficient cause for condonation of delay.

After hearing the arguments of the parties, we are of the opinion that the aforesaid approach of the Tribunal is clearly erroneous. It was a matter of pension, that too disability pension, which was claimed by the appellant and in a case like this it would be a continuous cause of action simply because of the reason that if pension is due and payable to the appellant, the appellant would be entitled to receive the same every month. At the most, the appellant could be denied the benefit of past pension beyond the period of three years. Even otherwise, in cases of pension the Tribunal should not have taken a such hyper technical view. However, we have gone through the merits of the case. We find that the law is in favour of the appellant and his case is squarely covered by a decision of this Court in “Ex Gnr Laxman Ram Poonia (D) through Lrs. Vs. Union

of India & Ors”, (2017 4 SCC 697. We, accordingly, set aside the judgment of the Armed Forces Tribunal and allow this appeal and hold that the appellant shall be entitled to disability pension. His pension shall be calculated within a period of three months and arrears shall be paid to him. However, the arrears would be limited to the period of three years from the date when the Original Application was filed. The appeal is accordingly disposed of.”

There are other cases also in which the law on condoning delay for ‘continuing cause of action and continuing wrong’ has been well established. In the case of ***Ex Sep Sri Chand vs Union of India & Ors*** (WP (C) No 148 of 2012 decided on 09.01.2012) by the Hon’ble Delhi High Court. The relevant portion of judgement is as under:-

“10. For his plea that his claim is not barred by delay and laches, the petitioner relied on 2000 (4) SCT 194 DB (Pb. & H), *Darshan Singh v. Union of India*; AIR 1997 SC 27, *S.R. Bhanrale v. Union of India & Ors.*; 1974 (3) SCC 91, *Haryana State Electricity Board v. Station of Punjab*; SLR 1992 (3) 662, *Roshan Lal v. Union of India*; 104 (2003) DLT 5 DB, *Ct.Jasbir Singh v. Union of India & Ors.*; 2007 (2) SCT 72 (SC), *Shiv Dass v. Union of India & Ors.*; 2009 (1) AISLJ 371, *Union of India v. Tarsem Singh* holding that if the issue relates to payment of pension or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of a WP(C) No.148/2012 Page 6 of 11 third party. The petitioner also relied on the decision of this Court in the case of *Ex. Sep. Hari Ram v. Union of India & Ors.*, 2003 (2) SCT 582 (Delhi) DB; *Ex. Cfn Maha Singh Dagar v. Union of India & Ors.*, O.A.No.64/2009 and *Ex. Cra Kulwant Singh Rathee v. Union of India & Ors.*, T.A.No.184/2009 and the decision of a Division Bench of this Court in W.P.(C) 4817/2011, *Ram Niwas Bedharak v. Union of India & Anr.*, wherein the decision of the Tribunal dismissing the petition on the ground of delay and laches though the petition pertains to pension/disability pension was set aside and the OA filed by the applicant was restored for adjudication on merits by the Tribunal.

11. This Court has heard the learned counsel for the parties. This is not disputed that the Armed Forces Tribunal has dismissed the Original application merely on the ground that it is extremely belated as the petitioner retired back in the year 1992 and the application with regard to his pension has been filed belatedly.

12. The Tribunal has not disputed the fact that the petition related to the pension. The petitioner has relied on a number of judgments the ratio of which is not disputed even by the respondents. However, the Tribunal has not considered as to how the ratio of the precedents relied on by the petitioner is not applicable in the case of the petitioner whose claim is with regard to his pension. A division Bench of this Court in WP (C) 4669 of 2010 titled as *Ex. Sigmn Ganga Rama Sharma Vs UOI & ors.* decided on 29.4.2011 had held as under:

“5. At the first blush, the Tribunal's decision that the claim was extremely belated appears to be plausible, but we note that on the issue of pensionary dues, in the decision reported as (2008) 8 SCC 648 *UOI & ors. Vs Tarseem Singh*, on the principle of law of continuing wrong, the Supreme Court has held that a judicial remedy pertaining to claim for pension may be invoked belatedly and if invoked would have to be decided on merits. On this issue of delay, the Supreme Court has held that the Court concerned would take cognizance thereof and if the claim is allowed, the implementation thereof would be restricted to the previous three years, when the claim before the Court was made. The reason is obvious. A money claim preceding three years, from the date when a judicial remedy is invoked would be barred by limitation.

6. The Tribunal ought to have taken note of the legal principle of continuing wrong with respect to limitation.”

In yet another judgment in CWP No 7277 of 2013 decided on 14.05.2014, *Ex Naik Umed Singh vs Union of India & Ors*, the Hon'ble High Court of Punjab and Haryana at Chandigarh has held as under:-

“Learned counsel for the petitioner and the respondents rely upon two judgments i.e. *Shiv Dass Vs. Union of India & others* (2007) 9 SCC 274 and *Union of India & others Vs. Tarseem Singh* (2008) 8 SCC 648 in support of their respective pleas. The argument of learned counsel for the petitioner is that in case of pension, the cause of action arises and continues from month-to month, therefore, delay or limitation cannot be a ground to decline claim of disability pension. Reference was made to the following observations from *Shiv Dass's case (supra)*:

“9. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

In *Tarseem Singh's case (supra)*, the Supreme Court held that a belated service related claim would be rejected on the ground of delay and laches. However, one of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced.”

13. It is therefore clear that the law on condonation of delay for 'Pension' related matters has adequately been defined by the Hon'ble Apex Court. Thus considering all issues, we are of the considered opinion that the facts of this case lie within the four corners of the cases as referred to above and the OA deserves condonation of delay in terms of the settled principles of law. However there is one more additional reason as to why this OA deserves to be heard on merits. The decision of Hon'ble Apex Court is the law of the land and is binding. However after losing their appeal in the Supreme Court, the action of respondents in providing relief only to post 02.05.2013 retirees and in totally ignoring the Group Captains (Time Scale) who retired before this date, is once again a gross violation of Article 14 of the Constitution i.e. Right to equality before Law. This action of respondents amounts to creating a sub class within the same class of pensioners and is therefore a violation of the law settled on this subject matter by the Hon'ble Apex Court in the case of ***DS Nakara & Others Vs Union of India*** reported in 1983 AIR 130, 1983 SCR (2) 165. The relevant portion of this order is as under:

“Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It is attracted where equals are treated differently without any reasonable basis. The principle underlying the guarantee is that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same. Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question. In other words, there ought to be causal connection between the basis of classification and the object of the statute.”

14. In view of above and in the interest of substantive justice we are of the opinion that ends of justice will be met if the applicants are provided relief on all issues which are related to their pension because pension is a cause of continuing wrong. However since pension comes out of last pay, relief to that extent will be provided to applicants. The relief will be subject to limitations as per the law settled by the Hon'ble Apex court in case of *Shiv Dass v. Union of India & Ors.*; 2009 (1) AISLJ 371.

15. Additionally, other retirement benefits paid to the applicants do not come in the category of continuing wrong. Hence other retirement benefits already received by applicants in terms of Gratuity, Commutation and Leave Encashment are to be treated as final and are not to be reopened. These benefits will be deemed to have been paid to the applicants after their final retirement. We would also like to add here that since the financial benefits of applicants will be primarily limited to a very marginal increase in pension (due to three increments), therefore the expected financial burden for the present applicants and also expected future applicants (Approximately 270 to 290) will be very minimal.

16. In view of the aforesaid, the OA is **partly allowed**. The retirement order of the respondents ordering the retirement of the applicants at the age of 54 years is set aside. The applicants are held entitled to notional service for additional three years till they attain the age of 57 years. The pension already paid to the applicants during these three years of notional service is to be adjusted as part payment

towards salary. The pay of the applicants is to be refixed by the respondents after catering for the annual increments of three years of notional service and as per all other rules as required for pay fixation. The revised pension of the applicants is to be re-worked out as per revised last pay. However, due to law of limitation, as held by the Hon'ble Apex Court in the case of *Shiv Dass* (supra) they shall not be entitled to arrears which were due to them before three years of filing the present O.A. In sum and substance, the applicants are entitled to receive enhanced pension from the date prior to three years on which the instant O.A. was filed. The date of filing this OA is 10.10.2017. The entire exercise shall be concluded within four months from the date of production of a certified copy of this order failing which the applicants shall be entitled to a simple interest @ 8 per cent per annum from the due date till the date of actual payment.

No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: July , 2019
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