

RESERVED**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION No. 276 of 2017**Wednesday, this the 10th day of August, 2022**"Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)"**

TC-31491Y Lt Col Kamal Singh (Retd), S/o (late Banwari Singh, R/o F-152, South City, Raibareilly Road, Lucknow (U.P) and Others.

..... Applicants

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh**, Advocate

Versus

1. Union of India, through the Secretary to Government of India, Ministry of Defence, South Block, Raisina Hills, New Delhi 110011.
2. Chief of Army Staff Integrated Headquarters of Ministry of Defence (Army), South Block-III, New Delhi-110011.
3. Quarter Master General, IHQ of MoD (Quarter Master General Branch), Sena Bhawan, New Delhi-110011.
4. Addl DG, APS Additional Directorate General of Army Postal Service, Pin-908700, C/o 56 APO.
5. O/o the Director of Accounts (Postal), Maharashtra Circle, Nagpur (Maharashtra)-440001.

.....Respondents

Ld. Counsel for the Respondents. : **Shri Amit Jaiswal**, Advocate
Central Govt. Counsel

ORDER

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

(I) To quash the impugned orders dated 23 Jun 2017 (For Applicant No. 1) 23 Jun 2017 (For Applicant No.2) 21 Jun 2017 (For Applicant No.3), 22 May 2017 (For Applicant No.5), 28Jun 2017 (For Applicant No.6) and 27 Jun 2017 for Applicant No.7)[Annexure A-3(A-3(A) to A-3(G) of Instant OA] wherein claim of the applicants for extending benefit of OROP has been wrongly held as untenable.

(II) To issue/pass an order or direction of appropriate nature to the Respondents to implement the notification dated 07 Nov 2015 and 03 Feb 2016 in respect of the applicants and benefit of OROP be extended to them with effect 01 Jul 2014.

(III) To issue/pass an order or direction of an appropriate nature to the respondents to make the payment of arrears with effect 01.07.2014 along with suitable rate of interest as deemed fit and proper by this Hon'ble Tribunal accrued to the applicant due to re-fixation of their correct pension and also to continue to pay regular pension to the applicants in the revised rate thereof.

(IV) Any other relief including cost of application as considered fit and proper by the Hon'ble Tribunal be awarded in favour of the applicants.

2. Brief facts of the case are that applicants in this petition were appointed in the Department of Posts and

were taken on deputation to the Army Postal Service. During the course of their service they were granted temporary commission in the Army and superannuated. The details of petitioners are as under:-

Ser No	Service particulars of the applicants	Date of enrolment	Date of temporary commission	Date of discharge	PPO No
1.	TC-31481Y Lt Col Kamal Singh (retd)	03.07.71	14.07.93	30.06.08	P-58880
2.	TC-31384F Lt Col Jagdish Babu (retd)	26.05.75	16.09.85	31.07.11	P-63001
3.	TC-31479F Lt Col Adi Shanker Mishra (retd)	16.12.72	14.06.93	31.07.09	P-60505
4.	TC-31403F Lt Col Prem Narain Srivastava (retd)	31.12.68	28.09.87	30.09.07	P-58070
5.	TC-31330A Col Sheo Chandra Singh (retd)	16.12.72	15.01.79	31.08.09	P-60591
6.	TC-31478Y Lt Col Surya Pratap Singh (retd)	28.12.68	14.06.93	30.06.08	P-58829

3. In the instant O.A. the main petitioner is Lt Col Kamal Singh (Retd) who was granted temporary commission on 14.07.1993 and superannuated on 30.06.2008. Consequent upon grant of One Rank One Pension (OROP) w.e.f. 01.07.2014 the petitioners were not extended the benefits of this provision. Having not been extended the benefit of the OROP the petitioners approached respondent No 4 vide their representations dated 07.06.2016, 07.06.2016, 17.06.2016, 05.09.2016, 26.06.2017 and 23.06.2017 respectively which was denied vide letters dated 23.06.2017 (Applicant No 1), 23.06.2017 (Applicant No 2), 21.06.2017 (Applicant No

3), 22.05.2017 (Applicant No 4), 28.06.2017 (Applicant No 5) and 27.06.2017 (Applicant No 6). Petitioners have filed this O.A. for grant of benefits of OROP w.e.f. 01.07.2014 on the basis of Govt of India Notification dated 07.11.2015 and 03.02.2016.

4. Learned counsel for the petitioners submitted that all the petitioners were appointed in the Department of Posts and were sent on deputation to the Army Postal Service Corps (APS). They got temporary commission in the Corps and became subject to Army Act. He further submitted that since the applicants drew Military Service Pay (MSP) while in Army service and after retirement they hold the status of ex-servicemen, they are entitled to benefits of OROP w.e.f. 01.07.2014 in terms of Govt Notification dated 07.11.2015 and 03.02.2016 which has been denied by the respondents. In support of their claim the petitioners have relied upon order dated 09.02.2017 passed by AFT, RB, Jabalpur in EA/04 (J)/2016 Inre O.A. No 11 (J)/2016, ***Lt Col Om Dutt Sharma vs UOI & Ors.***

5. On the other hand, learned counsel for the respondents submitted that the petitioners while serving in department of posts had voluntarily joined Army Postal

Service Corps and granted temporary commission. He further submitted that as per Para 6 of Annexure 'A' to Army Instructions 29/85 petitioners are governed by civil rules for service pension and therefore they were not getting pension as on 01.07.2014 in terms of Pension Regulations for the Army. He submitted that since the petitioners are not governed by Pension Regulations for the Army, therefore Govt notifications dated 07.11.2015 and 03.02.2016, as per which OROP is entitled to ex-service personnel, are not applicable to them. It was further submitted by learned counsel for the respondents that Govt of India, MoD/Department of Ex-servicemen Welfare vide letter dated 13.04.2017 has clarified that 'Gazetted Officers of Deptt of Posts, and granted temporary commission in Army Postal Service Corps, are not entitled to benefits of OROP.

6. Learned counsel for the respondents further submitted that the Govt of India, Ministry of Communication vide letter dated 01.03.2017 has also clarified that 'since pension to postal employees in APS is paid by Department of Posts unlike pension to regular Army Personnel, which is met from Defence Estimates, the postal employees in APS are not covered by OROP

scheme which is operated by MoD'. He further submitted that in view of the clarifications issued by the Govt of India MoD/Deptt of Ex-servicemen Welfare and Govt of India, Ministry of Communications, petitioners are not eligible for grant of OROP as they are drawing their service pension from Civil Estimates and not from Defence Estimates. It was further submitted that the order dated 09.02.2017 passed by AFT, RB, Jabalpur, directing grant of OROP to **Lt Col Om Dutt Sharma (Retd)**, has already been set aside by the Hon'ble Supreme Court vide order dated 05.11.2019, therefore reliance made by learned counsel for the petitioners has no relevance. He pleaded for dismissal of O.A.

6. Heard Shri Shailendra Kumar Singh, learned counsel for the applicants and Shri Amit Jaiswal, learned counsel for the respondents and perused the material placed on record.

7. It is undisputed fact that the petitioners were serving in Department of Posts and were taken on deputation in the APS. During the course of their service they were granted temporary commission and retired from APS on attaining the age of superannuation. In the instant case all the petitioners are of the rank of Lt Col.

We have observed that regular Army officers may serve up to the age of 54 years in the rank of Lt Col whereas temporary commissioned officers of APS may serve up to the age of 58 years or 60 years, and after superannuation regular Army officers are granted pension from Defence Estimates but APS officers are granted pension from Civil Estimates.

8. Annexure 'A' of Army Instruction No 29 of 1985 being relevant is reproduced as under:-

"Annexure 'A'

1. xx xx xx

2. Rank, Promotion and seniority –

(a) In the case of JCOs/WOs of APS – JCOs/WOs will be granted temporary commission in the rank of 2 Lt except that JCOs/WOs having 8 years service as JCO/WO and in the ranks would be commissioned as Lt and granted 2 years ante date for the purpose of pay only.

(b) In the case of gazetted officers of the Department of Posts – On commissioning in the Army Postal Service, Officers of the Department of Posts will be ranked as follows:-

<i>PSS/PMS Group 'B' Officers</i>	- Lt/Capt
<i>IPS Group 'A' Officers – Junior Scale</i>	- Capt
<i>IPS Group 'A' Officers – Senior Scale</i>	- Major
<i>IPS Group 'A' Officers with over ten years Service or Director Postal Services</i>	- Lt. Col.
<i>Director Postal Services drawing Base pay of</i>	- Col.
	- Rs.1800/-or more
<i>Postmaster General Level II</i>	- Brig
<i>Postmaster General Level I</i>	- Major Gen

The Director General, Postal Services, may, however, recommend variation in ranking when it is necessary due to paucity of suitable volunteers.

3. (a) xx xx xx

(b) An officer will however have an option at the time of commissioning and a further option on each occasion of promotion in Army rank to draw either military pay and allowances or civil pay plus a deputation allowance as under:

An officer below the grade of Director Postal - 20%
Services

An officer of the grade of Director - 12½%
Postal Services and above

The term 'civil pay' will take into account increments of civil pay, as they become due and the operations of the 'Next Below Rule' affecting officiating promotions under the civil rules applicable to the officers' permanent cadre.

(c) Pay and allowances of officers joining from the Department of Posts during the period prior to being commissioned as well as transit on reversion will be on the civil rates only and no deputation allowance will be allowed in addition.

4. xx xx xx

5. xx xx xx

6. Pension

(a) For service pension, officers will be governed by civil rules.

(b) For disability and family pension, the officer or, when the officer dies in service, his family will be eligible to receive awards under AI 64/76 as amended from time to time.

7. xx xx xx

8. xx xx xx

9. Relinquishment of Commission and repatriation to the Department of Posts (1) An

officer shall relinquish his temporary commission in Army Postal Service and be repatriated to the Department of Posts or proceed on compulsory retirement on superannuation by order of the Central Government or the authority specified in sub-para (2) with effect from the afternoon of the date specified in the orders. (2) The authority specified in Sub Para (1) shall be the Additional Director General Army Postal Service. (3) Approval of the Central Government will be obtained by the Additional Director General Army Postal Services prior to the issue of orders in all cases except the following:-

(a) Where an officer has completed the minimum period of engagement as specified in Para 3 of AI 29/85 and seeks repatriation to the Department of Posts.

(b) Where the service of the officer is recalled by the Department of Posts.

(c) Where the officer has completed his period of engagement and has outlived his utility to the APS and

(d) Where an officer has attained the age of compulsory retirement in the Army Postal Service and instead of being repatriated to the Department of Posts seeks retirement from Army Postal Service.

(4) The consent of the Department of Posts will be obtained and a minimum not of three months shall be given to the officer before his relinquishment of commission and repatriation to the Department of Posts."

9. From the aforesaid, we find that for the purpose of pension the officers of APS are governed by para 6 (a) of aforesaid Army Instruction which specifies that they will be entitled to service pension from Civil Estimates. The petitioners served up to the age of 60 years and consequent to their relinquishment of commission in APS, on attaining age of superannuation in their civil parent department, were granted pension by Director of Accounts

(Postal) Nagpur, debitible under Civil Estimates and not from Ministry of Defence.

10. The Govt of India MoD/Department of Ex-Servicemen Welfare vide letter dated 07.11.2015 had notified OROP scheme for the Ex-servicemen w.e.f. 01.07.2014 and procedural guidelines were issued for revision of pension. In consonance with aforesaid policy letter the PCDA (P), Prayagraj issued circular No 555 dated 04.02.2016 for implementation of OROP to defence pensioners to whom the pension was granted under defence estimates. We have perused policy letters dated 07.11.2015 and 03.02.2016 and we find that the policy letters for implementation of OROP are applicable to the personnel who are granted pension from Defence Estimates. In this case the petitioners are paid pension from Civil Estimates, hence this scheme is not applicable to them.

11. Also, from perusal of record we have observed that Shri P Radhakrishna Shenoy of Karnataka had approached Govt of India, MoD/Deptt of Ex-servicemen Welfare regarding payment of OROP to postal department which was clarified vide letter dated 13.04.2017, which for convenience sake is reproduced as under:-

"1. Please refer to your representation dated 17.03.2017 address to Hon'ble Prime Minister of India

and received in this office vide PMO ID No PMOPG/D/2017/0126730 dated 27.03.2017.

2. As regard OROP to APS Officers, it is mentioned that gazetted officers of department of post are granted temporary commission in the Army Postal Service as per terms and condition of service laid down in Annexure-A to Army Instruction 29/85. As per para 6 of this Annexure these officers will be governed by Civil Rules for service pension purpose. They are not governed by Pension Regulations of Army, hence OROP is not applicable to them.

3. x x x x x"

12. The instructions contained in Army Instructions contemplate that at every stage of promotion in APS, an option is available to an officer to choose military pay or the civil pay. These conditions show that the members of the APS continue to hold lien in the Department of Posts, though they were conferred ranks in the Army, and were also entitled to certain benefits as the members of the Armed Forces but being members of the Armed Forces during the period of their temporary commission does not make them a pensioner of the Armed Forces as per letter dated 07.11.2015. In the instant case the petitioners are getting pension from the Department of Posts and not from Ministry of Defence [PCDA (P), Allahabad].

13. In Civil Appeal No 8139 of 2019, ***Union of India & Ors vs Lt Col Om Dutt Sharma (Retd) Dead through LRS and Ors***, decided by the Hon'ble Supreme Court vide order dated 05.11.2019, their Lordships of the Hon'ble Apex Court has made it clear that APS personnel are not

eligible for grant of OROP. For convenience sake, para 52 of the aforesaid judgment is reproduced as under:-

"52. We, thus, hold that the persons such as the respondent and the intervenors on deputation to APS from Department of Posts are not entitled to the benefit of OROP. Therefore, the order of the Tribunal is not sustainable in law and hence set aside. The appeal is allowed.

14. A conspectus of above observations is that the petitioners are not entitled to benefits of OROP as claimed.

15. In view of the above, O.A. has no merit and deserves to be dismissed. It is accordingly, **dismissed**.

16. No order as to costs.

17. Miscellaneous applications, pending if any, stand disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated :10.08.2022
rathore