

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

1.

OA 773/2018

Lt Cdr(Retd) Dilip Bhatnagar

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant

: Mr.L S Chaudhary, Adv

For Respondents

: Mr.SR Swain ,Adv

2.

OA 774/2018

Cdr(Retd) R A Murphy

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant

: Mr.L S Chaudhary, Adv

For Respondents

: Mr.VS Tomar,Adv

3.

OA 775/2018

Lt Cdr(Retd) Aneesh Kadyan

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant

: Mr.L S Chaudhary, Adv

For Respondents

: Gp Capt K S Bhati, Sr CGCS

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. Order dismissing the OAs pronounced, signed and dated.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

2.

OA 774/2018

Cdr(Retd) R A Murphy

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant

: Mr.L S Chaudhary, Adv

For Respondents

: Mr.VS Tomar,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER

15.05.2018

1. Order dismissing the OA pronounced, signed and dated.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

3.

OA 775/2018

Lt Cdr(Retd) Aneesh Kadyan : **Applicant**

Versus

Union of India and Others : **Respondents**

For Applicant : Mr.L S Chaudhary, Adv

For Respondents : Gp Capt K S Bhati, Sr CGCS

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER
15.05.2018

1. Order dismissing the OA pronounced, signed and dated.

(JUSTICE V.K. SHALI)
MEMBER (J)

(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

4.

OA 557/2018 with MA 411/2018

Smt Usha Sharma Wd/o Late

Sgt Vijay Kumar Singh

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant : Mr Ramesh, Adv

For Respondents : Dr V S Mahndiyan, Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. The grievance of the applicant is that in the earlier round of litigation initiated by the applicant, this Tribunal vide order dated 40.10.2016 passed in OA 507/2015 has allowed the OA by holding that electrocution of the husband of the applicant was during the course of his duty at his official accommodation where the electrical gadget was also installed by the respondents and therefore, the applicant has been given the special family pension as well as interest thereto. However, so far as the question of payment of ex-gratia to the applicant was concerned, the learned Bench of this Tribunal had given directions to the respondents to consider the request of the applicant for grant of ex-gratia by passing a reasoned and speaking order. The speaking order dated 31.01.2017 has been passed, by virtue of which, the applicant has been denied the payment of ex-gratia payment. The learned counsel for the applicant seeks time to address the Tribunal to the effect that ex-gratia payment can be given to the applicant as was given by this Tribunal vide order dated 30.10.2014 in OA 506/2013.

2. List on **31.07.2018.**

(JUSTICE V.K. SHALI)
MEMBER (J)

(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

5.

OA 932/2018

Ex Hav(Hony Nb Sub) Shyam Bahadur Jaisi :Applicant

Versus

Union of India and Others

:Respondents

For Applicant : Mr.JP Sharma, Adv

For Respondents : Ms Jyotsana Kaushik ,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. Heard.

2. Issue notice.

3. Ms Jyotsana Kaushik, learned counsel for the respondents accepts notice.

4. Let reply affidavit be filed within six weeks with advance copy to the learned counsel for the applicant. Rejoinder, if any, may be filed within four weeks thereafter.

5. List on **19.07.2018**.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

6.

MA 439/2018 in OA 1475/2017

Ex-JWO Birham Singh Yadav & Ors :Applicants

Versus

Union of India and Others :Respondents

For Applicants : Mr.Praveen Kumar Adv

For Respondents : Mr.Ashok Chaitanya ,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. Learned counsel for the applicant states that present MA has already been disposed of by Court No.1.

2. In view of the above statement made by the learned counsel for the applicant at the Bar, the MA is treated as disposed of.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

8.

MA 656/2018 in OA 345/2014

Praveen Kumar Sharma :Applicant

Versus

Union of India and Others :Respondents

For Applicant : Mr.V S Kadian, Adv

For Respondents : Mr. Prabodh Kumar,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. Learned counsel for the respondents submits that sanction has already been issued, a copy of which has been handed over to the learned counsel for the applicant.

2. Accordingly, the MA 656/2018 stands dismissed as not pressed.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

9.

OA 374/2013 with MA 1534/2017 & 32/2018

Wing Cdr Arunaksha Nandy : **Applicant**
Versus
Union of India and Others : **Respondents**

For Applicant : Mr.Manish Kumar Adv
For Respondents : Dr V S Mahndiyan ,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)
HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER
15.05.2018

1. Learned counsel for the applicant seeks adjournment to advance arguments. Although the prayer has been vehemently opposed by the learned counsel for the respondents, in the interest of justice, the prayer is allowed.

2. List on **11.07.2018**.

(JUSTICE V.K. SHALI)
MEMBER (J)

(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

10.

OA 38/2014 with MA 364/2014

Brig Sunil Bhandari	:Applicant
Versus	
Union of India and Others	:Respondents

For Applicant	: None
For Respondents	: Gp Capt K S Bhati, Sr CGSC R 1-3 Mr JS Yadav, Adv R -4

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER
15.05.2018

1. There is no appearance on behalf of the applicant despite second call. In the interest of justice, no adverse order is passed.
2. List on **04.09.2018**.
3. It is made clear that no further adjournment shall be granted.

(JUSTICE V.K. SHALI)
MEMBER (J)

(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

11.

OA 41/2014

Gp Capt(Retd) KK Rohatgi

:Applicant

Versus

Union of India and Others

:Respondents

Applicant : In person

For Respondents : Mr SD Windlesh ,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. The present application has been filed by the applicant seeking quashing of the order dated 01.01.2014 issued by the State Bank of India, Centralised Processing Center, Chandni Chowk, Delhi where the applicant is maintaining is pension account to which his pension is being granted on the directions of DCDA. It is not in dispute that the applicant had retired from service as Gp Captain from the Indian Air Force w.e.f. 31.07.1993 and was in receipt of revised pension w.e.f. 01.01.2006 to 26.01.2015..... The applicant continued to receive the said pension til the aforesaid impugned notice was received by him through Centralised Processing Centre, SBI, intimating that he is receipt of excess payment of Rs.1,34,390/- and Rs.3040/- under the head of gratuity at the time of his retirement. It is contended by the applicant, who is appearing in person that the respondents intimated to the applicant that from 01.01.2006, an amount of Rs.26050/- was being credited in the pension account of the applicant instead of Rs.24866/- thus an amount of Rs.134390/- and Rs.3040/- is to be recovered from him.

2. The grievance of the applicant the aforesaid recovery is being sought from the pension account of the applicant by the SBI/respondent No.4 is to his detriment and therefore, this requires to be quashed that principal of natural justice has not been followed. The respondents have filed their counter affidavit to which rejoinder has also been filed.

3. We have heard the applicant and the learned counsel for the respondents . Since it would be pertinent to mention here that the impugned order cannot stand on merit of law on the ground of balance with the provisions of natural justice in as much as before affecting any recovery from the account of the applicant, a show cause notice has to be issued to the applicant and in response to the said show cause notice an opportunity has to be given to the applicant to represent to the respondents or the PCDA as to why the amount cannot be deducted from his pension account. This opportunity has not been admittedly given to the applicant. The very fact that an opportunity to file reply to the show cause notice has not been given to the applicant, this in itself causes serious prejudice to the applicant and nothing further remains to be seen. Reliance in this regard can be placed on the judgement of the Apex Court in VS where it has been clearly held that since balance of principal of natural justice itself makes the order unsustainable in the eyes of law and any prejudice must not be caused to the incumbent.

4. In the peculiar facts and circumstances of the matter, since no show cause notice has been issued to the applicant that itself is a sufficient ground for quashing the impugned order dated 01.01.2014.

5. Ordered accordingly.

6. During the course of earlier submissions, it has been pointed out by the learned counsel for the respondents that while the pension of the applicant has further been liberalized and stated that the applicant is receiving a total sum of Rs.27,900/- or so. It is further contended by the applicant while

7. In the facts and circumstances of the matter, we quash the letter dated 01.01.2014 issued by the Centralised Pension Processing Centre of SBI, a copy of which has been endorsed to the applicant seeking to effect recoveries from his pension account. Further, the respondents are at liberty to recover any amount which has been overdrawn by the applicant provided the opportunity of natural justice are followed. For this purpose, the respondents will issue show cause notice to the applicant giving details of the amount overdrawn by the applicant and head under which this amount has been credited to his account. Further, on receiving the reply to the said show cause notice, reply shall be filed by the applicant within four weeks from the date of issuance of show cause notice to the applicant. The respondents shall also taken into account any excess amount which has been paid to the applicant in terms of Circular dated 30.09.2016. While dealing with the matter, the excess amount which has been recovered may not be affected.

8. We hope and trust that the respondents shall pass detailed speaking order to the show cause notice and, in case, the applicant is still feels aggrieved with the order, so passed, he may take such recourse as available in law.

(JUSTICE V.K. SHALI)
MEMBER (J)

(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

12.

OA 74/2014

Ex Hav Reiji Kumar

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant

: Mr.SS Pandey Adv

For Respondents

: Mr Anil Gautam ,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER

15.05.2018

1. On joint request, list the matter on **14.08.2018**.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

13.

RA 20/2015 in OA 120/2014

Maj Gen(Retd) S K Chakravorty :Applicant
Versus
Union of India and Others :Respondents

For Applicant : Ms Jyoti Singh, Sr Counsel with Mr. A K
Trivedi, Adv

For Respondents : Mr Harish V Shankar ,Adv

WITH

14.

OA 120/2014

Maj Gen(Retd) S K Chakravorty :Applicant
Versus
Union of India and Others :Respondents

For Applicant : Ms Jyoti Singh, Sr Counsel with Mr. A K
Trivedi, Adv

For Respondents : Mr Harish V Shankar ,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER
15.05.2018

1. Arguments heard in part.
2. List for further hearing before the same Bench on **18.05.2018**.

(JUSTICE V.K. SHALI)
MEMBER (J)

(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

15.

OA 77/2015

Sigmn Khaja Mohiddin Bhasha Shaik :Applicant

Versus

Union of India and Others :Respondents

For Applicant : Mr Irshad Hanif, Adv

For Respondents : Mr Anil Gautam ,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER

15.05.2018

1. Short accommodation is sought by the learned counsel for the applicant. Prayer not opposed.

2. List on **06.07.2018**

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

16.

OA 1037/2015 with MA 1001/2015

Ex Sep/MT Kamal Singh

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant

: Mr VS Kadian, Adv

For Respondents

: Mr Ashok Chaitanaya, Adv

Maj Deek OIC, Legal Cell

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER

15.05.2018

1. There is no appearance on behalf of the applicant despite second call. OIC, Legal Cell of the respondents seeks further time.

2. List on **07.08.2018**.

3. In the meantime, decision on the mercy petition shall be taken by the respondents.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

17.

OA 88/2016 with MA 47/2016, 48/2016 & MA 49/2016

Ashok Singh Ex Chera & Ors :Applicants
Versus
Union of India and Others :Respondents

For Applicants : Mr Sukhjinder Singh, Adv
For Respondents : Mr VS Tomar,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)
HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER
15.05.2018

1. List alongwith connected matters on **09.07.2018** before the
Hon'ble Chairperson for directions.

(JUSTICE V.K. SHALI)
MEMBER (J)

(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

18.

OA 1675/2016

Ex Cpl Mamraj Singh Chahar : **Applicant**

Versus

Union of India and Others : **Respondents**

For Applicant : Mr VS Kadian, Adv

For Respondents : Ms Jyotsana Kaushik, Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER
15.05.2018

1. Arguments heard.

2. Order reserved.

(JUSTICE V.K. SHALI)
MEMBER (J)

(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

19.

OA 1703/2016

Rear Admiral RC Kochhar(Retd)

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant : Mr Ajay Yadav, Adv proxy for Mr IS Singh,
Adv

For Respondents : Mr Anil Gautam ,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. Learned proxy counsel appearing on behalf of Mr. I S Singh, arguing counsel for the applicant has admittedly stated that the respondents have already issued a letter dated 16.04.2018, by virtue of which, the benefits of revision of pension, family pension to all Maj General of equivalent ranks in Navy and Air Force who have retired on 01.01.2006to extended to all across the Board. A copy of the said circular is placed on record

2. In view of the above statement made by the learned counsel for the applicant at the Bar, the OA stands dismissed as not pressed.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

20.

OA 219/2017 with MA 169/2017 & 171/2017

CCP Nambiar Ex Chera

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant

: Mr Sukhjinder Singh Adv

For Respondents

: Mr Anil Gautam ,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER

15.05.2018

1. List alongwith connected matters on **09.07.2018** before the Hon'ble Chairperson for directions. **OA 219/2017 will be the lead case.**

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

21.

OA 450/2017

Hav Surender Singh :Applicant

Versus

Union of India and Others :Respondents

For Applicant : Mr Rohit Kumar, Adv

For Respondents : Mr Arvind Patel ,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. Additional affidavit has been filed by the learned counsel for the respondents. Learned counsel for the applicant seeks time to file response to the additional affidavit. Let the needful be done within four weeks.

2. List on **24.07.2018**.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

22.

OA 589/2017 with MA 767/2018

Sub M/Tech(OPTO) Gurjeet Singh :Applicant

Versus

Union of India and Others :Respondents

For Applicant : Mr SS Pandey, Adv

For Respondents : Mr Harish V Shankar,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. On joint request, list on **27.07.2018**.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

23.

OA 683/2017 with MA 578/2017

Ex Cdr Pradip Kumar Mitra

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant

: Mr Sukhjinder Singh Adv

For Respondents

: Mr Avdhesh Kr Singh,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. List alongwith connected matters on **09.07.2018** before the Hon'ble Chairperson for directions.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

24.

OA 737/2017 with MA 607/2017

Ex Lt Cdr L P Mishra

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant : Mr Sukhjinder Singh, Adv

For Respondents : Mr Harish V Shankar,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. List alongwith connected matters on **09.07.2018** before the Hon'ble Chairperson for directions.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

25.

OA 738/2017 with MA 608/2017 & MA 757/2018

Ex Cdr Chander Shekhar Singh :Applicant

Versus

Union of India and Others :Respondents

For Applicant : Mr Sukhjinder Singh Adv

For Respondents : Mr SR Swain,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. List alongwith connected matters on **09.07.2018** before the Hon'ble Chairperson for directions.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

26.

OA 739/2017 with MA 609/2017

Ex Cdr Vinod Kumar Jha :Applicant

Versus

Union of India and Others :Respondents

For Applicant : Mr Sukhjinder Singh Adv

For Respondents : Mr Avdhesh Kr Singh,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. List alongwith connected matters on **09.07.2018** before the
Hon'ble Chairperson for directions.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

27.

OA 1228/2017

Lt Cdr Bal Chandra Pandey & Ors :Applicant

Versus

Union of India and Others :Respondents

For Applicant : Mr Anil Srivastava, Adv

For Respondents : Mr Anil Gautam, Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. On joint request, list on **04.09.2018**.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

28.

OA 594/2018 with MA 481/2018

Maj R K Chhabra(Retd)

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant : Mr RK Tripathi, Adv

For Respondents : Mr Arvind Patel,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. Learned counsel for the respondents seeks time to file counter affidavit. Let the counter affidavit be filed within eight weeks with advance copy to the learned counsel for the applicant.

2. List before the Principal Registrar for completion of pleadings on **07.08.2018.**

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

29.

OA 656/2018

Maj Gen Bipin Bakshi

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant : Ms Jyoti Singh, Sr Adv., Mr. Rajiv Manglik
Adv

For Respondents : Gp Capt K S Bhati, Sr CGSC

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1. Respondents are allowed to file detailed counter affidavit with advance copy to the learned counsel for the applicant.

2. Since the next Board is taking place in the month of October/December, 2018, therefore, it will be in the interest of both the parties, in case, the matter is heard and decided.

3. As a matter of fact, in the previous order dated 05.04.2018, we specifically stated that respondents may file counter and not short reply. Be that as it may, let the counter affidavit be filed within six weeks with advance copy to the learned counsel for the applicant.

4. So far as the issuance of notice to respondent No.4 is concerned, learned senior counsel has stated that she may be given some time to show to the Tribunal about the order in terms of judgment of the Hon'ble Supreme in State of Bihar Vs..... 1981.....

MA 809/2018

This is an MA seeking condonation of delay in filing the counter affidavit. Since sufficient reasons have been cited for late filing of the counter, the delay is condoned and accordingly, the MA stands disposed.

(JUSTICE V.K. SHALI)
MEMBER (J)

(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

30.

MA 708/2018 & MA 709/2018 in OA 806/2015

Col S K Sharma(Retd) :Applicant

Versus

Union of India and Others :Respondents

For Applicant : Mr SS Pandey, Adv

For Respondents : Gp Capt K S Bhati, Sr CGSC

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

MA 709/2018

1. This is an MA seeking condonation of delay of 199 in filing the accompanied MA 708/2018 for leave to appeal. Since the applicant has shown sufficient cause for late filing of the MA for leave to appeal, the delay is condoned and the MA stands allowed.

MA 708/2018

This is an MA seeking leave of this Tribunal to appeal before the Hon'ble Supreme Court against the order dated 25.08.2017. Since no substantial question of law of general public importance is involved in the matter, the prayer for leave to appeal stands declined.

2. Accordingly, MA stands disposed.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

31.

MA 724/2018 & MA 727/2016 in OA 304/2015

Dfr(RDR) Govind Ram & Ors

:Applicants

Versus

Union of India and Others

:Respondents

For Applicant : Mr VS Kadian, Adv

For Respondents : Ms Jyotsana Kaushik, Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

ORDER

15.05.2018

1. On joint request, list the matter on **24.07.2018**.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

32.

MA 782/2018 in OA 167/2017

Ex Nk(Chef) Meda Chinnaiah thr wife

Smt. M Lalitha

:Applicant

Versus

Union of India and Others

:Respondents

For Applicant : Mr SS Pandey, Adv

For Respondents : Gp Capt KS Bhati, Sr CGSC

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

MA 782/2018

This is an MA, by virtue of which, the applicant has prayed for suspension of u/s 15(6)(e) of the Armed Forces Tribunal Act, 2007. The grounds for suspension of sentence are that the applicant has been kept under detention w.e.f. 06.02.2015 initially during trial, awaiting confirmation and thereafter in Civil Jail. At present the applicant has been lodged in Central Jail, Kudappah, Andhra Pradesh and he has served more than three years sentence behind the bars sincerely without any disorderly behavior. Further, the daughter of the applicant is going to be married on 26.05.2018 and necessary rituals for which shall commence from 20.05.2018. Thus, the applicant being a father has to perform several rituals in the marriage and there is no one to look after and supervise the marriage arrangements in addition to arrange resources.

2. It is the contention of the learned counsel for the applicant that the applicant has already remained in custody both, pre trial court martial proceedings as well as during trial and the appeal will take some time to

be heard on merits and therefore, the applicant's sentence may be suspended and he be enlarged on bail keeping in view the fact that he has already undergone three years imprisonment.

3. Having regard to the aforesaid contention, we suspend the sentence of the applicant and enlarge on bail on furnishing personal bond for a sum of Rs.25,000/- with one surety for the like amount to the satisfaction of the Principal Registrar, Principal Bench, Armed Forces Tribunal, New Delhi subject to the conditions mentioned below:

- i) The applicant shall not leave the country without obtaining prior permission of the Tribunal;
- ii) The applicant shall surrender his passport, if any, to the Principal Registrar, AFT, New Delhi.
- iii) The applicant shall not visit to any witnesses who have been cross examined and testified against him before the court martial;
- iv) The applicant shall not indulge in any act of violence by words or physical before any officer of his department
- v) In the event of violation of any of the aforesaid conditions by the applicant, the respondents shall be at liberty to bring the same to the notice of the Tribunal, whereupon such appropriate order including the withdrawal of the suspension order.

4. With these directions, the MA stands allowed.

5. A copy of this order be given DASTI to the parties.

(JUSTICE V.K. SHALI)
MEMBER (J)

(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)

15.05.2018/chanana

**COURT NO. 2, ARMED FORCES TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

33.

MA 808/2018 in MA 1177/2016 in OA 229/2015

Ex Sgt Jawahar Prasad & Ors :Applicants

Versus

Union of India and Others :Respondents

For Applicants : Mr VSv Kadian Adv

For Respondents : Mr Anil Gautam,Adv

CORAM:

HON'BLE MR JUSTICE VK SHALI, MEMBER (J)

HON'BLE VICE ADMIRAL P.MURUGESAN MEMBER (A)

**ORDER
15.05.2018**

1.

**(JUSTICE V.K. SHALI)
MEMBER (J)**

**(VICE ADMIRAL P.MURUGESAN)
MEMBER (A)**

15.05.2018/chanana

**COURT No. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 219/2017 with MA 169/2017 & 171/2017

In the matter of :

**CCP Nambiar Ex Chera
...Applicant**

Versus

**Union of India & Ors. ...
Respondents**

**For Applicant : Mr. Sukhjinder Singh,
Advocate**

For Respondents : Mr. Anil Gautam, Advocate

CORAM:

**HON'BLE MR. JUSTICE V.K. SHALI,
MEMBER (J)**

**HON'BLE VICE ADMIRAL P. MURUGESAN,
MEMBER (A)**

**ORDER
15.05.2018**

This is an application filed by the applicant seeking quashing of impugned order dated 18th October, 2016 for denying the pensionary benefits to the applicant. Further, it has been prayed that the applicant be paid admissible pension and other consequential pensionary benefits along with arrears with an interest @ 12%.

2. Briefly stated the facts of the case are that the applicant was enrolled in the Indian Navy on

14.01.1948 and retired on 13.10.1961 after rendering 13 years and 1 day's service. The applicant was discharged from Navy on compassionate ground.

3. The case of the applicant is that, although the qualifying period of service, according to the Pension Regulations for the Navy, 1964 (hereinafter referred to as 'Pension Regulations') for grant of pension is 15 years. However, if the period of four years of service rendered by the applicant as 'Artificer Apprentice Sailor' has been taken into account, then he makes out a case for grant of pensionary benefit of having served the respondents for more than 15 years. It has also been stated that, according to the Regulation 82A of the Pension Regulations, a person who takes premature retirement is not entitled to be granted pension, this has been struck down in **Writ Petition (C) No. 166 of 1990 by the Bombay High Court** titled **'Gurumukh Singh & Ors. Vs. Union of India & Ors.'** and, therefore, that cannot be a ground for denying him the pensionary benefits.

4. So far as the qualifying service is concerned, it has been stated by the applicant

that, according to Regulation 82, a period of deficiency of one year can be condoned, though originally it was six months, which would make the total qualifying service in his case to be 15 years. For the purpose of meeting the requirements of qualifying service of 15 years, the learned counsel has also referred to the judgement dated 19.11.2013 in ***O.A. No. 401 of 2013 Surender Singh Parmar Vs. UOI & Ors.*** given by the Principal Bench of the Tribunal, which has been upheld by the Hon'ble Supreme Court.

5. With regard to shortfall of service to make it to 14 years to be eligible for condonation of service by one year, the above judgement of Principal Bench dated 19.11.2013 in OA No. 401 of 2013 observed as follows :-

“18. So far as shortfall of the petitioner's service to the fourteen years is concerned that issue was raised specifically by the UOI and was contested by the petitioner and initially it was challenged by the petitioner because of the reason that in the impugned order dated

14.08.2001 before the Delhi High Court in petitioner's writ petition whereby the petitioner's claim was rejected on the ground that he rendered service of 13 years, 10 months and 13 days only but that order has been set aside by the Division Bench of the Delhi High Court after considering the Government of India instructions of 30.10.1987. The Hon'ble Division Bench of the Delhi High Court firstly did not reject petitioner's Writ Petition on the ground raised by the UOI of shortfall of service to the fourteen years service of the petitioner. Therefore, the issue cannot be re-opened before us."

6. Further, on the same subject of rounding off to 14 years of service, Hon'ble High Court of Delhi in its order dated 06.11.2007 in W.P. (C) No. 12507 of 2004, observed as follows :

"Reliance has been placed on the Govt. of India's Instructions dated 30th October 1987 stating in Para 5 of the Notes that "In calculating the length of qualifying service, fraction of a year equal to three months and above but less than 6 months shall be treated as a completed

one half year and reckoned as qualifying service.” On the strength of this Instruction, learned counsel for the Petitioner contends that the Petitioner would have to be deemed to have served 14 years thereby rendering him eligible for favourable exercise of discretion in condoning the shortfall of one year of service.”

7. While dealing with the judgement of the *Surender Singh Parmar (supra)*, learned counsel for the parties have also referred to Circular issued on 6th August, 1984 and the Circular dated 30th October, 1987 issued by the Government of India for condoning the deficiency of service for the determination of the amount of pension.

It has been contended by the learned counsel for the applicant that based on the aforesaid legal position, not only the Principal Bench but all other Benches of the Tribunal have been condoning the deficiency in service and granting pensionary benefits to the applicants. While doing so, the quantum of qualifying service is also being calculated in terms of Note 5 of the *Surender Singh Parmar’s* case. There is no

dispute about the fact that almost substantial number of Benches of the Tribunal at different places have granted the benefit of deficiency in service to the officials of the respondents so as to make their qualifying service as 15 years, which has well passed over one year also in terms of Circular of 1987 and my Brother Judge has been also a party to some of the judgements.

8. However, when questions have been put to the learned counsel for the parties as to how the benefit of this condonation of deficiency in service can be given at both ends, none of the counsels had an answer to the same.

9. Further, Mr. Anil Gautam, learned counsel for the respondents, has stated that the judgement of *Surender Singh Parmar in OA 401 of 2013* was in *per curiam*, inasmuch as the Note 3 of the Circular of 1987 was not pointed out to the Tribunal. We also feel that the matter requires to be considered by a Larger Bench on number of issues, which arise in the instant case. All these issues/questions are being formulated hereinafter but before doing so, it will be worthwhile to reproduce the relevant regulations and the portions of Circular.

“Service Pension And Gratuity

78. Minimum qualifying service for pension. – Unless otherwise provided, the minimum service which qualifies for service pension is fifteen years.

79. Service qualifying for pension and gratuity. – (1) All service from the date of enrolment or advancement to the rank of ordinary seaman or equivalent to the date of discharge shall qualify for pension or gratuity with the exception of -

(i) any period of service on a temporary establishment or for which a special rate of pay is granted without pensionary benefits;

(ii) any period of service rendered before reaching the age of seventeen years;

(iii) any period of service rendered after the date on which the proceedings of the medical board found the individual unfit for service were countersigned by the Director of Medical Services (Navy);

(iv) any period of unauthorised absence for which pay and

allowance have not been allowed;

Explanation.— Mulcts of pay and allowances awarded for absence without leave under the Act do not amount to disallowances for the purpose of this clause;

(v) Any period of absence without leave which is regularised as extraordinary leave without pay and allowances;

(vi) Any period intervening between the date of dismissal/ discharge/ release and that of its cancellation which is regularised as extraordinary leave without pay and allowances.

(vii) any period of absence as a prisoner of war unless pay and allowances are admitted for the period of absence;

(viii) unless the Central Government, by order, otherwise directs, any period of detention in civil custody before being sentenced to imprisonment or fine;

(ix) any period of imprisonment under the sentence of a civil court or of a court martial, and

(x) any period of absence without leave, as also any period intervening between the date of dismissal/discharge/release and that of its cancellation to the extent it is regularised as extraordinary leave without pay and allowances.

82. Condonation of deficiency, in service for eligibility to service reservist pension. – Except in the case of a sailor

(a) who is discharged at his own request, or

(b) who is eligible for special pension or gratuity under regulation 95, or

(c) who is invalided with less than fifteen years' service, deficiency in the service qualifying for service pension or reservist pension on gratuity may be condoned by competent authority up to six months in each case.”

“84. Rank and group for assessment of service pension. – The service pension shall be assessed on the basis of the rank actually held by an individual continuously whether in a substantive or paid acting capacity and the lowest group for which he was paid during

the last ten months of his service qualifying for pension”.

“85. Condonation of deficiency of service in a particular rank. – A competent authority may, depending on the circumstances of the case, condone a deficiency of service in a particular rank not exceeding three months, except on voluntary retirement.”

“91. Reservists in receipt of service pension. – (1) A reservist who is in receipt of a service pension shall continue to draw such pension in addition to the retaining fee admissible to him while he is in the reserve, or the normal pay and allowances admissible for the duration of the periodical training, as the case may be.

(2) Service in the reserve shall not qualify for any higher pension or for gratuity.”

10. Similarly, relevant extract of Circular dated 6th August, 1984 is as under :

“No.

B/38076/AG/PS4(a)/2190/A/B)(Pension/Services)

***Government of India/Bharat Sarkar
Ministry of Defense/Raksha
Mantralaya***

New Delhi, the 6th August, 1984

***The Chief of the Army Staff,
The Chief of the Naval Staff,
The Chief of the Air Staff.***

***Subject :- Calculation of the length
of qualifying services for
assessment of
pension/Gratuity in
respect of Service
personnel including
Commissioned Officers.***

Sir,

I am directed to say that the President is pleased to decide that in calculating the length of qualifying service for the purpose of pensionary benefits, a fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service for determining the amount of pension and service/DCRG.

2. These orders will have effect from 28th June, 1983.

3. The existing provisions of the Pension Regulations for the three services may be deemed to have been amended in this respect to the aforesaid Regulations will be issued in due course.

This issues with the concurrence of the Finance Division of this Ministry vide their U.O. No. 2748/Pen of 1984.

Yours faithfully,

Sd/-

(Amit Cowshish)
UNDER SECRETARY TO THE
GOVERNMENT OF INDIA

“No. 1(5)/87/D(Pension/Services)
Government of India/Bharat Sarkar
Ministry of Defence/Raksha Mantralaya
New Delhi, dated the 30th October, 1987

To

The Chief of the Army Staff,

The Chief of the Naval Staff,

The Chief of the Air Staff.

Subject :- Implementation of the
Government decision on the
recommendations of the Fourth
Central Pay Commission regarding
pensionary benefits for the Armed
Forces officers and personnel below
officer rank retiring or dying in
harness on or after 1.1.1986.

Sir,

xxx

xxx

Part – I Date of effect and

Definitions

2.1 The provisions of this letter
shall apply to the Armed Forces
personnel who were in service as
on 1.1.1986 or joined / join
service thereafter.

xxx

xxx

xxx

xxx Actual qualifying service
rendered by the individual plus a
weightage of 5 years subject to
the total qualifying Service

***including weightage not
exceeding 33 years***

xxx xxx

xxx

Notes : (1) and (2) xxx xxx

***(3) The above weightage shall
not be reckoned for determining
the minimum qualifying service
specified for admissibility of
Retiring / Service Pension i.e. 20
years for service officers (15
years for late entrants), 15 years
for personnel below officer rank
and 20 years for NCs (E).”***

11. On the strength of the aforesaid rule position, the following questions arise for consideration, which deserve to be considered by the Full Bench in order to settle the controversy at rest :

- (a) Whether the period of service, which a person has rendered as Artificer in the capacity of being less than 18 years of age, can his service be taken into consideration, and if so, to what effect ?
- (b) Whether the judgement in *Surender Singh Parmar's case* is in *per curiam* as it did not consider Note 3 of the relevant Regulations?

- (c) Whether the Tribunal is competent to grant condonation of deficiency in service so as to make a person eligible for grant of pensionary benefit of qualifying service, if so, within how much time it must be applied ?
- (d) Whether the benefit of Circular issued on 6th August, 1984 with regard to grant of quantum of pensionary benefits alone is applicable to an official so as to give him the benefit of condonation of deficiency of service by rounding-off a period of a full year or less than that in terms of the Regulations applicable at the relevant time?
- (e) Whether the Circular, which has been issued on 6th August, 1984 and is specifying that it is prospective in operation inasmuch as the date of implementation of Circular is given, can be made applicable retrospectively, so as to extend the benefit to the applicant who admittedly has retired way back in 1961 ?

- (f) Does the question of laches and delay would arise in granting the aforesaid benefit of condonation of deficiency of service, and if so, to what effect ?
- (g) Any other question which may arise during the course of hearing or is raised by any of the parties.

12. The aforesaid questions, in our view, deserve to be considered by the Larger Bench so as to settle the controversy once for all because *prima facie* we do not agree with the conclusions arrived at by the judgements referred to in this order.

13. List the matter on **9th July, 2018** along with connected matters before the Hon'ble Chairperson for directions.

[JUSTICE V.K. SHALI]
MEMBER (J)

[VICE ADMIRAL P. MURUGESAN]
MEMBER (A)

/ng/

