

**COURT No.1, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

1-6. <u>OA 1439/2016</u> <u>with MA 1085/2016</u>	Ex Sgt. Girish Kumar	
<u>OA 1440/2016</u> <u>with MA 1086/2016</u>	Ex MWO(HFO) Sunil Kumar Saxena,	
<u>OA 1441/2016</u> <u>with MA 1087/2016</u>	Ex (HFO) Kameshwar Prasad Singh	
<u>OA 1448/2016</u> <u>with MA 1091/2016</u>	Ex HFO Chandra Prakash Singh	
<u>O.A. 1452/2016 with</u> <u>MA 1093/2016</u>	Ex Sgt(X) Biplap Kumar Barman	
<u>OA 1663/2017</u> Vs UOI & Ors. ...Respondents	Ex Sep Danesh Kumar	.. Applicants

For Applicant : Mr. Praveen Kumar, Advocate
 Mr. V.S. Kadian, Advocate

For Respondents : Mr. Arvind Patel, Mr. Shyam Narayan,
 Mr. Prabodh Kumar, Mr. Y P Singh and
 Mr. Harish V Shankar, Advocates

CORAM:
HON'BLE THE CHAIRPERSON
HON'BLE MR. JUSTICE SURENDRA VIKRAM SINGH RATHORE
HON'BLE LT. GEN. S.K. SINGH, MEMBER (A)

ORDER
01.12.2017

After pronouncement of the judgement, Mr. Arvind Patel, learned counsel for the respondents has made an oral prayer for grant of leave to appeal Under Section 31 of Armed Forces Tribunal Act, 2007 impugning the judgement of the Larger Bench.

2. We do not find any weightage in the submission made by Mr. Arvind Patel for the reason that the issue which stands answered by the Larger Bench, is with regard to certain anomalies crept in the letter of

the respondents dated 31.01.2001, which have been clarified by various judgments of Hon'ble Supreme Court and followed by the Larger Bench in its decision. We, for that reason, do not find any point of law, much less point of law of general public importance involved in it for granting leave to appeal. It thus stands declined.

(VIRENDER SINGH)
CHAIRPERSON

(JUSTICE SURENDRA VIKRAM SINGH RATHORE)
MEMBER
(J)

(S.K.SINGH)
MEMBER (A)

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

O.A Nos. 1439, 1440, 1441, 1448, 1452 of 2016 and 1663/2017

O.A No. 1439 of 2016 with M.A No. 1085 of 2016:

Ex Sgt. Girish Kumar	..	Applicant
Vs.		
Union of India and others	..	Respondents

O.A No. 1440 of 2016 with M.A No. 1086 of 2016:

Ex MWO (HFO) Sunil Kr. Saxena	..	Applicant
Vs.		
Union of India and others	..	Respondents

O.A No. 1441 of 2016 with M.A No. 1087 of 2016:

Ex (HFO) Kameshwar Prasad Singh	..	Applicant
Vs.		
Union of India and others	..	Respondents

O.A. No. 1448 of 2016 with M.A No. 1091 of 2016:

Ex HFO Chandra Prakash Singh	..	Applicant
Vs.		
Union of India and others	..	Respondents

O.A. No. 1452 of 2016 with M.A No. 1093 of 2016:

Ex Sgt (X) Biplap Kumar Barman	..	Applicant
Vs.		
Union of India and others	..	Respondents

O.A. No. 1663 of 2017:

Ex Sep Danesh Kumar	..	Applicant
Vs.		
Union of India and others	..	Respondents

For Applicants: Maj. Navdeep Singh (Retd), Mr. Praveen Kumar, Mr. S.M. Dalal, and Mr. V.S. Kadian, Advocates

For Respondents: Gp Capt. Karan Singh Bhati (Retd), Sr. CGSC, Mr. Arvind Patel, Col. R. Balasubramaniam (Retd), Mr. Harish V. Shankar, Mr. Prabodh Kumar, Mr. Shyam Narayan, and Ms. Aarti Sharma, and Advocates and Mr. Rooheen Kalra, proxy for Mr. Y.P. Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE VIRENDER SINGH, CHAIRPERSON
HON'BLE MR. JUSTICE SURENDRA VIKRAM SINGH RATHORE,
MEMBER (J)
HON'BLE LT. GEN. S.K. SINGH, MEMBER (A)

Dated: 1st December 2017

ORDER

Per Justice Virender Singh (Chairperson)

This batch of O.As were initially taken by the coordinate bench as per roster assigned and after granting the benefit of broad-banding of the disability element of disability pension, dissented with regard to the arrears to be paid to the applicants as one of the Members (Hon'ble Mr. Justice S.S Satheesachandran, the then Member (J)), held that since the issue of arrears was conclusively decided, therefore, arrears have to be granted to the applicants from 01.01.1996, whereas Hon'ble Lt. Gen. Sanjiv Langer, Member (A), being the Bench partner, in dissention, recorded that the Principal Bench, so far in all similar cases, has been following the law laid down by the Apex Court in *Union of India and others v. Tarsem Singh* (2008) 8 SCC 648 and while awarding

arrears, has been restricting these to the period for three years prior to the date of filing of respective O.A(s). The other view taken by (Member (A)) was that the Principal Bench has not been able to hear the contentions of the rival counsel related to the import and impact of the judgment of the Hon'ble Supreme Court in *Davinder Singh v. Union of India*, passed on the orders of the Chandigarh Bench of this Tribunal in O.A No. 1289 of 2011 dated 04.11.2011 and that the said matter was pending in a batch matter before another co-ordinate Bench of the Principal Bench, therefore a clear determination on the date from which arrears will be applicable was required to be decided by the Tribunal, to set the controversy at rest.

2. This is how the matter was placed before me on the administrative side as Chairperson for appropriate orders.

3. It also came to my notice that with regard to the date of arrears to be made applicable, different Benches of the Armed Forces Tribunal were taking different views, therefore, in order to avoid divergent views and to have a clear determination on the date on which the arrears for broad banding of the disability element of disability pension have to be made applicable, regardless of the delay occurred in filing the application(s), being the central issue having significant bearing on a large number of cases pending before the Benches of the Tribunal, including Principal Bench, it became incumbent upon me to refer the

matter to a Larger Bench. It is in this factual backdrop; the Larger Bench was constituted. However, the instant matter could not be heard on certain dates for one or the other reason, as such some unavoidable delay has occurred.

4. Heard learned counsel for both the sides at length on 10.11.2017 and judgment reserved.

5. Mr. Navdeep Singh, Advocate, taking the lead and virtually appearing for all the applicants, submitted that the question of arrears of **"rounding off/broad-banding"** benefits with effect from 01.01.1996 has already been settled by the Hon'ble Supreme Court and also by certain Regional Benches of the Armed Forces Tribunal and the view thereafter upheld by the Hon'ble Supreme Court also. He submitted that the issue of arrears from a specific date initially came up in case *K.J.S Buttar v. Union of India and another* (2011) 11 SCC 429, where the notification dated 31.01.2001, around which the entire controversy revolves, was discussed and ultimately the Hon'ble Supreme Court, while allowing the appeal, held that the appellant therein was entitled to grant of war injury element of pension with effect from 01.01.1996 and that the disability element of disability pension should be commuted as 75% instead of 50% and that the appellant would be granted arrears with effect from 01.01.1996 with an interest @ 8% per annum.

6. Ld. Counsel further contended that the issue of arrears once again cropped up before the Regional Bench, Chandigarh in *Lt. Gen. Vijay Oberoi v. Union of India and others* (O.A No. 329 of 2009 decided on 04.08.2010), clubbed with other petitions, including *Ram Avtar v. Union of India and others*, where the core question involved was, whether the individual, who had retired or discharged on attaining the age of superannuation or on completing the tenure of engagement, found to be suffering from 20% or more disability, which is attributable to or aggravated by military service and consequently entitled to disability pension, was entitled to the benefit of "rounding off" of the disability element of disability pension, as propounded in the Government of India Office Memorandum No. 45/22/97-P MV (C) dated 03.02.2000 or not on the basis of Para 8.2 of the Ministry of Defence Office Memorandum No. 1(2)/1997/I/D (Pen-C) dated 31.01.2001, which stipulated that the benefit of "rounding off" will not apply to those superannuated from service' and that the Regional Bench, Chandigarh ultimately, while going into a detailed discussion on all the issues, allowed all the applications by striking down the prohibitory stipulation as contained in para 8.2 of the letter dated 31.01.2001 which says that "provisions contained in Para 7.2 shall not be applicable for computing disability element and that disability actually assessed by the duly approved Release Medical

Board/Invaliding Medical Board, as accepted by the Pension Sanctioning Authority, shall reckon for computing disability element".

7. The learned counsel further contended that Union of India being aggrieved of the said judgment, went to Hon'ble Supreme Court, the lead case being C.A No. 418 of 2012 titled *Union of India and others v. Ram Avtar*, and the said appeal was ultimately dismissed by Three Judge Bench of the Hon'ble Supreme Court vide judgment dated 10.12.2014 finding no error in the judgment handed down by the Armed Forces Tribunal, Regional Bench, Chandigarh.

8. Learned counsel contended that thereafter also, in case *Davinder Singh v. Union of India* (C.A No. 9946 of 2016 decided on 20.09.2016), a Three Judge Bench of the Hon'ble Supreme Court, while disturbing the view taken by Regional Bench whereby arrears were restricted, gave the benefit of arrears to the appellant therein with effect from 01.01.1996 while relying upon the view already taken by the Hon'ble Supreme Court in an appeal filed by Union of India in case of Jai Singh and a bunch of 85 cases.

9. Strengthening his case further, Mr. Navdeep Singh also relied upon a judgment of Punjab and Haryana High Court in case *Amarjit Singh v. Union of India* (CWP No. 20936 of 2012 decided on 26.05.2014), wherein also, while modifying the order of the Tribunal, which restricted the arrears for a period of three years, directed the

respondents to grant disability pension and all other benefits and also the "rounding off" of the disability pension in view of the letter dated 31.01.2001. According to learned counsel, the said judgment has also attained finality.

10. On the strength of the aforesaid judgments, Mr. Navdeep Singh thus summed up that, in fact, there had never been any controversy on the question of arrears of "rounding off" with effect from 01.01.1996 i.e. (1996 or the date of retirement or the date of grant of disability/war injury pension, whichever is later) and the same has already been allowed by the respondents vide Ministry of Defence letter dated 15.09.2014 but the benefit of this letter, however, was granted only to the invalided out cases, taking the refuge of the prohibitory situation in an earlier letter dated 31.01.2001, but the said prohibitory situation already stands struck down by the Tribunal in case *Vijay Oberoi/Ram Avtar* (supra) and upheld by the Hon'ble Supreme Court, therefore, the respondents should not join any issue at all about the arrears regardless of the delay in asking for the same by an individual, rather it would be most improper if any hurdle is created in this regard which in turn can be said to be contemptuous.

11. Mr. Bhati, learned Senior Central Government Standing Counsel (Sr. CGSC), per contra, submitted that grant of arrears of broad banding, as asked for from 01.01.1996 even to an individual(s), who

knocks the doors of the Tribunal at a very belated stage, would not only have financial implications, which aspect would have a great relevance while determining the main issue, as thousands of such like individuals would be benefitted with huge amount of arrears from 01.01.1996 or as the case may be, even otherwise on the yardstick of Article 102 of the Limitation Act, the arrears have to be restricted to three years and not that across the board every individual will be entitled to the benefit of arrears, regardless of the delay in moving the Tribunal. In support of his submissions, Mr. Bhati has relied upon three judgments of the Hon'ble Supreme Court titled *D.S. Nakara v. Union of India* (1983) 1 SCC 305; *Tarsem Singh* (supra); and *Asger Ibrahim Amin v. LIC of India* (2016) 13 SCC 797.

12. Mr. Balasubramaniam, Advocate who has also put in appearance for the respondents, contended that Section 22(c) of the Armed Forces Tribunal Act 2007 has itself laid a limitation of three years in dealing with cases before it, amplifying that the Tribunal thus is not competent to grant arrears beyond this limit.

13. The contention of Mr. Balasubramaniam was that three years' restriction imposed in payment of arrears has been held by the Apex Court in case *Tarsem Singh* (supra) and in the said case, there was a delay of 16 years and that the apex Court ultimately held that this delay would affect the consequential claim of arrears, therefore, the High

Court was not justified in directing payment of arrears relating to sixteen years, that too with interest, and it ought to have restricted the relief on arrears only to three years before the date of filing of the writ petition or from the date of demand to date of writ petition, whichever was lesser. Mr. Balasubramaniam also relied upon the judgment of *Madhav Laxman Vaikunthe v. State of Mysore* (1962) 1 SCR 886, which emphasised that on the question of limitation, the suit will be governed by Article 102 of the Limitation Act. He also relied upon other judgments of Apex Court viz. *Anand Swarup Singh v. State of Punjab* (1972) 4 SCC 744, *P.L. Shah v. Union of India* (1989) 1 SCC 546, *M.R. Gupta v. Union of India* (1995) 5 SCC 628, *Shiv Dass v. Union of India and others* (2007) 9 SCC 274 and *Asger Ibrahim Amin* (supra), relied upon by Mr. Bhati as well.

Discussion by the Bench

14. The concept of "broad-banding" was introduced by the 5th Central Pay Commission (5th CPC) to overcome the rigid mathematical calculations and subjectivity of Medical Boards while assessing the percentage of disability. It was stated that the Armed Forces personnel discharged with less than 50% disability would be granted disability element of pension by computing it at 50% rate, those discharged with a disability between 50 and 75% would be granted a disability element @ 75% while those discharged with a disability of above 75% would be granted a disability element by treating the disability at 100%. The said

system of broad-banding was applicable to war injury element rates also. The Ministry of Defence, while issuing the Government letter made the concept applicable only to post-1996 retirees and that too only to those who were medically boarded out (invalided), from service prior to completion of their terms. However, the fact remained that broad-banding was made for removal of medical subjectivity and not a compensation for early retirement, which was equally applicable to all disability pensioners irrespective of the manner of exit.

15. The controversy of "broad-banding/rounding off" issue hence touched two aspects:

- (a) whether pre-1996 retirees were entitled to broad-banding benefits at par with post-1996 retirees and if so, from which date? and
- (b) whether the broad-banding benefit is entitled only to those who are invalided out or also to those who are discharged on completion of their terms or retired on superannuation or otherwise released in low medical category on a disability or war injury pension since such personnel are also to be treated as, 'deemed to have been invalided out' under the Defence Pensionary Rules.

16. This controversy came up before the Armed Forces Tribunal (Regional Bench, Chandigarh) in O.A No. 329 of 2009 (*Vijai Oberoi/Ram Avtar v. Union of India and others* decided on 04.08.2010, wherein the offending clause of policy i.e. Para 8.2 of the Ministry's letter dated 31.01.2001, which prohibited broad-banding benefits granted under Para 7.2 of the same letter to normal cases who were released with a disability on completion of terms/superannuation, etc. was struck down. The decision was thus, *in rem*, obviously as the policy itself was struck down with regard to a particular aspect, which was equally applicable to all affected retirees and there was no restriction of arrears in the judgment. Union of India, however, being aggrieved of the said judgment, went in appeal before the Hon'ble Supreme Court.

17. It needs to be mentioned here that in the case *Jai Singh v. Union of India and others* (T.A No. 1077 of 2010, before Regional Bench, Chandigarh) had also held that in the light of the MoD letter dated 31.01.2001, those who are invalided out on or after 01.01.1996 were entitled to get the benefit of "rounding off" of the disability pension but those who retired/invalided prior to 01.01.1996 were not entitled to get the said benefit.

18. It so happened that in the meantime, the Ministry of Defence issued a letter dated 19.01.2010 granting the benefit of "rounding off" of

benefits to post 1996 retirees also, but with arrears from 01.07.2009 and not from 01.01.1996 and that too only to invalidated out cases.

19. The issue with regard to the cut-off date in the aforesaid letter came up for consideration before the Hon'ble Supreme Court in *K.J.S Buttar v. Union of India* (2011) 11 SCC 429), in which it was held that those who retired/invalidated prior to 01.01.1996 are also entitled to the benefit of "rounding off". The relevant paragraphs of the said judgment run as follows:

"14. In our opinion the appellant was entitled to the benefit of para 7.2 of the instructions dated 31.1.2001 according to which where the disability is assessed between 50% and 75% then the same should be treated as 75% and it makes no difference whether he was invalidated from service before or after 1.1.1996. Hence the appellant was entitled to the said benefits with arrears from 1.1.1996 and interest at 8% per annum on the same.

17. At any event, we have held that there will be violation of Article 14 of the Constitution if those who retired/were invalidated before 1.1.1996 are denied the same benefits as given to the who retired after that date."

20. In the year 2012, the respondents finally issued a policy stating that all pre-1996 cases should be conceded in Courts with financial effect from 01.01.1996 rather than 01.07.2009. It was also noted that in case of civilian disability pensioners, there was no such restriction of a cut-off date of 1996. This is how, in the year 2014, the

Ministry of Defence, issued a formal policy dated 15.09.2014 granting arrears with effect from 01.01.1996, thereby settling the issue of arrears from 1996 once and for all. The policy, however, did not provide benefits to those who were released on completion of terms or superannuation, etc. since the fresh letter dated 15.09.2014 still quoted the prohibitory stipulation of letter dated 31.01.2001, which had already been struck down and became *non est*. In effect, though this letter dated 15.09.2014 provided for benefits with effect from 1996 only to invalided out cases, the letter was legally applicable to all cases of disability pension since the difference between invalided out and others and the prohibitory stipulation of letter dated 31.01.2001 had already been set aside in *Vijay Oberoi/Ram Avtar*(supra).

21. It would be relevant to mention here that the appeal filed by the Union of India in *Vijai Oberoi/Ram Avtar* (supra) came up before a Three Judge Bench of the Hon'ble Supreme Court on 10.12.2014, thereby finally upholding the striking down of the prohibitory stipulation, vide which broad-banding was being refused to cases other than those who are invalided out. The striking down having been upheld, this at last cleared the decks for the release of benefits to all affected disabled personnel since the prohibitory stipulation no longer remained on the rule book. The operative part of the said order is reproduced below:

"4. By the present set of appeals, the appellant(s) raise the question, whether or not, an individual, who has retired on attaining the age of superannuation or on completion of his tenure of engagement, if found to be suffering from some disability which is attributable to or aggravated by the military service, is entitled to be granted the benefit of rounding-off disability pension. The appellant(s) herein would contend that, on the basis of Circular No.1(2)/97/D(Pen-C) issued by the Ministry of Defence, Government of India, dated 31.01.2001, the aforesaid benefit is made available only to an armed Forces Personnel who is invalidated out of service, and not to any other category of Armed Forces Personnel mentioned hereinabove.

5. We have heard learned counsel for the parties to the lis.

6. We do not see any error in the impugned judgement(s) and order(s) and therefore all the appeals which pertain to the concept of rounding-off of the disability pension are dismissed, with no order as to costs"

22. The genesis of the issue, in fact, stems from judgement of the Hon'ble Supreme Court in *Union of India and others v. Ram Avtar*(C.A No. 418 of 2012 decided on 10.12.2014).

23. Though full arrears were granted in the case *K.J.S Buttar* (supra) and also in the case *Ram Avtar* (supra), certain Regional Benches of the Armed Forces Tribunal started granting arrears from 01.01.1996, but at the same time, certain Benches restricted the arrears to three years, which came to be challenged by affected parties before the Hon'ble Supreme Court and various High Courts and ultimately, this

issue once again landed before the Three Judge Bench of Hon'ble Supreme Court originating from a matter decided by Regional Bench, Chandigarh in case *Davinder Singh v. Union of India* (O.A No. 1289 of 2011). In the said case, Regional Bench, Chandigarh, while allowing the application of the applicant and granting him the benefit of broad banding of the disability element of disability pension, restricted the arrears for a period of three years from prior to the date of filing of the O.A. It is that part, which was challenged by the applicant before the Hon'ble Supreme Court in Civil Appeal No. 9946 of 2016. Before taking up *Davinder Singh* matter, the Hon'ble Supreme Court had already disposed of *Jai Singh's* case originating from T.A No. 1077 of 2011 and held that pre-1996 retirees were also entitled to broad banding of disability pension and that arrears were also be given to them from 01.01.1996 with interest @ 8% per annum. It is thereafter, when *Davinder Singh's case (Supra)* came up for consideration before the Hon'ble Supreme Court with regard to the arrears of broad banding of disability pension, it was observed as under:

"Learned counsel for the appellant argued that the Tribunal has while holding the appellant entitled to the benefit of rounding off inter alia placed reliance on a similar order passed by the Tribunal in a bunch of 85 cases allowed and disposed off vide order dated 06.04.2011 in T.A.No. 1077 of 2010 (Jai Singh Vs. UOI & Ors.) along with other connected cases. The said order when challenged before this Court was affirmed. From a reading of the order passed by the Tribunal in Jai Singh's case supra, it is evident that the Tribunal had while allowing the batch of petitions held the appellants therein,

who were retirees prior to 01.01.1996, to the benefit of rounding off of disability pension as per letter dated 31.01.2001. The benefit was given w.e.f. 01.01.1996. Arrears w.e.f. 01.01.1996 with interest @ 8% p.a. were also allowed. It is argued by learned counsel for the appellant that arrears w.e.f. 01.01.1996 having been allowed by the High Court in the relied upon judgment with interest @ 8% p.a., there was no reason for reducing the said period to three years only immediately prior to the filing of the petition in the case of the appellant. It is submitted that this Court having already affirmed the view taken in Jai Singh's case, similar relief could be granted to the appellant also. We find merit in that submission. From a perusal of the order passed in Jai Singh's case, it appears that while most of the cases disposed of in the said batch were transferred cases where writ petitions had been filed earlier than 2010, there were half a dozen fresh cases that were filed in the year 2010 and later. The Tribunal had notwithstanding the delay in the filing of the O.As granted redress to the petitioners in the said batch of cases w.e.f. 01.01.1996 with interest @ 8% p.a. That being so and the order passed by the Tribunal in Jai Singh's case and batch of cases having been affirmed by this Court, we see no distinction between the cases dealt with by the Tribunal in that batch and the appellant's case to warrant a differential treatment to him in the matter of grant of arrears. We accordingly allow this appeal and modify the order passed by the Tribunal to the extent that the appellant shall also on the analogy of the order passed by the Tribunal in Jai Singh's case supra be entitled to arrears payable to him by reason of rounding off of disability pension w.e.f. 01.01.1996 with interest @ 8% p.a. subject to the adjustment of any amount already received by him for the said period....."

24. The question of arrears was also specifically dealt with in detail by the Regional Bench, Chandigarh in *Labh Singh v. Union of India and others*, lead case being O.A No. 1370 of 2011 (clubbed matters) decided on 22.12.2011 and also *Ved Prakash and others v. Union of India* (O.A No. 1960 of 2012 decided on 03.08.2012), wherein the Union of India knocked the doors of the Hon'ble Supreme Court in one of the cases, in which initially leave was granted and notice issued, but ultimately all those matters were tagged with the case *Ram Avtar* (supra) and dismissed by the Hon'ble Supreme Court upholding the decision of the Tribunal.

25. Thus there appears to be no controversy now existing on the question of arrears of broad banding with effect from 01.01.1996 (i.e. 1996 or the date of retirement or the date of grant of disability/war injury pension, whichever is later) in the light of the decisions already rendered by the Hon'ble Supreme Court in cases *Ram Avtar*, *Davinder Singh*, *Jai Singh*, *Labh Singh* and *Ved Prakash* (supra) and that the same also having been granted by the Ministry of Defence in its letter dated 15.09.2014, wherein, in Para 2, it is stated as under:

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2. Consequent upon receipt of reference from various Pensioners' Associations for extending the provisions regarding broad banding of percentage of disability to such pre

– 1.1.1996 Armed Forces Pensioners from 1.1.1996 itself, the matter has been suitably examined in this Ministry. In partial modification of this Ministry's above said letter dated 19th January 2010, the President is now pleased to decide that with effect from 1.1.1996, the benefit of broad banding of percentage of disability/war injury shall be allowed to Armed Forces Officers and PBOR pensioners who were invalided out of service prior to 1.1.1996 and were in receipt of disability element/war injury element as on 1.1.1996. In such cases where the pensioner was not in receipt of disability element as on 1.1.1996 but became entitled at a later stage due to reassessment of disability more than 20%, this benefit shall be allowed from the same date. Similarly, in those cases where the pensioners were in receipt of disability element/war injury element as on 1.1.1996 but the same was discontinued at a later stage due to reassessment of disability as less than 20%, the disability element/war injury element shall be discontinued from the later date as hitherto. However, in those pre-1.1.1996 cases where the disability element/war injury element was not allowed for disability being accepted as less than 20% at initial stage or subsequent stage on reassessment of disability, the same will continue to be disallowed and such cases will not be re-opened.

26. So the remaining controversy was not about the arrears at all, but the admissibility of the arrears to those other than invalided out, which has now been decided by the Hon'ble Supreme Court. The policy, however, did not provide benefit to those who were released on completion of terms or superannuation, etc. since the fresh letter dated

15.09.2014 still quoted the prohibitory stipulation of the letter dated 31.01.2001, which reads as under:

"The undersigned is directed to refer to the provisions stipulated in Para 7.2 of this Ministry's letter No. 1(2)/97/D (Pen-C) dated 31.1.2001 through which the concept of broad banding of percentage of disability/war injury was introduced in respect of those Armed Forces Officers and Personnel Below Officer Rank who were invalided out of service on or after 1.1.1996 on account of disability/war injury accepted as attributable to or aggravated by Military Service. The said provisions for determining extent of disability/war injury was also extended to pre – 1.1.1996 invalided out cases from 1.7.2009 vide this Ministry's letter No. 10(1)/D (Pen/Policy) 2009/Vol II dated 19.1.2010 provided that the Armed Forces personnel were in receipt of disability element/war injury element for disability more than 20% as on 1.7.2009."

27. This was struck down, therefore, it was *non est*. In effect, though this letter dated 15.09.2014 provided for benefits with effect from 1996 only to invalided out cases, the letter was legally applicable to all the cases of disability pension since the difference between invalided out and others and the prohibitory stipulation of letter dated 31.01.2001 had already been set aside.

"2. Consequent upon receipt of reference from various Pensioner's Associations for extending the provisions regarding broad banding of percentage of disability to such pre-1.1.1996 Armed Forces pensioner from 1.1.1996 itself, the matter has been suitably examined in this Ministry. In partial modification of this Ministry's above said letter dated

19th January 2010, the President is now pleased to decide that with effect from 1.1.1996, the benefit of broad banding of percentage of disability/war injury shall be allowed to Armed Forces Officers and PBOR pensioners who were invalided out of service prior to 1.1.1996 and were in receipt of disability element/war injury element as on 1.1.1996."

28. So in our considered view, the Hon'ble Supreme Court has removed the anomaly with regard to disability element of disability pension, from the date of its inception and not from any future artificial date, therefore, the benefits must flow to all affected parties without having to litigate for it. This aspect can be seen, yet from another angle. Where the right was already existing by way of rule or policy and the amount is illegally held back from an individual or where there is a vested right arising out of an *in rem* decision by the Hon'ble Supreme Court and the respondents do not give effect to the judgment, thereby forcing the affected parties to litigate, the entitlement starts from the date the amount falls due, and the entitlement of the entire arrears starts from the same date.

29. The issue here revolves around pension and pension is the property of the pensioner and the respondents cannot be allowed to usurp his right or property. Pension has been recognised as 'property' under Article 300-A of the Constitution by the Apex Court in the case

State of Jharkhand v. Jitendra Kumar Srivastava and another (2013) 12 SCC 210.

30. We may mention here that on the issues discussed hereinabove the Hon'ble Supreme Court after observing favourably has made it amply clear that the respondents themselves are expected to base their actions and policies in terms of the decisions. Therefore in our view, no delay or laches or restriction of arrears can be argued in such cases. In other words, the affected pensioners cannot be made to suffer due to the respondents' own fault in not following the law laid down and no restriction on arrears can be effectuated. In short, the respondents cannot take the benefit of their own wrong. Ideally, the respondents themselves are supposed to grant the benefits to all affected parties without forcing them to approach the Courts. Arrears in such cases must flow in the same terms as laid down by the Hon'ble Supreme Court without any additional factors or restrictions, irrespective of the fact whether the person approaches the Court or not.

31. We first of all advert to the arguments advanced by Mr. Balasubramaniam that Section 22(c) of the Act has itself laid a limitation of three years in dealing with the cases before it. In short, Mr. Balasubramaniam wanted to convey that the Tribunal is not competent to grant arrears beyond this limit. The relevant provisions are quoted as under:

"In a case where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which jurisdiction, powers and authority of the Tribunal became exercisable under this Act, in respect of the matter to which such order relates and no proceedings for the redressal of such grievance had been commenced before the said date before the High Court."

A plain reading of the above provision will clarify that the same pertains to admitting of cases after establishment of the Armed Forces Tribunal and is not applicable to payment of arrears in broad banding a medical disability, which we are dealing with at present. Even otherwise, the limitation of three years in admission of cases can be waived as per the provisions of Section 22(2) of the said Act. Therefore, the contention of the learned counsel has no application at all in this case and is totally misconceived, although an attempt was made to make it somewhat attractive. Section 22(1)(c) has been incorporated in the Statute Book altogether in a different context where an individual, before knocking the doors of the Armed Forces Tribunal, had not initiated any proceedings for redressal of the grievance in the High Court before the date on which the jurisdiction, power and authority of the Tribunal had become exercisable under the said Act. Sub clause (c) of Section 22(1) of the Armed Forces Tribunal Act is, in fact, a leverage to an individual for the

redressal of his grievance and should not be taken as if beyond three years if any application is filed, it cannot be condoned by the Tribunal.

32. It needs to be mentioned here that the Regional Bench, Chandigarh had occasion to deal with Sections 21 and 22 in Chapter IV of the Act in case *Bakshi Chand v. Union of India and others* (R.A No. 235 of 2015 in O.A No. 670 of 2016 decided on 09.02.2017) with regard to an issue of arrears. In fact, it was a review application. It was with regard to a Havildar who was granted the honorary rank of Naib Subedar and after retirement was held entitled to be paid the pension of Naib Subedar. He was held entitled on the basis of the judgment passed in O.A No. 42 of 2010 *Virender Singh and others v. Union of India and others* decided on 08.02.2010, (subsequently allowed by Apex Court) in which the following directions were issued:

"In case these benefits were to be extended to Havildars granted honorary rank of Naib Subedar on or after 01.01.2006, it would introduce serious disparities within the same class and category of individuals i.e. Honorary Naib Subedars of pre and post 01.01.2006. This would be arbitrary and discriminatory.

In view of the facts and circumstances of the case the application is allowed. Respondents No. 1 to 6 are directed to implement the Government instructions and release the entitled pension with arrears wef 01.01.2006 to Honorary Naib Subedars within three months of the receipt of the order."

The said judgment was affirmed by the Hon'ble Supreme Court. While dealing with another case titled *Baldev Singh and others v. Union of India and others* (O.A No. 3146 of 2013, etc. decided by the Regional Bench, Chandigarh, it was observed as follows:

"6. In the case of Baldev Singh (supra), the order held as follows:

'30. It is, therefore, clear that not only the case of the petitioners in Virender Singh's case (supra) was allowed but the respondents were also directed to implement the Government instructions and to release the entitled pension with arrears w.e.f. 01.01.2006 to honorary Naib Subedars as per the Government instructions. This clearly shows that the directions were specifically issued to grant such arrears to honorary Naib Subedars and the directions were not restricted to the petitioners only (Emphasis supplied). The said order has been affirmed by Hon'ble Supreme Court when Their Lordships dismissed the Special Leave Petition against the said order as mentioned above'.

7. In Baldev Singh (Supra), the order cited from S.R. Bhanrale Vs Union of India, 1997 AIR (SC) 27 = 1996 (10) SCC 172, Civil Appeal No. 9489 of 1996 decided on 19.07.1996, S.K. Mastan Bee Vs The General Manager, South Central Railway, 2003 (1) SCC 184 – 2002 (7) SLR 1, Civil Appeal No. 8089 of 2002 decided on 04.12.2002, Nirmaljit Singh and others Vs Punjab State Electricity Board, 2008(1) SCT 494 = 2008(3) SLR 542, CWP No. 1070 of 2007 decided on 11.12.2007, Smt. Om Pati Vs State of Haryana, 2007(1) SCT 294 (P&H), Sanjeev Prabhakar and others Vs Union of India and others, W.P (C) 5795 of 2012, decided on 2.4.2012 and Ex Nk Singheswar Singh Vs Union of India and others, WP (C) No. 9186 of 2009 decided on 28.08.2009 and K Venkittaraman Vs Indian Air Force Benevolent Fund Association, WA No. 1002 of 2010, decided on 12.11.2010 and finally on the point of limitation concluded as follows:-

'33. *It follows from above discussion that once the general directions were issued in Virender Singh's case (supra) and the judgment was judgment in rtem and the said judgment had been affirmed by Hon'ble the Supreme Court, the respondents were required to implement the instructions in regard to all honorary Naib Subedars and not only to those who approached the Tribunal relying upon Virender Singh's case (supra). From the date the said order was passed on 08.02.2010 all those persons similarly placed as petitioners in Virender Singh's case (supra) were entitled to the pension of Naib Subedar and it was not necessary for them to approach the Court for the relief. Therefore, it is clear that once the issue had been settled, it was not open and the directions in general having been issued, made the respondents liable to pay the revised pension to every such person and they cannot claim that they must approach the Court and then only they will be entitled to the relief. A right had accrued to such persons similarly placed and they were entitled to the benefit and revised pension ought to have been issued which could not be denied to them that they have approached the Court after three years and, therefore, the arrears could be restricted to three years only. Once a right had accrued to them and the respondents were required to issue the revised pension order, no limitation can be placed holding that the petitioners who approached the Court will be entitled to arrears for a period of three years only.*

34. *In view of the above discussion, we accordingly hold that all such petitioners who are similarly placed as in Virender Singh's case (supra), are entitled to the revised pension with effect from 01.01.2006 as directed in Virender Singh's case (supra), and no restriction can be placed upon their entitlement for three years only and all such objections taken by the respondents in this regard are liable to be rejected, which are rejected accordingly.*"

33. In the review application, the Union of India took two grounds viz. (i) that the grant of arrears should be restricted to six months before filing of the O.A in view of the judgment in O.A No. 1111 of 2012 *Jaswant Singh v. Union of India and others* decided on 28.08.2012 and in the case *Kishan Lal* in O.A No. 722 of 2013 decided on

12.02.2014; and (ii) the application was highly belated as there is a delay of 24 years in filing the petition and that no representation or appeal was filed before the respondents as provided under Section 21 of the AFT Act. The Tribunal, of which I was the Bench partner as Member (J), closely scrutinised the AFT Act *and observed as under:*

"10. A close scrutiny of the AFT Act reveals, that the concept and condonation of delay has been applied by the AFT Act only to serving personnel and their statutory remedies under the Army Act or rules/regulations thereunder. This simply means, that it applies to remedies under Section 26 and 27 of the Army Act (and corresponding provisions of the Air Force and Navy Acts), which at best would apply to ACRs, promotions etc., since delay can affect third party rights, for which concept of delay would definitely come into play. The concept of delay on pension, has already been set aside by Constitutional Courts by ruling that this is a recurring right and as such, the concept of delay would not apply.

11. In Baldev Singh (Supra) the only issue framed by the Bench was "whether the petitioners are entitled to the amount as granted in their favour with effect from 01.01.2006 or the arrears can be restricted to three years or 38 months." After discussing all issues, the order held, that the petitioners are similarly placed as in Virender Singh's case (Supra) and no restriction can be placed on their arrears for three years only and all such objections of the respondents in this regard are rejected:" the Civil Appeal filed by Union of India as CA 4677 OF 2014 Union of India and others Vs Subhash Chander Soni, was dismissed by the Hon'ble Supreme Court on 20.05.2015. Therefore, the issue stands finally settled. In support of the above, we may

gain fully quote from the order passed in the case of Baldev Singh (Supra). Relevant paras 24 to 26 are reproduced below:

"24. The submissions made by the learned Central Government Counsel for the Union of India were that the limitation for filing such petitions is within six months from the date of order under Section 22 of the Act, which were not filed by the petitioners well in time. It was also submitted that the petitioners are not entitled to appears prior to three years of filing of the petitions at the most and the order allowing the petitions should be restricted to three years prior to the filing of the petition. The contention put forward in support of the above submissions was that the judgement in Virender Singh's case (supra) was passed on 09.02.2010 and the petitions had the cause of action to file petitions and claim arrears within three years only and prior to three years they are not entitled to the pension claimed by them.

25. We have considered the submissions in the light of the judgments referred to above and we are of the view that the petitioners in these petitions have not challenged the notification issued by the Ministry of Defence dated 06.09.2019 (Annexure A-1 in Virender Singh's case) and the said letter was interpreted to mean that the said letter takes effect from 01.01.2006 and it does not discriminate between the pre 01.01.2006 retirees or post 01.01.2006 retirees. The date for the implementation of the order was from 01.01.2006 and not that it distinguished between honorary Naib Subedars or pre and post 01.01.2006. The validity of the said letter and its interpretation was affirmed by the judgment in Virender Singh's case (supra). The said orders are not being challenged by the present petitioners in these cases, but they have relied upon Virender Singh's case (supra) to hold that the entitlement to the pension of Naib Subedar had only been clarified or reiterated from the date of the judgment i.e. 08.02.2010 and they had not challenged any order of the Union of India to hold that the same should have been challenged within six months from the date of the order. The validity of the said order dated 03.06.2009 has already been affirmed by the Bench of this Court in Virender Singh's case (supra) and that is not an issue before us.

26. The petitioners had not challenged any order and therefore, the limitation of six months was not applicable to the case of the petition.

12. In Baldev Singh (Supra), the learned counsel for the respondents had submitted, that the question of restricting arrears to six months in accordance with AFT Act,

2007, or to 36 months in consonance with the Limitation Act was settled by the Tribunal in a bunch of cases led by Jaswant Singh Vs Union of India, OA 1111 of 2012 decided on 28.08/2012 and notwithstanding a recurring right like pension, delay by the claimant would result in restricting the arrears as per law. He made a plea for Leave to Appeal to Hon'ble Supreme Court which was granted. By the judgment of Baldev Singh (Supra), 35 cases were decided, but the respondents filed the appeal only in one case as Union of India and others Vs Subhash Chander Soni which was dismissed on 20.05.2015, thus affirming the order of this Tribunal in Baldev Singh (Supra).

13. In another case, TA 674 of 2010 (arising out of CWP 10561 of 2009), balbir Singh Vs Union of India and others decided on 14.12.2010, this Bench restricted the arrears of service element to three years prior to filing of the writ petition. The petitioner went in appeal and the HON'BLE Supreme Court in Civil Appeal No. 3086 of 2012 decided on 08.04.2016, modified the order of this Tribunal with the direction "that the appellant shall be paid service element of pension with effect from the date of said payment was stopped by the respondents." More recently in another case, OA 1289 of 2011 Davinder Singh Vs Union and others decided on 04.11.2016, this Bench had while granting rounding off, restricted the entitlement to a period of three years prior to filing of the OA. The petitioner went in appeal and the Hon'ble Supreme Court in Civil Appeal 9446 of 2016(arising out of SLP (CC) 3353 OF 2012), decided on 20.09.2016 in the extent "that the appellant shall also on the analogy of the order passed by the Tribunal in Jai Singh's case (Supra) be entitled to arrears payable to him by reason of rounding off of disability pension wef. 01.01.1996."

14. We note from the above, that the Hon'ble Supreme Court has consistently held that the arrears would be

payable from the date the individual stood entitled to them. Under these circumstances it does not behove the respondents to take up this issue on one pretext or the other. We also note that a large number of Reviews and Leaves to Appeal have been filed in cases covered by Virender Singh. We were informed by the learned counsel for the respondents that they have received instructions to file review in each case covered by Virender Singh. We are unable to appreciate the logic of such instructions. The respondents should review their policy in view of the wastage of funds and time and the National Litigation Policy.

34. Ultimately, the review petition filed by the Union of India was dismissed. We have been informed by Mr. Navdeep Singh, learned counsel for the applicant that the aforesaid view taken by the Regional Bench, Chandigarh has attained finality and that the Ministry of Defence has reviewed the policy and gave all the arrears.

35. A close scrutiny of the AFT Act reveals, that the concept and condonation of delay has been applied by the AFT Act only to serving personnel and their statutory remedies under the Army Act or rules/regulations thereunder. This simply means, that it applies to remedies under Section 26 and 27 of the Army Act (and corresponding provisions of the Air Force and Navy Acts), which at best would apply to ACRs, promotions etc., since delay can affect third party rights, for which concept of delay would definitely come into play. The concept of delay on pension, has already been set aside by Hon'ble Supreme Court by

ruling that this is a recurring right and as such, the concept of delay would not apply.

36. In *Baldev Singh* (supra), the only issue framed by the Bench was "*whether the petitioners are entitled to the amount as granted in their favour with effect from 01.01.2006 or the arrears can be restricted to three years or 38 months.*" After discussing all issues, the order held, that the petitioners are similarly placed as in *Virender Singh's* case (Supra) and no restriction can be placed on their arrears for three years only and all such objections of the respondents in this regard are rejected." Therefore, the issue stands finally settled. In support of the above, we may gain fully quote from the order passed in the case of *Baldev Singh* (Supra). The relevant paragraphs, Para 24 to 26, are reproduced below:

"24. The submissions made by the learned Central Government Counsel for the Union of India were that the limitation for filing such petitions is within six months from the date of order under Section 22 of the Act, which were not filed by the petitioners well in time. It was also submitted that the petitioners are not entitled to appear prior to three years of filing of the petitions at the most and the order allowing the petitions should be restricted to three years prior to the filing of the petition. The contention put forward in support of the above submissions was that the judgement in *Virender Singh's* case (supra) was passed on 09.02.2010 and the petitions had the cause of action to file petitions and claim arrears within three years only and prior to three years they are not entitled to the pension claimed by them.

25. *We have considered the submissions in the light of the judgments referred to above and we are of the view that the petitioners in these petitions have not challenged the notification issued by the Ministry of Defence dated 06.09.2019 (Annexure A-1 in Virender Singh's case) and the said letter was interpreted to mean that the said letter takes effect from 01.01.2006 and it does not discriminate between the pre 01.01.2006 retirees or post 01.01.2006 retirees. The date for the implementation of the order was from 01.01.2006 and not that it distinguished between honorary Naib Subedars or pre and post 01.01.2006. The validity of the said letter and its interpretation was affirmed by the judgment in Virender Singh's case (supra). The said orders are not being challenged by the present petitioners in these cases, but they have relied upon Virender Singh's case (supra) to hold that the entitlement to the pension of Naib Subedar had only been clarified or reiterated from the date of the judgment i.e. 08.02.2010 and they had not challenged any order of the Union of India to hold that the same should have been challenged within six months from the date of the order. The validity of the said order dated 03.06.2009 has already been affirmed by the Bench of this Court in Virender Singh's case (supra) and that is not an issue before us.*

26. *The petitioners had not challenged any order and therefore, the limitation of six months was not applicable to the case of the petition.*

37. In *Baldev Singh* (supra), the learned counsel for the respondents had submitted, that the question of restricting arrears to six months in accordance with AFT Act, 2007, or to 36 months in

consonance with the Limitation Act was settled by the Tribunal in a bunch of cases led by *Jaswant Singh Vs Union of India*, O.A No. 1111 of 2012 decided on 28.08.2012 and notwithstanding a recurring right like pension, delay by the claimant would result in restricting the arrears as per law. He made a plea for Leave to Appeal to Hon'ble Supreme Court which was granted. By the judgment of *Baldev Singh (Supra)*, 35 cases were decided, but the respondents filed the appeal only in one case as *Union of India and others Vs Subhash Chander Soni* which was dismissed on 20.05.2015, thus affirming the order of this Tribunal in *Baldev Singh (Supra)*.

38. In another case, TA 674 of 2010 (arising out of CWP 10561 of 2009), *Balbir Singh Vs Union of India and others* decided on 14.12.2010, the Tribunal restricted the arrears of service element to three years prior to filing of the writ petition. The petitioner went in appeal and the Hon'ble Supreme Court in Civil Appeal No. 3086 of 2012 decided on 08.04.2016, modified the order of this Tribunal with the direction "that the appellant shall be paid service element of pension with effect from the date of said payment was stopped by the respondents." At the cost of repetition, we, once again may refer to Davinder Singh's case (*supra*) decided by Three Judge Bench of the Hon'ble Supreme Court.

39. In our view, the judgments relied on by Mr. Bhati or Mr. Balasubramaniam, Ld. Counsel appearing for the respondents would not put them to any advantageous position with regard to the issue involved herein. They heavily relied on the case *Tarsem Singh* (supra), where there is a reference to the case *Shiv Dass* (supra). No doubt that some of the Regional Benches, including the Principal Bench, of the Tribunal, following the ratio of the case *Tarsem Singh* (supra), and while allowing the application(s) for condonation of delay, have been restricting the arrears to three years from the date of filing of the application(s), but now we are examining the aspect of grant of arrears of broad banding of the disability element of disability pension in more detail with regard to the entitlement of Defence personnel of three wings i.e. Army, Navy and Air Force, on the strength of the letter dated 31.01.2001 issued by Ministry of Defence, Government of India itself.

40. The cases *Shiv Dass* and *Tarsem Singh* (supra) are on different set of facts. In the case *Shiv Dass* (supra), right to claim disability pension did arise or was claimed to have arisen on sustaining injury and being invalided out in 1984 and in the case *Tarsem Singh* (supra), right arose to claim disability pension when he was invalided out in 1983, and the question was examined by the Hon'ble Supreme Court from the point of accrual of the right and/or it being a continuing wrong, and different judgments are rendered while the point of discussion

before us stand entirely on a different footing falling initially within four corners of Government of India's letter dated 31.01.2001, when the entitlement to broad banding came into existence for the first time. Obviously, till that date, there was no occasion for anyone to stake any claim for broad-banding whether pre-1996 retiree(s) or post-1996 retiree(s) and from this letter of 31.01.2001 only, the entitlement was made with effect from 01.01.1996 or the date of occurring disability or invalidment, whichever is later. If at all any litigation could be initiated, then, in that event, it could only be for challenging the restriction contained in the letter dated 31.01.2001 and it is how the case *K.J.S Buttar* (supra) came into being. It is much later thereafter, during the pendency of above challenges by Government of India's letter dated 19.01.2010, the President of India was pleased to decide that the concept of broad-banding of percentage of disability/war injury, as provided in Para 7.2 of the letter dated 31.01.2001 shall be extended to Armed Forces officers and PBORs, who are invalided out of service prior to 01.01.1996. It is a different story that this extension of entitlement, as noticed above, was made subject to many ***ifs and buts*** but then the entitlement did come into existence in its own right for the first time by the letter dated 19.01.2010 and in that, pre-1996 retiree(s) could straight away stake their claim(s) for broad banding before the issuance of the communication and post-1996 retiree(s) could straight away stake

their claim(s) before the issuance of this communication. It is thereafter that many judicial pronouncements were made by the Hon'ble Supreme Court upholding the view of the Regional Bench, Chandigarh, wherein most of the controversies cropped up because of number of applications filed in that Bench and that the Hon'ble Supreme Court has now clarified all the anomalies in the initial letter dated 31.01.2001 making it clear for the individuals of the three wings who were in receipt of disability pension, either pre or post-1996 retiree(s), including the mode of their exit.

41. The other four judgments in cases *Madhav Laxman Vaikunthe*; *Anand Swarup Singh*; *P.L. Shah*; and *Asger Ibrahim Amin*(supra) have restricted the arrears from a particular date, applying Article 102 of the Limitation Act 1908. It needs to be mentioned here that in the case *Anand Swarup*(supra), while restriction the arrears of pension for three years preceding the suit filed by the appellant/plaintiff, relied upon the case *Madhav Laxman Vaikunthe* (supra). In the case *P.L. Shah* (supra), the appellant was suspended from service pending criminal proceedings against him about 13 years ago in 1975 and by an order of August 1975, he was sanctioned subsistence allowance @ 50% of his salary last drawn. Thereafter, the subsistence allowance was reduced to 25% of the salary he was drawing on the date of suspension. The increment he would have earned from time to time and the

periodical revision of pay scales were also not taken into consideration in determining the subsistence allowance. It was not clear as to whether the appellant was responsible for the inordinate delay in the disposal of the case instituted against him. While the case was pending, the appellant approached, in the year 1998, the Central Administrative Tribunal for a direction to be issued to the Government to restore the original order dated 04.08.1975. The Tribunal dismissed the petition on the ground that the appellant had approached the Tribunal more than five years after the date on which the order dated 06.05.1982 had been passed, apparently on the ground of limitation set out in Section 21(2) of the Administrative Tribunal Act 1985. The said order was set aside by the Hon'ble Supreme Court and remanded the case back to the Tribunal for disposal on merits. It was held by the Hon'ble Supreme Court that the Tribunal was not right in rejecting the application solely on the ground that the order reducing the subsistence allowance having been passed on 06.05.1982, the Tribunal could not entertain an application for directing the Government to revise the order dated 06.05.1982 even in respect of any period within three years from the date on which the Tribunal commenced to exercise its powers having due regard to the date of the application also. The Hon'ble Supreme Court ultimately held as under:

"7. In the circumstances, the Tribunal was not right in rejecting the application solely on the ground that the order reducing the subsistence allowance having been passed on May 6, 1982 the Tribunal could not entertain an application for directing the government to revise the order dated May 6, 1982 even in respect of any period within three years from the date on which the Tribunal commenced to exercise its powers having due regard to the date of the application also since we feel that the cause of action in respect of such prayer arises every month in which the subsistence allowance at the reduced rate is paid. We, therefore set aside the order of the Tribunal and remand the case to it to dispose of the application made by the appellant on merits. We make an order accordingly."

42. In the case *Asger Ibrahim Amin* (supra), while dealing with the effect of delay and laches on entitlement to pension, Their Lordships held that in cases of continuing or successive wrong, delay/laches/limitation will not throw claim, so long as claim, if any, does not have adverse repercussions on settled third party rights. However, due to the extreme delay in the said case, on its own facts, benefits of arrears of pension were restricted to three years preceding when claim was raised in judicial forum. In the said case, it was held that though the appellant was found entitled to pension, but, considering the huge unexplained delay in approaching the Court, (i.e. appellant allowed to resign on 28.02.1991), enquired about his entitlement to pension from respondent on 08.08.1995 after promulgation of LIC Pension Rules, 1995, and approached court on 29.03.2012 against rejection of his claim for pension), benefit of arrears of pension limited to three years preceding date of petition filed before High Court. In the said case, the

Hon'ble Supreme Court relied upon the case *Tarsem Singh* (supra) and applied the observation made in Para 7 of that case to the factual matrix of the said case and ultimately observed that the case of the appellant would have effect of restricting the claim for pension to three years previous to when it was raised in the judicial forum.

43. Let us now advert to *D.S. Nakara* (supra) relied upon by Mr. Bhati. We may observe here that in the said case, while delving into the aspect of financial implication, Their Lordships, while not agreeing with the plea taken by the Union of India on that ground, ultimately held in Para 64 as under:

64. *The financial implication in such matters has some relevance. However, in this connection, we want to steer clear of a misconception. There is no pension fund as it is found either in contributory pension schemes administered in foreign countries or as in Insurance-linked pensions. Non-contributory pensions under 1972 rules is a State obligation. It is an item of expenditure voted year to year depending upon the number of pensioners and the estimated expenditure. Now when the liberalized pension scheme was introduced, we would justifiably assume that the Government servants would retire from the next day of the coming into operation of the scheme and the burden will have to be computed as imposed by the liberalized scheme. Further Government has been granting since nearly a decade temporary increases from time to time to pensioners. Therefore, the difference will be marginal. Further, let it not be forgotten that the old pensioners are on the way out and their number is fast decreasing. While examining the financial implication, this Court is only concerned with the additional*

liability that may be imposed by bringing in pensioners who retired prior to April 1, 1979 within the fold of liberalized pension scheme but effective subsequent to the specified date. That it is a dwindling number is indisputable. And again the large bulk comprises pensioners from lower echelons of service such as Peons, L.D.C., U.D.C, Assistant etc. In a chart submitted to us, the Union of India has worked out the pension to the pensioners who have retired prior to the specified date and the comparative advantage, if they are brought within the purview of the liberalized pension scheme. The difference upto the level of Assistant of even Section Officer is marginal keeping in view that the old pensioners are getting temporary increases. Amongst the higher officers, there will be some difference because the ceiling is raised and that would introduce the difference. It is however necessary to refer to one figure relied upon by respondents. It was said that if pensioners who retired prior to 31st march, 1979 are brought within the purview of the liberalised pension scheme, Rs. 233 cores would be required for fresh commutation. The apparent fallacy in the submission is that if the benefit of commutation is already availed of, it cannot and need not be reopened. And availability of other benefits is hardly a relevant factor because pension is admissible to all retirees. The figures submitted are thus neither frightening nor the liability is supposed to be staggering which would deflect us from going to the logical end of constitutional mandate. Even according to the most liberal estimate, the average yearly increase is worked out to be Rs. 31 crores but that assumes that every pensioner has survived till date and will continue to survive. Therefore, we are satisfied that the increased liability consequent upon this judgment is not too high to be unbearable or such as would have detracted the Government from covering the old pensioners under the scheme."

44. We may observe that the judgments, whereby the arrears are restricted to three years, cited by Mr. Balasubramaniam or Mr. Bhati will not put the respondents' side to any advantageous position so as to put restraint on the arrears on broad banding of disability element of disability pension, which has now been considered and decided by various judgements of Armed Forces Tribunal (Regional Bench) which view also subsequently approved by authoritative pronouncements of the Hon'ble Supreme Court as referred to herein above.

45. As stated hereinabove, there were certain prohibitory clauses in the letter dated 31.01.2001, which were subsequently struck down by judicial pronouncements. Not only that certain other aspects of the said letter were also made clear by judicial pronouncements vis-à-vis pre-1996 retirees and post-1996 retirees. In short to say there were certain anomalies, which came to the notice of the Courts from time to time calling for judicial interpretation, which controversy, as we all know, has now been set at rest, the judgment(s) of the Hon'ble Supreme Court is thereby now *in rem* and not *in personam*. Suffice to state that where an issue of policy is raised before a judicial forum, upon verdict being rendered, the same has to be treated *in rem* and not *in personam*. Law draws a distinction between claims which are based on facts personal to the claimants vis-à-vis claims which relate to the interpretation of the law, whereas, the former would be *in personam*, the latter would be *in*

rem. The issue for our discussion is based on a policy issued by the Ministry of Defence, Government of India, which has been adjudicated up to Hon'ble Supreme Court, and the verdict has since been rendered, consequently, it has to be treated *in rem* and not *in personam*. On this rationale also, given the fact that the pay disbursement authorities are bound by these policies, and should act on them expeditiously; the policy itself imparts a vested right to those within its ambit. Such right should have evoked action of the respondents *suo motu*, that not being the case an individual now being compelled to litigate, for a vested right (as distinct to a right that is yet to be established/recognised); cannot be denied what the vested right has already granted, on the premise that he has come to the Court late. Therefore, in our considered view, there should not be any stumbling block for granting arrears to an applicant claiming broad-banding of disability element of disability pension with effect from 01.01.1996 in the case of pre-1996 retiree(s) from 01.01.1996 and post-1996 retiree(s) from 01.01.2006, irrespective of the delay in moving the Tribunal/Court.

46. Let us now advert to disability pension to Voluntary Retirees.

47. Premature retirees were not entitled to disability and war injury pensions based on the Pension Regulations 1940, 1961 and 2008. They have only become entitled as a consequence of the Ministry of

Defence, Government of India's letter dated 29.09.2009. In the specific case of officers, there was a section in the Pension Regulations consistently that has imposed a bar by a positive pronouncement in all Pension Regulations denying the right of disability element of pension or war injury element of pension to the officers. In the case of persons below officers' rank, there was no provision for granting such disability/war injury element to voluntary/premature retirees. It was by the judgment of the Hon'ble Delhi High Court in case *Mahavir Singh v. Union of India* (2004 DLT 550), that the issue was dealt with and personal below officer rank became entitled to disability/war injury pension, despite premature/voluntary separation from service.

48. Over the course of years, various High Courts held that the aim of disability pension was to compensate for the disability incurred while in service, which was deemed as attributable to or aggravated by service and with which the individual was to spend the rest of his life and hence it made no difference whether he was invalided out or retired on completion of terms or whether he sought retirement at his own request. In the year 2004, the Hon'ble Delhi High Court, in the case *Mahavir Singh* (supra), held that such retirees are entitled to disability pension. The Union of India, however, went into appeal before the Hon'ble Supreme Court and the SLP (SLP No. 4171 of 2004) was finally dismissed by the Hon'ble Supreme Court on 04.01.2005. The

Government, however, did not grant the benefit across the board, but only to those who approached Courts for relief, which was ultimately termed contemptuous by the Delhi High Court in *Ex Nk Singheswar Singh Vs Union of India and others* (W.P (C) No. 9186 of 2009 decided on 28.08.2009).

49. Premature retiree is a category, which is dependent on individual choice and volition being exercised by him. There can be variety of reasons which an individual may put forward for premature retirement and in addition, this can be articulated at any stage of service. The right created for premature retiree (since it is retirement on acceptance by competent authority) is for disability element of pension which up to now was denied. The other leg of disability element of pension i.e. service element is not an automatic occurrence of premature retirement. The service element needs to be earned in relation to the minimum service that is required for this and if not earned, the right of service gratuity would remain as relevant, we, therefore, can only find a clear nexus based on the 6th Central Pay Commission report and letter of 2009 between disability element and premature retirement. The right to full disability pension of both the elements does not flow automatically to premature retirees. Where the individual chooses to retire from service on sanction of the competent authority without completion of the period that is mandated for him in the service, obviously the benefit of retiring

pension cannot flow to the individual. What is also relevant is that in case the individual was disabled and unable to perform his military duties, then surely the medical authorities would have found him unfit and invalided out the individual (organisational severance), thereby enabling the individual to fulfil the requirement of both the elements of disability pension, irrespective of the length of service.

50. On 29.09.2009, the Government officially issued a policy for grant of disability benefits to voluntary retirees, but restricted the same only to post 2006 retirees. The cut-off date was examined by the Armed Forces Tribunal in variety of cases, including *Rajesh Kumar Bhardwaj* (supra), but most importantly in *J.K. Kaushik v. Union of India* in T.A No. 523 of 2010 decided on 12.08.2010, wherein it was held that the same benefit also needed to be extended to pre-2006 retirees with effect from 01.01.2006. The Tribunal also directed the Government to review such cases. Union of India, however, did not implement the decision rendered in Kaushik's case (supra). However, the Government still did not issue instructions and finally issued instructions on 19.05.2017, thereby providing the disability and war injury benefits to pre-2006 premature retirees with financial benefits of arrears from 01.01.2006.

51. It would be most relevant to mention here that the issue of broad-banding of disability element and war injury element was also taken up by the '**Raksha Mantri's Committee of Experts**' to review

service and pension matters, including potential disputes for the purposes of minimising litigation and strengthening institutional mechanisms related to redressal of grievances, wherein the issue of broad-banding was also taken up, considering the judgment of the Hon'ble Supreme Court in the case *K.J.S Buttar* (supra) with regard to pre-1996 retirees and that issue of more than 800 appeals being dismissed on the subject of broad-banding of disability element of disability pension by a Three Judge Bench of the Hon'ble Supreme Court in the case *Ram Avtar* (supra), where applicability of Ministry of Defence letter dated 31.01.2001, which takes financial effect from 01.01.1996, was adjudicated. During discussion, the main part of the said letter (Para 8.2) containing the prohibitory stipulation already stands quashed and upheld by the Hon'ble Supreme Court, was also discussed. The further discussion was that despite the dismissal of many appeals by the Hon'ble Supreme Court, a universal policy has not been issued by the DWSW, and the personnel are still being forced to litigate for their dues. All the Service HQs have also vouched for grant of the said benefits with financial effect from 01.01.1996. The matter was then placed before the Hon'ble *Raksha Mantri* for further action on the recommendations made by the Expert Committee and with regard to broad-banding of disability percentage for computation of disability element/war injury element, Ministry of Defence had principally agreed.

52. It is not understandable that once it is principally agreed by the Ministry of Defence, still the poor litigants have to approach the judicial fora for the redressal of their grievances on this issue, which is by authoritative pronouncement is a decision *in remand* also principally agreed by the Ministry of Defence, the respondents herein. It is sheer waste of money from the litigant side (as well as Union of India); and unnecessary wastage of time of the Tribunal.

53. Another aspect, which, in our considered view, is equally important and ancillary to the main issue is, 'whether an individual who has been separated from service, if has no vested right of pension on disability element; and the right accrues only by way of judgment depending upon the facts of a particular case vide a decision rendered *in personam* and there is a delay in approaching the Tribunal, is he still entitled to the arrears right from 01.01.1996 he being a pre-retiree or post-retiree'. The answer straight away would be "No" and that the arrears in his case can be restricted may be up to three years prior to the filing of the application for the main relief of disability element of disability pension, as well as broad banding. An example would be a case, where a Medical Board holds a disability as neither attributable to nor aggravated by military service and a Court based on the judicial interpretation, after perusing the entire medical board proceedings comes to the conclusion that the disability should have been regarded as

attributable to or aggravated by military service, certainly, in that situation, there was no existing vested right available to him and the right accrued only when the Tribunal decides the main issue of attributability and aggravation by service. In such like cases, where there is undue delay in approaching the Tribunal, the arrears can definitely be restricted for a very simple reason that the rights are decided on the case to case basis *in personam* turning on individual facts of each individual case and in that eventuality, the judgments having effect *in rem* would not be applicable to that individual.

54. So restriction of arrears can be applied to an individual case post adjudication of his entitlement of disability war injury element of pension with an exception where vested right of an individual is snatched, undoubtedly depending on the facts of each individual case and in that eventuality entitlement of arrears shall reckon from the date it falls due.

Conclusions:

55. After having fully discussed the issue involved before us and to set the controversy at rest vis-à-vis arrears of broad banding of the disability/war injury element of disability pension on the ground of delay in filing application(s) by the individual/applicant(s), we conclude thus:

- (i) Armed Forces personnel who have been invalided/superannuated/completed terms of service/discharged under normal circumstances**

with disability, pre or post 01.01.1996, (including the applicants) will be entitled to broad banding of disability/war injury element. Armed Forces personnel who retired pre 01.01.1996 will be entitled to the arrears of broad banding with effect from 01.01.1996 and in the case of those who retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement;

- (ii) Armed Forces personnel who were premature retirees/proceeded on premature discharge with disability will be entitled to broad banding of disability/war injury element of pension with effect from either 01.01.2006 or the date of their retirement. There will, however, be no restriction of date for premature retirees to be eligible for disability/war injury benefits since the earlier restriction on pre 01.01.2006 premature retirees has been struck down.
- (iii) In all cases at (i) and (ii) preceding, there will be no restriction of three years on arrears and arrears will be paid according to eligibility (as stated preceding).

The other salient conclusions are:

- (a) restriction of arrears can be applied to applicant(s) wherein he is not held entitled to disability/war injury element of pension, and such entitlement only gets established post adjudication by AFT/Courts; however, exception apart where the vested right of an individual is

held to be denied the issue will be decided by AFT Benches, on its own facts.

- (b) all premature/voluntary retirees will remain eligible only for disability/war injury element of pension, their service element will need to be earned independently, based on years of service rendered and held as qualified for service pension;**

56. We would like to add that the respondents have their internal mechanisms in the form of First Appeal and Second Appeal to redress the grievances of disability pension. It has been observed by us that the applications are being dismissed in a routine manner by the First and Second Appellate authorities, thus increasing the number of litigations in this Tribunal. When the issues have been well settled by the Apex Court in various judgments, and now the larger Bench of the Tribunal has settled the issue of payment of arrears for broad banding, we hope and trust that the respondents will use this judgment to dispose of most of the cases pertaining to disability pension and payment of arrears in First and Second appeals to the respondents, rather than forcing the applicants to approach this Tribunal/Courts. This would ease the load on AFT Benches and enable them to deal with other meaningful matters before them.

57. After having considered the main issue, the cases on hand shall be put up before the appropriate Bench as per roster for further orders in the week commencing 11th December, 2017.

58. Before parting with this order, another very important aspect that impacts on the functional paradigm of the Armed Forces Tribunal, daily, we feel, needs focussed attention. We may mention here that most of the cases pending before the Benches of the Tribunal in the country, relate to pension matters and this is one category which is consuming our time on a daily basis. Therefore, need is to come out with an effective policy, so as to reach out to ex-servicemen sitting even in the remotest area, without troubling them to knock at the doors of the Armed Forces Tribunal. We were informed that some steps are being taken in this regard to reach out to ex-servicemen but still we feel, we must comment upon the expansion of legal aid service to ex-servicemen and their families.

**EXPANSION OF LEGAL-AID SERVICES TO EX-SERVICEMEN
AND THEIR FAMILIES**

59. In the 14th Report of the Law Commission under the Chairmanship of the first Attorney General for India, Shri M.C. Setalvad, it was observed:

"Insofar as a person is unable to obtain access to a court of law for having his wrongs redressed Justice becomes unequal and laws which are meant for his protection fail in their purpose."

60. The Preamble of our Constitution, alongwith Article 39-A, endeavours to ensure justice in its complete sense for all, in order to prevent the above scenario, by providing free legal aid to the poor and weaker sections of the society and to promote justice on the basis of equal opportunity. The main motive behind the concept of Legal Aid is that the poor and illiterate should be able to approach the courts and their ignorance and poverty should not be an obstacle in the way of their obtaining justice from the courts.

61. That prior to 1995, there was no formal scheme of administering legalaid in India, although tacitly existing through Section 304 of the Code of Criminal Procedure and Order XXXIII Rule 17 of the Code of Civil Procedure. The higher judiciary, upholding its obligation to the Constitutional principles of equal protections in law for all, sensitized the process of judicial redressal by sufficient judicial intervention, judicial activism and Public Interest Litigation. It is for the first time in the year 1987, a formal mechanism was established for implementing, administering and regulating legal-aid in India, through the Legal Services Authorities Act, which came into being in the year 1995. This

Act lays down the criteria/entitlement for grant of benefit of legal-aid and even provides an *inclusive* list of 8 categories of people for the same, including even an "*industrial worker*" (Section 12(F)) and also a person with a disability defined under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Section 12(g)). It is noteworthy that the Act, currently, does not specifically include within its scope and ambit such Ex-Servicemen and their families.

62. This nationwide framework for legal aid under the Act, 1987 also provides for establishment of a National Legal Services Authority (which is the apex body under the statute) and a State Legal Services Authority for each state. District Legal Services Authorities and Taluk Level Legal Services Authorities are also constituted for each district to implement the legal-aid programmes and give effect to the corresponding schemes in relation thereto. All Legal Services Authorities, in effect, bear all actual and incidental expenses pertaining to an eligible person under the Act, in relation to a case, starting from paying of court fees to the entire fee of the legal counsel. The *Lok Adalats* established under the statute were originally functioning for dispensing justice through amicable settlement and compromise terms. However, over a period of time and with the introduction of formal amendments to the statute, Permanent *Lok Adalats* are also

incorporated which possess the powers of formal adjudication of disputes even in case of failure of compromise or settlement.

63. However, as already mentioned hereinabove, the said Act does not specifically include Ex-Servicemen and their families within its scope and ambit for grant of legal aid benefit and there are umpteen number of Ex-Servicemen and their dependants who are unable get their wrongs redressed and continue to suffer in either ignorance of judicial mechanisms or inability to access the same on account of financial hurdles and other disabilities. The armed Forces Tribunal, created to specifically cater the needs for them, also remains inaccessible to many due to a variety of reasons, including lack of knowledge. While there are presently 17 total benches of the Armed Forces Tribunal at nine cities (although not all are functional), catering to the armed forces, there is still lack of accessibility in, both, financial and geographical terms.

64. It is, therefore, imperative to initiate a mechanism for improved accessibility to judicial redressal for Ex-Servicemen (particularly disabled soldiers) and their families, through legal-aid under the Legal Services Authority Act, 1987, the same being also in consonance with Article 39-A of the Constitution which is the foundation for the provision of legal-aid. So an effective mechanism for the benefit of the disadvantaged and disabled Ex-servicemen and their families can be thought of. A formal method to bring Ex-servicemen and their

dependent members within the ambit of Section 12 of the Act, by way of an amendment, is crucial.

65. In fact, the need for the above has been felt time and again, even as early as in the year 2001, when the Government of India had issued a formal press statement dated 28-06-2001 ("Expansion of Legal Aid") recommending amendments to Section 12 of the Legal Service Authorities Act, 1987, as follows:

"In this connection, Section 12 of the Legal Services Authorities Act, 1987 is proposed to be amended to include in the category of Armed Forces, ex-members of para-military Forces and the dependents of those who died on duty or in a war or insurgency."

Thereafter, the following schemes and measures can be envisaged to implement legal-aid for ex-servicemen and their dependents:

(a) **Legal-aid clinics:**

Establishing permanent and regular LegalAid Clinics in all districts in the country primarily to aid and assist people who otherwise are unable to access the Courts/AFT, using the assistance of trained para-legal volunteers, who could further refer a complex legal problems to professional Legal Aid Counsels, primarily for grievance redressal and disposal of disputes at pre-litigative stage for Ex-Servicemen and their dependent members. The same would be of much assistance

particularly in cases which already stand covered by *in-rem* decisions of the Hon'ble Supreme Court, which included cases pertaining to rounding-off/broad-banding of disability element for disabled soldiers, grant of pension of next rank to honorary rank holders, grant of pension to retirees who took voluntary/pre-mature retirement on account of their disabilities, etc. In fact, it is pertinent to note that the National and State Legal Services Authorities are already engaging in such projects for *Legal-Aid Clinics*, for other underprivileged sections of the society.

(b) **Sensitisation of Judicial Officers in regard to Legal Services Schemes and programmes:**

Conducting regular seminars and workshops for judicial officers involved in administering legal-aid to underprivileged Ex-Servicemen and their families with the purpose of spreading awareness of the disabilities and handicaps that engulf them and hence, the need to adopt a sensitive and sympathetic approach in adjudication of such cases. The same should be done by projecting to the judicial officers a regular and comprehensive data analysis regarding the hindrances faced by the Ex-Servicemen and their families in accessing justice and courts, by seeking assistance from accredited NGOs and other organizations who work for betterment of Ex-Servicemen.

(c) **Literary Awareness Camps**

Accreditation of NGOs can also be done for Legal Literacy and Legal Awareness campaigns. Such literary and legal awareness programs can be conducted to spread awareness amongst the Ex-Servicemen fraternity not only

about their rights but also about the functioning of courts and judicial bodies. Seminars, lectures, workshops, live phone-in programmes, broadcasting documentaries, public interactions by operating mobile vans are some means of conducting such programmes for boosting legal literacy and awareness. Such programmes could also be conducted with the assistance of law students, and para-legal staff of the Court and in fact, regular camps could be set-up in law colleges and schools of each district.

(d) **Application for ADR:**

Legal aid institutions to be well equipped to implement Alternate Dispute Resolution (ADR) techniques and methods in the process of adjudication/judicial redressal.

66. Since the heart of the legal aid programme must address the Ex-servicemen, it is pertinent to note that population of Ex-servicemen is almost double to that of the serving fraternity. A large quantum of them are residing in remote areas and are unaware of their legal rights and several of them belonging to schedule tribes and other marginalized section of society. Let the intention of the legal aid be focused to target this large section of society of ex-servicemen, who have spent their better years serving the nation in a disciplined forum, unaware of the dimension of their rights. This is in conformity with the priority laid down by the Hon'ble the President of India on his inaugural address at the 'Constitution Day' celebrations, wherein he had laid stress on providing

legal aid to those whom it is not readily accessible. In this endeavour it will undoubtedly never be late to show a fresh initiative.

67. Let copy of this order be sent to the Defence Secretary, Ministry of Defence, Government of India forthwith for perusal and appropriate action at the end of Ministry of Defence.

**(VIRENDER SINGH)
CHAIRPERSON**

**(SURENDRA VIKRAM SINGH RATHORE)
MEMBER (J)**

**(S.K. SINGH)
MEMBER (A)**

01 Dec.2017
Alex

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

1.

OA 1439/2016 with MA 1085/2016

Ex Sgt Girish Kumar

.....Applicant

Vs.

UOI & Ors

.....Respondents

For Applicant : Mr, Praveen Kumar, Advocate

For Respondents : Mr.Arvind Patel, Advocate

CORAM:

HON'BLE MR. JUSTICE V. K. SHALI, MEMBER

HON'BLE LT. GEN. S.K. SINGH, MEMBER

ORDER

13.12.2017

● **MA 1085/2016**

1. This is an application under Section 22(2) of the Armed Forces Tribunal Act, 2007 for condonation of delay of 3124 days in filing the OA.

2. Since sufficient reasons have been cited by the applicant in late filing of the O.A., the M.A. is allowed and the delay in filing the O.A is condoned.

● **OA 1439/2016**

1. This is an Original Application seeking broadbanding of disability element of pension. The applicant was enrolled in the Indian Air Force on 30.03.1988 and discharged from the Air Force service w.e.f. 31.03..2008 after completion normal tenure. The Release Medical Board assessed his disability @ 20% for life attributable to and aggravated by Military service. The DCDA (Air Force), New Delhi vide PPO No. 08/14/B/Corr/DP/369/2010 dated 19.07.2010 granted disability element of pension @ 20% for life and the applicant is getting disability element of

pension @ 20% attributable to and aggravated by military service. The applicant is pleading for broadbanding of disability element of pension from 20% to 50% in terms of Govt of India, Ministry of Defence Letter No.1(2)/97/D(Pen-C) dated 31.01.2001 and law settled by Hon'ble Supreme Court in **Civil Appeal No.418/2012 titled UOI & Ors Vs Ram Avtar vide judgment dated 10.12.2014.**

2. Issue notice to the respondents to show cause as to why the application may not be admitted.

3. Notice is accepted by Mr. Arvind Patel, Advocate appearing for the respondents.

4. The learned counsel for the respondents does not contest the above mentioned facts or correctness of documents placed on record. However, it is pleaded that broadbanding could be allowed subject to verification of Record in terms of the Full Bench Judgment of this Tribunal.

5. The Full Bench of this Tribunal vide order dated 01.12.2017, passed in OA 1439/2016- Ex Sgt Girish Kumar Vs UOI & Ors and other related matters has held as under:

Conclusions:

55. After having fully discussed the issue involved before us and to set the controversy at rest vis-à-vis arrears of broad banding of the disability/war injury element of disability pension on the ground of delay in filing application(s) by the individual/applicant(s), we conclude thus:

- (i) Armed Forces personnel who have been invalided/superannuated/completed terms of service/discharged under normal circumstances with disability, pre or post 01.01.1996, (including**

the applicants) will be entitled to broad banding of disability/war injury element. Armed Forces personnel who retired pre 01.01.1996 will be entitled to the arrears of broad banding with effect from 01.01.1996 and in the case of those who retired on or after 01.01.1996 will be entitled to arrears with effect from the date of their retirement;

- (ii) Armed Forces personnel who were premature retirees/proceeded on premature discharge with disability will be entitled to broad banding of disability/war injury element of pension with effect from either 01.01.2006 or the date of their retirement. There will, however, be no restriction of date for premature retirees to be eligible for disability/war injury benefits since the earlier restriction on pre 01.01.2006 premature retirees has been struck down.**
- (iii) In all cases at (i) and (ii) preceding, there will be no restriction of three years on arrears and arrears will be paid according to eligibility (as stated preceding).**

The other salient conclusions are:

- (a) restriction of arrears can be applied to applicant(s) wherein he is not held entitled to disability/war injury element of pension, and such entitlement only gets established post adjudication by AFT/Courts; however, exception apart where the vested right of an individual is held to be denied the issue will be decided by AFT Benches, on its own facts.**
- (b) all premature/voluntary retirees will remain eligible only for disability/war injury element of**

pension, their service element will need to be earned independently, based on years of service rendered and held as qualified for service pension;

6. Having regard to the aforesaid facts that the applicant is getting disability pension 20% for life, he is entitled to broadbanding of the said disability pension @ 50% w.e.f. 01.04.2008. The respondents are accordingly, directed to issue the sanction order and to carry out the amendment in the PPO and are also directed to give arrears of the disability element of pension within six months from the date of receipt of this order. In case, the aforesaid order is not complied with within the stipulated period, the arrears shall carry interest @8%.

7. With these directions, the OA stands disposed of.

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

**(LT. GEN. S. K. SINGH)
MEMBER (A)**