

No. R-07/2/2025-SPG-II-DOP
Government of India
Ministry of Communications
Department of Posts
(SPG-II Section)

New Delhi, the 10th March, 2025

OFFICE MEMORANDUM

Subject: Court cases in APS matters – Previous settled Judgement/Orders in favor of Department of Posts reg.

With reference to this Department OM No.7-4/2021-SPG dated 18.07.2023, various decision have been taken in order to curb the violations of provisions of Army Instructions-AI 29/85 by temporary commissioned APS officers as it was resulting in huge pension liability & other associated post-retirement financial burden, financial anomalies etc.

2. The said decisions have been challenged by various affected Gr.'B' officers [ASP/IP/PS Gr.B] of this Department, who are currently on deputation to APS, before Hon'ble AFT, PB, New Delhi.

3. The main plea of these officers are related to legality of the OM dated 18.07.2023, voluntary retirement directly from the APS without repatriation etc.

4. It has been observed that:

(i) There is no provision of voluntary retirement from APS in Army Instructions No.29/85.

(ii) As per this Department letters No.X-17/1/2018-SPB-II dated 10.01.2019 & dated 24.01.2019 (copies attached) read with CCS (Pension) Rules, 2021, *"all appointing authorities not to accept request for voluntary retirement directly from Army Postal Service (APS) without an official being repatriated to civil side and that such request for voluntary retirement would be considered only after repatriation of the official to the parent unit in civil side."*

(iii) As per categorical instruction No.6 of terms and conditions laid down in Annexure 'A' to AI 29/85 dated 01.09.1985 (copy enclosed), **"For service pension, officers will be governed by civil rules."** Therefore, provision of CCS (Pension) Rules, 2021 shall be applicable in case of the temporary commissioned APS officials/officers.

(iv) Ministry of Defence vide letter No.32006/AVSC/AG/PS-2(a) dated 24.08.2006 (copy attached) states as follows:

"APS officers granted quasi-substantive ranks in the Army will hold such ranks for so long as they are serving in APS. Officers will have no claim to any benefits by virtue of holding the same on reversion to the parent cadre."

(v) The above applicants hold lien against civil posts in this Department, there service conditions are governed by the civil rules. The basic employment of the applicant and all conditions of service i.e. Pension, vacancy, Disciplinary rules etc. attached to his employment in this Department have continued to operate as per terms and conditions for his initial appointment.

5. In addition to above rule-position in the present matter, it is apposite to state following settled law positions & legal provisions:

(i) The stand of the Gol cited on Para No.4(iv) above has already been upheld by the Hon'ble AFT (PB) New Delhi vide Order dated 10.02.2022 (copy attached) in OA No.1239/2020 (Lt. Col. Shaji Joseph [Retd.] v. UoI & ors.).

(ii) The Hon'ble AFT(PB), Delhi vide Para-33 of the Order dated 10.02.2022 also held that the Rule-67 of CCS (Pension) Rules, 1972 is applicable in the case of a government servant who 'retires' while on deputation. It is the case of the respondents that there is no provision of voluntary retirement in the Army and, therefore, this Rule 67 is not applicable in the case of the applicant.

(iii) The Para-35 of the Order dated 10.02.2022 of the Hon'ble Tribunal *inter-alia* states "....Therefore, Department of Posts is the Competent Authority to grant pensionary benefits to the applicant and not the borrowing department i.e. APS."

(iv) The Hon'ble Apex Court in 'Major M.R. Penghal v. UoI' {(1998)5SCC454} {in Civil Appeal Nos.556/1998 & 557/1998} (copy enclosed) already decided the above jurisdiction and held as under:

*".... Since the appellant was not a member of the Armed Forces and continued to work as a civilian on deputation to the Army Postal Service, **his case was covered under Section 14(1)(a) of the Administrative Tribunals Act.**"*

(v) The above settled law was again reiterated by the Hon'ble Apex Court vide judgement dated 05.11.2019 in CA No.8139/2019 {UoI & Ors. v. Lt. Col. O M Dutt Sharma (Retd.) dead through LRS & Ors.} (copy enclosed). In the said judgement, it is also held that:

- i. *"....The respondents have discharged their duties as per Army Instructions issued from time to time. If they have drawn higher salaries while working in the APS than other counterparts in the Department of Posts **that will not make them at par with the members of the Armed Forces. Their birth mark is with the Department of Posts which mark was never removed, when they were serving as members of APS.** The Instructions provided for an option on promotion on every rank in the Army to draw either military pay and allowances or civil pay plus deputation allowances meaning thereby that they continue to hold their lien on the civil posts in the Department of Posts. **Since they hold a lien in the Department of Posts they could be recalled by the Department of Posts as well as they could seek reversion to their parent Department.**"*

- ii. *"...In respect of pension, there is a categorical instruction that the officers would be governed by civil rules for service pension. An option is available to opt for military or civil rules in respect of disability or special family pension."*
- iii. *"...These conditions show that **the members of the APS continue to hold lien in the Department of Posts** though they were conferred ranks in the Army and were also entitled to certain benefits as the members of the Armed Forces but being members of the Armed Forces during the period of their Temporary Commission does not make them a pensioner of the Armed Forces..."*
- iv. *"... There was never any condition in any policy decision that the members of APS will be treated as pensioners of the Armed Forces."*
- v. *"The respondents were holders of Temporary Commission only to facilitate the grant of rank and other benefits but they cannot be called as Commissioned Officers."*
- vi. *"...**It is not disputed that retirement age of a regular Commissioned Officer of the rank of Lt. Colonel is 54 years. Such fact only shows that the respondents are the holders of civil posts entitled to civil pension and are not the Ex-servicemen to which benefit of OROP was conferred.**"*

(v) Recently, the Hon'ble AFT, RB, Kochi vide order dated 01.07.2024 in OA No.13/2024 {Lt. Col. V C Paulose V/s UoI & Ors.} (copy enclosed) held that:

"...Indisputably, Pension Sanctioning Authority under the Department of Posts will not come under the jurisdiction of this Tribunal. Therefore, we find that this Bench of the Tribunal has no jurisdiction to entertain this Original Application."

(vi) The Hon'ble Apex Court in the case of "Kunal Nanda vs. UoI & Anr." reported in (2000) 5 SCC 362 (copy enclosed) has already held that **"The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation."**

(vii) Some temporary commissioned officials/officers of APS also raised the issue of selection **"exclusively for APS appointed in the cadre of Postal Assistant/Sorting Assistant"**. In a precedent case of similarly situated persons, Hon'ble AFT, Chandigarh Bench vide order dated 23.11.2015 in OA No.4445/2013 & OA No.4449/2013 (copy attached) already held that the parent civil department of the such applicant is Department of Posts.

6. It is requested to:

(i) Render any other judgements/orders of Tribunals/High Courts/Apex Court given in favour of this Department in respect of temporary commissioned APS officials/officers to this Directorate for reference.

(ii) Render details of all such pending cases, whose subject matter already decided in above legal cases.

(iii) Defend the cases of temporary commissioned APS officers in light of above extant guidelines and settled law positions.

This has the approval of the competent authority.

Encl. As above (through India-Post website).

Digitally signed by

Rajpal

Date: 10-03-2025

12:27:40

(Rajpal)

Assistant Director General (SPG)

To

1. All CPMsG
2. Addl. DG, APS Dte., New Delhi
3. GM(CEPT), Mysore with a request to upload this OM on the India Post Website.
4. Director (SPN): It is requested to consult with SPG Branch in all matters related to APS Policy decisions before issuing guidelines thereof.
5. Guard File.

No. X-17/1/2018-SPN-II
Government of India
Ministry of Communications
Department of Posts
(Personnel Division)

Dak Bhawan, Sansad Marg
New Delhi – 110 001

Dated: 24th January, 2019

To,

- 1) All Chief Postmasters General/ Postmasters General
- 2) Chief General Manager, BD Directorate/ Parcel Directorate/ PLI Directorate
- 3) Director, RAKNPA / GM, CEPT / Directors of all PTCs
- 4) Addl. Director General, Army Postal Service, New Delhi
- 5) All General Managers (Finance) / Directors Postal Accounts DDAP

Subject: Voluntary retirement of personnel on deputation to APS.

Sir/Madam,

Directorate *vide* letter no. X-17/1/2018-SPB-II dated 10th January, 2019 (copy enclosed) had requested to direct all appointing authorities not to accept request for voluntary retirement directly from Army Postal Service (APS) without an official being repatriated to civil side and that such request for voluntary retirement would be considered only after repatriation of the official to the parent unit in civil side.

2. The APS has now requested for clarification whether the above instructions would also be applicable in case of personnel seeking retirement directly from APS on attaining the age of compulsory retirement in APS.

3. It is hereby clarified that the instructions issued *vide* aforesaid letter of 10th January, 2019 shall be applicable only in cases where personnel on deputation to APS seeks voluntary retirement from service before attaining the age of compulsory discharge from the APS.


| | | |
|---|----------|----------|
| Centre for Excellence in Postal Technology, Mysore-570 010 | | |
| 30 JAN 2019 | | |
| | | |
| G.M. | A.D. (T) | A.D. (A) |

Ported
upload

4. However, personnel on deputation to APS, on attaining the age of compulsory retirement/discharge in APS, may seek retirement directly from APS, without being repatriated to civil side, in terms of Army Instructions No. 29/85, as amended from time to time, and O.M. No. 9(5)/20016-D(Mov) dated 16.05.2017 of Ministry of Defence read with O.M. No. 36-16/89-NB/T dated 05.09.1989, as the case may be. Copies of Army Instructions No. 29/85, O.M. No. 9(5)/20016-D(Mov) dated 16.05.2017 of Ministry of Defence and O.M. No. 36-16/89-NB/T dated 05.09.1989 are enclosed for ready reference.

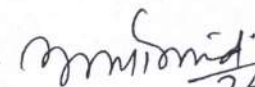
Encl: As above

Yours faithfully,


(Satya Narayana Dash)
Director (SPN)

Copy forwarded to:

- 1) PS to Minister of State for Communications (I/C)
- 2) Sr. PPS to Secretary (Posts) / Sr. PPS to Director General Postal Services
- 3) PPS/PS to Addl. DG(Coordination)/ Member (Banking)/ Member (O)/ Member (P)/ Member(Planning & HRD)/ Member (PLI)/ Member (Tech)
- 4) Additional Secretary & Financial Advisor
- 5) Sr. DDG (Vigilance) & CVO/ Sr. DDG (PAF)
- 6) Director General (P&T Audit)
- 7) Secretary, Postal Services Board/ All Dy. Directors General
- 8) Chief Engineer (Civil), Postal Directorate
- 9) All Sections of Postal Directorate
- 10) All recognized Federations/ Unions/ Associations
- 11) GM, CEPT for uploading the order on the India Post website
- 12) Guard file
- 13) Spare copy


(Alok Kumar Tiwari)
Section Officer (SPN-II)

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No. X-17/1/2018-SPB-II
Government of India
Ministry of Communications
Department of Posts

Dak Bhawan, Sansad Marg
New Delhi - 110 001

Dated: 10th January, 2019

To,

All Heads of the Postal Circles.

Subject: Voluntary retirement of personnel on deputation to APS -reg.

Sir/Madam,

It has come to the notice of the Directorate that officials on deputation to Army Postal Service (APS) are seeking Voluntary Retirement from Service (VRS) directly from APS under CCS(Pension) Rules, 1972 which is being accepted by respective appointing authority in civil side. However, there is no provision of VRS in Army and also in the instructions regulating deputation of officials to APS. These officials are being allowed to retire voluntarily from APS without being repatriated to civil side, which is in contravention of laid down guidelines.

2. It is therefore requested to direct all appointing authorities not to accept such request of voluntary retirement directly from APS without an official being repatriated to civil side. On receipt of request for VRS from an officer who has completed minimum service deputation to APS, the appointing authority shall inform the APS that the request of the official would be considered after repatriation to parent unit in civil side.

Yours faithfully,



(Satya Narayana Dash)
Director (SPN)

Copy to:

✓ Addl. DG, APS, C/o 56 APO, PIN 908700 w.r.t. letter no. 90024/APS 1A dated 14.12.2018.

COPY OFARMY INSTRUCTION NO 29/85(AS AMENDED VIDE CORRIGENDA NO 2 TO AI 2/86
AND NO 4 TO AI 4/89 AND NO 202 AI 21/89)

New Delhi, Sunday, September 1, 1985 / Bhadra, 10, 1907 S.E.

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TEMPORARY COMMISSION IN THE ARMY POSTAL SERVICE -
REVISED TERMS AND CONDITIONS OF SERVICE

1. In super session of the orders contained in AI 107/53 and AI 295/59, terms and conditions laid down in annexure 'A' to this Army Instruction will apply to the Temporary Commissions granted in the Army Postal Service of the Regular Army.

2. Eligibility

(i) Gazetted Officers (substantive or officiating) of the Department of Posts, preferably with previous service in the Army, Navy or Air Force.

(ii) JCOs of the APS and such WOs as have earned competitive vacancies in the JAOs/IPOs/IRMs examination of the Department of Posts.

3. Length of Commission The commission will be granted for a period of one year and so long thereafter as the services may be required, but not exceeding the age of compulsory retirement in the Army. The officers will, however, normally be retained in the Army Postal Service for a minimum period of four years.

4. Age limit Candidates must not be over 45 years of age on the date their application forms are completed and forwarded. For officers joining in the rank of Colonel and above, this limit may be waived at the discretion of the Quartermaster General on the recommendation of the Director General, Postal Services provided the officers have earlier served in the APS.

5. Medical Standard Candidate must be in medical category 'A'

6. Applications

(a) In the case of gazetted officers of the Department of Posts - Candidates will submit applications through Director General, Postal Services to Army Headquarters, QMG's Branch, New Delhi in form given in Annexure 'B' to this Army Instruction.

(b) In the case of JCOs/WOs of the APS - Applications will be submitted in form given in Annexure 'C' through the normal Corps Channel to the Addl Director General Army Postal Services, Army Headquarters; New Delhi. Applicants considered suitable for grant of commission, if necessary after preliminary interview, will be screened by the Services Selection Board. Final selection will be made by the Quartermaster General at Army Headquarters. Selected JCOs/WOs will be granted commission if found suitable in all respects.

7. Date of Commission - The commissions will be granted from the date as notified in the Gazette of India which will be the date the individual reports for training at the Army Postal Service Centre in case of gazetted officers of the Department of Posts and the date individual assumes duty as a commissioned officer with an Army unit or formation in the case of JCOs/WOs.

8. Military training - Officers of the Department of Posts will be given basic military training at the Army Postal Service Centre for a period of nine weeks. JCOs/WOs granted commissions will undergo an orientation course of four weeks duration at the Indian Military Academy, Dehradun.

9. Period of probation - Officers will be on probation for a period of six months from the date of posting to a unit after completion of training. If an officer is reported on within the period of training or probation as unsuitable to retain his commission, it may be terminated at any time, whether during or after the probationary period.

10. Traveling concessions on commissioning - While proceeding for training, P & T gazetted officers will be granted traveling allowance admissible under civil rules. JCOs/WOs granted commissions will be governed by the rules applicable to personnel of regular Army.

11. Advance of pay on commissioning - As admissible under the rules of the Department of Posts or the rules of the regular Army, as the case may be.

12. Option - All officers of the Department of Posts at present serving in the APS will be allowed to opt for the terms and conditions contained in Annexure 'A' to this Army Instruction from the date of its issue provided that they satisfy the conditions laid down therein. On exercising such option, they will be regarded as newly commissioned for purposes of the option to draw civil or military rates of pay under para 3 (b) of annexure 'A'. The existing orders will continue to apply to other serving officers.

Annexure 'A' to Army Instructions 29/85

1. **Liability for service** - Officer will be liable for service in any part of the world.
2. **Rank, Promotion and seniority** -
 - (a) In the case of JCOs/WOs of APS - JCOs/WOs will be granted temporary commission in the rank of 2 Lt except that JCOs/WOs having 8 years service as JCO/WO and in the ranks would be commissioned as Lt and granted 2 years ante date for the purpose of pay only.
 - (b) In the case of gazetted officers of the Department of Posts - On commissioning in the Army Postal Service, officers of the Department of Posts will be ranked as follows:-

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

The Director General, Postal Services, may, however, recommend variation in ranking when it is necessary due to paucity of suitable volunteers.
 - (c) Officers will be governed by the acting promotion rules for so long as there remain in force. IPS Group A gazetted service will be equated with full pay commissioned service for the purpose of fixation of Army Seniority and eligibility for action promotion. PSS/PMS Group B gazetted service will also be equated similarly after deducting two years from it. Promotions to the rank of Lt Col and above will normally be confined to Group A officers of the Department of Posts. However, other officers may be temporarily promoted to the rank of Lt Col, pending availability of a Group A officer of the Department of Posts for the appointment.

(d) An Indian Postal Group A officer, who during his service in APS, an initial fulfills the conditions for grant of higher rank with reference to Para 2 (b) above, but cannot be promoted for want of vacancy, will be granted higher rank as personal to him, in case it is proposed to retain the officer in the interest of service. The personal rank will normally be granted for a period not exceeding six months or till a vacancy occurs, whichever is earlier. In such cases the officer will draw his civil pay, and deputation allowance only.

3. Pay and allowance -

(a) An officer will receive military pay and allowances appropriate to the rank held and at such rates under such conditions as may be laid down from time to time for Army Officers of all arms other than Army Medical Corps, Army Dental Corps and Remount Veterinary and Farms Corps. IPS Group A gazetted service will be equated with full pay commissioned service for fixation of pay and grant of increments under the military rules. PSS/PMS Group B gazetted service will also be equated similarly after deducting two years from it.

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

| | | |
|--|---|--------|
| An officer below the grade of Director Postal Services | - | 20% |
| An officer of the grade of Director Postal Services and above | - | 12 ½ % |

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

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

(d) During the period of military training their pay and allowances will be regulated in accordance with sub para (a) and (b) above.

(e) The option referred to in para 3 (b) above shall be exercised within a period of one month from the date of commission/promotion in the APS. If an officer fails to exercise the option within the above specified period he will be deemed to have elected military rates of pay.

4. Outfit allowance - Initial outfit allowance will be admissible at the rates under the conditions laid down in Rule 215 et seq Pay and Allowances Regulations. Officers (Army) (1954), except that, for the purpose of recovery of the allowance under Rule 243 ibid, the minimum service in the Army Postal Service will be 3 years instead of 4 years.
5. Passage and traveling allowance
 - (a) During Service - As laid down in Military Rules
 - (b) On release from service - As laid down in AI 53/S/47
6. Pension
 - (a) For service pension, officers will be governed by civil rules
 - (b) For disability and family pension, the officer or, when the officer dies in service, his family will be eligible to receive awards under AI 64/76 as amended from time to time.
7. Leave
 - (a) Casual leave, annual leave, furlough and sick leave will be governed by the rules which may from time to time be applicable to the temporary commissioned officers of the Army.
 - (b) On termination of the engagement, the amount of annual leave, that is 60 days on full pay, will be admissible if not availed of at an earlier date.
 - (c) No leave salary contribution will be payable to the Department of Posts in the case of these officers, nor will service rendered while in the military employ be viewed as qualifying service for earning leave under civil rules.
8. Other conditions of service - In regard to other conditions service including various allowances and concessions, officers will be governed by the same rules as are applicable the corresponding ranks of the Regular Army.
9. Relinquishment of Commission and repatriation to the Department of Posts
 - (1) An officer shall relinquish his temporary commission in Army Postal Service and be repatriated to the Department of Posts or proceed on compulsory retirement on superannuation by order of the Central Govt or the authority specified in Sub Para (2) with effect from the afternoon of the date specified in the orders.

(2) The authority specified in Sub Para (1) shall be the Additional Director General Army Postal Service.

(3) Approval of the Central Government will be obtained by the Additional Director General Army Postal Services prior to the issue of orders in all cases except the following:-

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

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

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

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

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

**APPLICATION FOR GRANT OF TEMPORARY COMMISSION IN ARMY POSTAL SERVICE TO
GAZETTED OFFICERS OF THE DEPARTMENT OF POSTS**

1. Name in full (in block letters)
2. Present appointment and address in full
3. Permanent address in full
4. Date of birth
5. Nationality
6. Name and address of next of kin showing relationship
7. Educational qualifications
8. Details of Gazetted service in the Department of Posts
 - (a) Date of entry in the Gazetted rank
 - (b) Total service in PSS/PMS Group
 - (c) Total service in IPS Group 'A'
9. Details of Army/Navy/Air Force service, if any
 - (a) In ranks
 - (b) As Junior Commissioned Officer
 - (c) As Officer
10. Declaration to be signed by the candidate

I hereby declare that to the best of my knowledge and belief the information given in this application form is correct.

Place :

Date :

(Signature of the applicant)

(Certificate to be filled in by a medical officer)

I have this _____ day of _____ 20 _____

Examined Shri _____ and hereby certify that in my opinion he is in good health and physically fit for active service in India or any other part of the world.

Place :

Date : (Signature of medical officer)

.....
(Certificate to be filled by the Director General, Department of Posts)

(i) The applicant is recommended for grant of Army in the Army Postal Services in the rank of _____

(ii) Certified that the particulars given at items 1 to 9 of the application have been

Verified from service records and found correct.

Date :

Director General Postal Services

DECLARATION REGARDING PLURAL MARRIAGES

I, _____

Hereby declare that :-

- (a) I am married
- (b) I am widower
- (c) I am married and have more than one wife living
- (d) I am married and not have more than one wife living

2. I also undertake not to contract another marriage without first obtaining the permission of Government of India, Ministry of Defence.

3. I fully understand that in the even of my declaration being found incorrect at any time during the period of training or after my enrolment/appointment/grant of commission, I should be liable to be returned/ dismissed from training/ service.

Date :

Signature

Address

Witness

Designation

.....

APPLICATION FOR GRANT OF TEMPORARY COMMISSION IN THE ARMY POSTAL SERVICE
CORPS TO SERVING JCOs/WOs OF APS

1. (a) Number and rank

 (b) Name in full (in block letters)

 (c) If applying again exact name as given
 in previous application

 (d) Name in full (in capital letters) as given
 In matriculation/Higher Secondary or equivalent
2. (a) Unit or Formation

 (b) Postal address (in full)

 (c) District and state in which unit is serving

 (d) Nearest railway station of the unit
3. Permanent home address
4. Date of Birth
5. Nationality
6. (a) Father's Name (in full)

 (b) His present postal address
 (if dead give last address)
7. Name, address and occupation of next
 of kin showing relationship
8. Married or unmarried (if married, give number
 of children, if any with their ages and sex)

9. Educational qualification and details of institutions attended from 10 + 2 standard onwards:

| Name of Institution | Date of Entering | Date of leaving | Education standard | Grade / Percentage | Remarks |
|---------------------|------------------|-----------------|--------------------|--------------------|---------|
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10. Give the following details of service in the Department of Posts:

- (a) Date of entry (Civil) :
- (b) Present appointment (Civil) :
- (c) Present pay :
- (d) Total period of service :
 - (i) Gazetted :
 - (ii) Non gazetted :

11. (a) Date of enrollment in APS and the rank in which enrolled :
- (b) Details of previous service, if any, in APS :
- (c) Military qualification achieved while in APS :

12. (a) Have you served in the Army, Navy or Air Force in any capacity before joining Department of Posts? :
- (b) If so, give the following details: - :

- (i) Date of enrolment
- (ii) Brief history of service Rank Period
- (iii) Whether any examinations passed or courses attended (give full details)

3

13. Have you ever applied for any other type of Commission in the Army, Navy or Air Force? If so, give particulars thereof. : Type of Commission Date of application

14. Did you ever apply or attend a Service Selection Board Interview for any type of commission in the Army, Navy and Air Force? If so, give the following particulars in respect of each interview: -

| Type of Commission Applied for | Place of Interview | Date | Board No | Batch / Chest No | Result of the Interview |
|--------------------------------|--------------------|------|----------|------------------|-------------------------|
| | | | | | |
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15. Do you have any relative/intimately known person serving in any of the Selection Centre/Services Selection Board? If so, give the full details

16. Have you ever been debarred from appearing at any Examination/Selection conducted by the Union Public Service Commission/Govt of India/State Government/University/Board of Institution/authority?

Warning: Concealment of any information / furnishing of wrong information will result in the cancellation of candidature and may also debar a candidate either permanently or for a specific period from applying for grant of Temporary Commission in future, in addition to suitable disciplinary action.

I hereby declare that to the best of my knowledge and belief, the information given in this application form is correct.

Signature of witness :

Dated :

No, Rank Name
and Address :

Signature of applicant

Dated:

(CERTIFICATE TO BE FILLED BY A MEDICAL OFFICER)

I have thisday of..... examined No Rank Name

..... Unit

and formed the opinion that he is fit for service in medical category **S1 H1 A1 P1 E1**.

Place :

Dated :

Signature of Medical Officer

RECOMMENDATIONS BY OFFICER COMMANDING / POSTAL OFFICER

Station:

Dated :

RECOMMENDATIONS BY SUPERIOR POSTAL OFFICER

Station:

Dated :

**RECOMMENDATIONS BY ADDL DIRECTOR GENERAL, ARMY POSTAL SERVICES,
INTEGRATED HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY)**

Station:

Dated :

**COUNTERSIGNATURE BY QUARTERMASTER GENERAL, INTEGRATED
HEADQUARTERS OF MINISTRY OF DEFENCE (ARMY) WITH REMARKS, IF ANY**

Station:

Dated :

No 32006/AVSC/AG/PS-2(a)
Bharat Sarkar/Government of India
Raksha Mantralaya/Ministry of Defence
New Delhi - 110011

24th Aug 2006

To,

The Chief of Army Staff
New Delhi

Sub : **RESTRUCTURING OF OFFICERS' CADRE IN ARMY
POSTAL SERVICE**

Sir,

1. President is pleased to sanction revision of various terms and conditions of service for officers of the Army Postal Service as given in the succeeding paragraphs.

2. **Promotion.** Officers granted Temporary Commission in the APS will be eligible for quasi-substantive promotion to higher ranks subject to completion of the under mentioned years of qualifying service (commissioned or equivalent service) w.e.f. 16 Dec 2004: -

| <u>Rank</u> | <u>Qualifying Service for Quasi-Substantive Promotion in APS</u> |
|-------------|--|
| Capt | 2 years |
| Major | 6 years |
| Lt Col | 13 years |
| Col (TS) | 26 years |

3. Officers granted Temporary Commission in any rank before completion of the qualifying service prescribed at Para 2 above will hold that rank in acting capacity till they are granted quasi-substantive promotion to that rank.

4. Quasi-substantive promotion upto and including the rank of Lt Col and Col(TS) will be granted by time scale, irrespective of vacancies, on completion of the qualifying service prescribed at Para 2 above. Officers holding the quasi-substantive rank of Col by time scale will be held against the authorization of appointments in the rank of Lt Col. Promotion to the rank of Col, Brig and Maj Gen will continue to be based on existing policy.

5. **Pay and Allowances.** Officers of APS granted quasi-substantive promotion and opting for military rates of pay, will receive pay and allowances appropriate to the quasi-substantive rank held. Those officers granted Temporary Commission in any rank and

holding such rank in acting capacity will be eligible only for minimum of the basic pay of that rank. Rank pay of such rank will also be admitted in addition. The next increment above the minimum of such basic pay will be admitted after grant of quasi-substantive promotion to that rank as prescribed in Para 2 above. An officer will however, will have an option at the time of commissioning and a further option on each occasion of promotion in the Army or in the civil, to draw either military pay and allowances or civil pay plus a deputation allowances as per existing rules.

6. APS officers granted quasi-substantive ranks in the Army will hold such ranks for so long as they are serving in APS. Officers will have no claim to any benefits by virtue of holding the same, on reversion to parent cadre. The quasi-substantive ranks granted under these orders will be treated for purposes of pay and allowances in the same manner as substantive ranks granted to permanent commissioned officers. In the absence of a higher paid acting rank, the quasi-substantive rank will be taken into account for all pensionary awards, if any.

7. As a consequence of the above orders, appointments in which Major/Lt Col and Col can be posted are given in Appendix to this letter. The appointments upgraded to the rank of Col will be in addition to the sanctioned strength of Cols in the Army.

8. AI 29/85, SAI 2/S/98, PEs/WEs and other orders and instructions affected by this order would be amended in due course.

9. These orders will be applicable w.e.f. 16 Dec 2004 in respect of time bound/time scale promotions upto the rank of Col (TS). Revision in pay and pension due to promotion where applicable to officers who retired during the period intervening between 16 Dec 2004 and the date of issue of this letter will be reviewed with retrospective effect. In the case of appointments from Lt Col to Col (select) the date of effect will be from the date of their promotion.

10. This issues with the concurrence of Integrated Finance vide Diary No7/10/01/APS/513/AG PA dated 22 Aug 06.

Yours faithfully,



(TKM Pillai)

Under Secretary to Govt of India

Copy to:-

1. The Controller General of Defence Accounts, New Delhi.
2. The Director of Audit, Defence Services, New Delhi.
3. The Controller of Defence Accounts (Officers), Pune.
4. The Chief Controller of Defence Accounts (Officers), Pune.
5. The Senior Deputy Director of Audit, Defence Service, Pune.
6. The Deputy Director of Audit, Defence Service, Allahabad.
7. The Adjutant General's Branch/MP-2
8. The Adjutant General's Branch/PS-2(a)
9. The Deputy Chief of the Army Staff, New Delhi

10. The Military Secretary, IHQ of MOD (Army), New Delhi.
11. Additional FA (M).
12. DG Posts, Dak Bhawan, Sansad Mar, New Delhi – 110 001
13. Officer Incharge, P&T Adm Cell, PIN : 900 746, C/O 56 APO

Copy signed in ink to:-

Director of Accounts (Postal), Nagpur, Nagpur – 440 001.
The Controller of Defence Accounts (Officers), Pune.
The Controller of Defence Accounts (Pensions), Allahabad.
APS Accounts Section, O/O DA(P) Nagpur, Nagpur – 440 001

Two copies:-

D(GS-I), D(GS-II), D(GS-III), D(MS), D (Works-II), D(Navy-II), D(Air-II)
D(Pen/Services), D(Pay/Services), Pen(c), D(QS), D(Mov).
MOD/Fin/AG/PA

Copy also to:-

PS to RM.
SO to Defence Secretary.
PPS to Secy Defence (Finance).
PPS to Secretary (DP).
PS to Addl Secy.



Appendix

Refer to para 7 of Min of Def letter
No 32006/AVSC/AG/PS-2(a)
dated 24 Aug 06

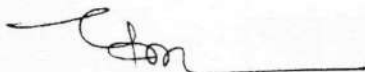
UPGRADATION OF APPOINTMENTS IN APS

(a) Appointments to be upgraded from Major to Major/Lt Col

| <u>Ser No</u> | <u>Unit</u> | <u>Appointment</u> | <u>Number</u> |
|---------------|--|--------------------|---------------|
| (i) | Corps Postal Unit | OC | 12 |
| (ii) | Div Postal Unit (incl CI Delta Force Postal Unit) | OC | 36 |
| (iii) | UB, MB & ATNK&K Area SDS Units | OC | 03 |
| (iv) | Addl Dte Gen of APS | DDsAPS | 02 |
| (v) | Addl Dte Gen of APS (PLI) | DDAPS | 01 |
| (vi) | Addl Dte Gen of APS (SB) | DDAPS | 01 |
| (vii) | 1 & 2 CBPOs Coy Cdr, Base PM & PM (SB) for each | | 06 |
| (viii) | APS Centre OIC P&T Adm Cell, 2 Coy Cdrs | | 03 |
| Total | | | 64 |

(b) Appointments to be upgraded from Lt Col to Col

| | | | | |
|-------|-----------|---|--|----|
| (i) | Army HQ | - | JDAPS(Staff) to Director APS (Staff) JDAPS(PLI) to Director APS (PLI) | 02 |
| (ii) | Corps HQs | - | ADsAPS to Directors APS HQs 2, 3, 4, 10, 11, 12, 15 16, and 33 Corps | 09 |
| Total | | | | 11 |



(93)

No. 9(5)/2016-D(Mov)
Government of India
Ministry of Defence
D(Mov)

Sena Bhavan, New Delhi
Dated 16th May, 2017.

OFFICE MEMORANDUM

Subject: VRS from APS in respect of persons of D/o Post on deputation with APS

Reference AG/MP-8(I of R) dated 6th December, 2016 on the subject mentioned above. It is intimated that a decision has already been taken by the Government with regard to this issue and has been mentioned at Sl.No.2 of Government of India decision, given under Rule 67 of CCS Pension Rules. A copy of the same is enclosed herewith for ready reference.

2. The VRS cases of Non-gazetted DoP personnel on deputation with APS may be dealt as per the provision of the GOI decision mentioned in the above para. With regard to query of extension of their deputation the issue has to be examined considering the man power requirement of APS.

Encl: a.a.

Director
MP-8(I of R)
IHQ of MoD (Army)

Copy to:

1. Director (Staff) Deptt. of Posts

✓ 2. ADG APS


(Dhirendra Verma)
Director(Q)
Tel. 23101372

COURT NO. 2, ARMED FORCES TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
(Through Virtual Hearing)

O.A. No. 1239 of 2020
[OA 236/2018 (RB Kochi)]

In the matter of :

Lt Col Shaji Joseph (Retd.)

... Applicant

Versus

Union of India & Ors.

... Respondents

For Applicant : Mr. Alex Joseph, Advocate

**For Respondents : Dr. Vijendra Singh Mahndiyan, Advocate
for Respondents Nos. 1 to 5 and 7 to 10**

Mr. Neeraj, Sr. CGSC for Respondent No.6

CORAM :

HON'BLE MS. JUSTICE SUNITA GUPTA, MEMBER (J)

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

ORDER

Through the medium of this OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has sought the following reliefs :

- i. to issue a declaration that the applicant is entitled to get all his retirement benefits including pension, gratuity, GPF, AGIF maturity benefits, leave encashment, commutation of pension on retirement on the date of his retirement viz. on 01.08.2017 and that the delay on the part of the respondents in releasing the said benefits due to the applicant is highly willful, negligent, illegal, arbitrary and

discriminatory and hence the applicant is entitled to interest at the rate of 18% per annum for the arrears of his aforesaid benefits from the date on which it became due till the date of actual disbursement.

- ii. To issue a further declaration that Annexure A5 and A6 orders/letter issued by the 4th respondent is illegal, arbitrary, without any authority of law, against Rule 67 (1) of the Central Civil Service (Pension) Rules, 1972 and against Annexure A2 order and Annexure A7 office memorandum issued by the 1st respondent and hence the same is liable to be set aside.
- iii. To issue a further declaration that the action to authorize pension and gratuity of the applicant shall be taken as per Rule 67 of Central Civil Service (Pension) Rules, 1972 by the Head of Office of the borrowing Department of the applicant viz. the Army Postal Service.
- iv. To further issue a declaration that the applicant is entitled to 'Ex-serviceman' status with pension and hence he is entitled to the benefit of Ex-Servicemen Contributory Health Scheme and Military Canteen Facilities.

- v. To call for the records leading upto Annexure A5 and A6 set aside the same.
- vi. To issue a direction, directing the respondents to sanction and disburse all pensionary benefits due to the applicant including pension, gratuity, GPF, Army Group Insurance benefit, CGEGIF maturity benefits, leave encashment, commutation of pension on retirement etc.
- vii. To further issue a direction, directing the respondent to pay interest at the rate of 18% per annum to the applicant for the arrears on his terminal benefits from the date on its became due till its actual disbursement to the applicant.
- viii. To issue a direction, directing the 10% respondent to admit the applicant in the Ex-Servicemen Contributory Health Scheme.
- ix. to issue such other further reliefs as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of this case; and
- x. to award exemplary cost for this proceedings to the applicant.

In the interim, to direct the respondents to pay the admitted value of retirement benefits due to the applicant including gratuity, GPF, CGEGIF maturity benefits, Army

Group Insurance Fund, leave encashment etc. and also direct the respondents to pay provisional pension to the applicant prospectively, pending this original application, in the interest of justice.

2. Succinctly stated, the case of the applicant is that he originally joined the Department of Posts under Respondent No.6 as Short Duty Postal Assistant during August, 1985. He joined the Army Postal Service as Field Servant Volunteer from the Department of Posts on 28.12.1988 in the rank of Warrant Officer, duly recruited by the Branch Recruiting Office, Thiruvananthapuram, to serve in the Indian Army in a Combatant capacity. Thereafter, he was promoted several times and finally got promoted to the post of Lieutenant Colonel (Lt Col) with effect from 01.05.2010. While working as Lt Col in the Army Postal Service (hereinafter referred to as 'APS'), the applicant submitted his application under Rule 48A of the Central Civil Service (Pension) Rules, 1972 (hereinafter referred to as 'CCS Pension Rules, 1972') seeking voluntary retirement without repatriating to the postal department. At the time of submitting the application, he had completed more than 20 years' service and thus entitled to apply for voluntary retirement under Rule 48A of the CCS Pension Rules. This application was submitted under the provisions of the CCS Pension Rules, since, as per Para 6 of the Army Instructions (AI)

29/85, pension in respect of the temporary commissioned offices shall be governed by CCS Pension Rules. This request was approved by Respondent No. 6 and the applicant was permitted to retire from service voluntarily with effect from the forenoon of 01.08.2017 by Order No. B4/604 dated 23.06.2017 (Annexure A-2). Pursuant to Annexure-A2 order, the 4th respondents, who is the competent authority under the APS as per his order No. 90024/APS IA dated 12.07.2017, approved voluntary retirement of the applicant and accorded sanction for the relinquishment of temporary commission of the applicant in APS and simultaneous voluntary retirement from the Department of Posts in the forenoon of 01.08.2017, as per Annexure A-3. Pursuant to Annexure-A3, the Officiating Officer Commanding of the 8 Mountain Division Postal Unit issued movement order to the applicant on 01.08.2017 as per Annexure-A4. It is evident from Annexure-A4 that the applicant has retired from service on the forenoon of 01.08.2017. The respondents had however not released any retirement benefits to the applicant till date despite several correspondences.

3. Respondent No. 4, vide Order No. 90024/APSIA dated 24.04.2018 (Annexure-A5) cancelled Annexure-A3 i.e. order dated 12.07.2017 and ordered that the applicant is repatriated to the office of Respondent No. 6 with effect from 30.07.2017.

Subsequently, 4th Respondent issued letter No. 90024/APSIA dated 18.05.2018 (Annexure-A6), replacing Annexure-A5 and changing the date of relinquishment of temporary commission in the APS of the applicant to 31.07.2017 (AN). It is alleged that Annexure-A5 issued by 4th Respondent cancelling Annexure-A3 is illegal, arbitrary, discriminatory and unsustainable. After retirement of an employee, it is not permissible for an employer in a borrowing department to repatriate the employee to his parent department.

4. As per Rule 67(1) of the CCS Pension Rules, 1972, in the case of government servant who retires while on deputation to another Central Government department, action to authorize pension and gratuity in accordance with the provisions of Chapter III of the CCS Pension Rules shall be taken by the Head of Office of the borrowing department. In view of this Rule, office of the borrowing department is authorized to take action for releasing pension and gratuity etc. of the applicant. There is no reason to delay the pensionary benefits due to the applicant and the same should have been disbursed to him on 02.08.2017. The applicant had worked in the APS from 28.12.1988 to 01.08.2017 and is entitled to the status of 'Ex-serviceman' with pension and hence entitled to the benefits of Ex-servicemen Contributory Health Scheme (ECHS). Denial of

the said benefits to him is illegal, arbitrary and discriminatory. Hence, this OA.

5. A joint counter affidavit has been filed by Respondents Nos. 1 to 3, wherein it was not disputed that the applicant joined APS on 28.12.1988 as Warrant Officer and his service was regularized in the Department of Posts on 27.05.1990. Thereafter, on passing Field Promotion exams conducted by APS, he was promoted as Junior Commissioned Officer in APS on 19.04.1996. After fulfilling the eligibility criteria, he was selected by Services Selection Board, Allahabad for temporary commission in APS and was granted Commission in the rank of Lieutenant with effect from 01.05.1997. The Adjutant General's Branch/PS-2 vide Service Note No. B/32006/Misc./APS/AG/PS-2(a) dated 18.04.2018, filed as Annexure-R4, has intimated the ages of retirement in respect of APS Officers as under :

| | |
|---|------------------|
| "(a) Up to including the rank of Colonel | 54 years |
| (b) Brigadier | 56 years |
| (c) Major General | 58 years" |

6. The applicant, vide application dated 21.04.2017, had applied for voluntary retirement from service directly from APS without reverting back to his parent department i.e. Department of Posts, with effect from 01.08.2017 (FN). Vide letter No. 90024/APS-1A dated 15.05.2017 (Annexure-R6), APS Directorate had forwarded the application to his parent Division

i.e. Superintendent of Post Offices, Idukki Division, Thodupuzha vide letter No. B/604 dated 23.06.2017, who had accepted his voluntary retirement with effect from 01.08.2017 (FN). Thereafter, APS Directorate, vide letter dated 12.07.2017, had issued retirement-cum-relinquishment order in respect of the applicant with effect from 01.08.2017 (FN) as per the procedure being followed. Accordingly, the officer had relinquished his Temporary Commission in APS and simultaneously retired from the Department of Posts with effect from 01.08.2017 (FN), duly relieved from duties at 8 Mountain Division Postal Unit under Headquarters, Northern Command (Jammu & Kashmir) vide Movement Order No. A/3-3/APS-1 dated 01.08.2017 (Annexure-R9).

7. The Adjutant General's Branch/PS-2 vide Service Note No. 32006/APS/AG/PS-2(a) dated 10.08.2017 (Annexure-R10), raised the following observations :

- (a) The date of relinquishment of Temporary Commission in APS has not been mentioned. An attempt has been made to relinquish an appointment in APS with concurrent/consequential relinquishment of Temporary Commission which happens on the afternoon of the day assume another appointment in the Department of posts on the same afternoon and grant voluntary retirement from the post so assumed in the Department of posts the next

morning. There is a requirement of clarifying this confusion by clearly stating the date of relinquishment of Temporary Commission.

(b) As relinquishment of appointment in the APS would be in the afternoon of the last working day of the Officer, and he has to assume an appointment in Department of Posts prior to becoming eligible for voluntary retirement from that post and voluntary retirement can only be granted thereafter, all the three activities cannot be done on the same date. The date of relinquishment of appointment in APS has to be distinctly different from the date of voluntary retirement.

(c) Also voluntary retirement is granted from an appointment post in Department of Posts. The appointment/post from which voluntary retirement has been granted is not mentioned in the order. This is against all rules on the subject as it appears that the individual has been granted voluntary retirement as a Lt Col, which is not the case. The same may be clearly indicated in the order.

(d) The only provision of retiring directly from APS without reversion to Department of Posts for officers holding Temporary Commission is for Officers retiring on attaining the mandatory age of retirement in the Army (Para-9-3(d) to Annexure 'A' of Army Instruction 29/85

refers). The present order is, therefore, a violation of terms laid down vide Army Instruction 29/85 and needs to be reconciled.

8. The Adjutant General's Branch/MP-8(I of R) vide letter No. A/20037/APS/MP-8(I of R) dated 31.08.2017 also brought out that there is no provision of voluntary retirement in the Army as per Annexure-R11. However, Temporary Commission granted in Army has to be relinquished in the afternoon on last working day. Thereafter, the individual has to assume an appointment as per his civil status in his parent department to become eligible for voluntary retirement from the post he is holding there (Department of Posts) and to further proceed on voluntary retirement once the same is approved by the Competent Authority. However, all pensionary benefits of the individual will be regulated on the basis of his entitlement in substantive posts in the parent cadre as temporary commission is not the permanent rank/appointment which has been relinquished by the Army as per existing instructions. Adjutant General's Branch recommended that the applicant be repatriated to his parent department for his substantive appointment (as per civil status) held in Department of Posts where he became eligible for voluntary retirement as per the existing policy. Based on the objections raised by Adjutant General's Branch, the pension sanctioning authority for APS

personnel withheld the pension processing of the applicant. Comments were called on these observations raised by Adjutant General's Branch. Accordingly, APS Directorate vide Service Note No. 90007/APSIA dated 04.09.2017 and 21.09.2017 submitted the comments as per Annexure-R14 and Annexure-R15. Adjutant General's Branch vide Service Note No. B/32006/APS/AG/PS-2(a) dated 11.04.2018 (Annexure-R16) directed APS Directorate to cancel the Release Order dated 12.07.2017 (Annexure-R8) in respect of the applicant and issued a fresh Repatriation Order as per Annexure-R16.

9. Accordingly, APS Directorate vide letter dated 24.04.2018 accorded *ex-post facto* approval for relinquishment of Temporary Commission in APS by the applicant and repatriated to the Office of the Superintendent of Post Offices, Idukki Division, Thodupuzha Kerala Circle with effect from 30.07.2017 (AN) as per Annexure R-17. However, the repatriation of the officer with effect from 30.07.2017 was not in order as it could have been on 31.07.2017 (AN) as the officer was granted voluntary retirement from service with effect from 01.08.2017 (FN). Therefore, APS Directorate vide letter dated 18.05.2018 (Annexure-R18) had amended relinquishment of Temporary Commission/repatriation date from 30.07.2017 (AN) to 31.07.2017 (AN) and issued fresh Repatriation Order as per Annexure-R18. However, APS Directorate, vide letters dated

24.04.2018 and 18.05.2018 (Annexure-R17 and Annexure-R18) requested APS Accounts Section Office of the Director of Accounts (Postal), Nagpur to release the pensionary benefits to the applicant, which was not done. APS Directorate, vide letter dated 18.05.2018, intimated that as the applicant was repatriated to Superintendent of Post Offices, Idukki Division, Thodupuzha, the pension case will be processed by the Superintendent of Posts Offices, Idukki Division, as per Annexure-R19. The applicant had not physically joined at Idukki Division because he had already proceeded on retirement with effect from 01.08.2017 (FN) prior to issue of Repatriation Order dated 18.05.2018. As such, it is submitted that the cancellation of the retirement order is not arbitrary and discriminatory and the OA is liable to be dismissed.

10. Respondent No. 4, in the reply, reiterated the averments made by Respondents Nos. 1 to 3 in their counter affidavit and it was further alleged that grant of ESM status to service personnel is governed by the definition laid down by DoP&T which is the Nodal Agency in this regard. Eligibility of APS officers for grant of ESM status is covered under the definition laid down at para 2 (I)(c)(iii) of DOP&T Notification dated 04.10.2012, an amendment of Notification dated 15.12.1979 (Annexure-R17 of R4 Reply). As per the laid down definition, personnel of APS who are part of Regular Army and retired from

APS without reversion to their parent service with pension will be eligible for ESM status. As per APS Directorate letter No. 90024/APS 1A dated 18.05.2018, the applicant was repatriated to his parent office i.e. O/o Superintendent of Post Offices, Idukki Division, Thodupuzha, Kerala Circle with effect from 31.07.2017 (AN). Thus, the applicant does not fulfill eligibility criteria laid down by DoP&T for grant of ESM Status. As per policy (Annexure R-18) following is the eligibility criteria for getting the ECHS benefits:

- (a) Should have ESM status.
- (b) Should be drawing normal service/disability/Family Pension.

The applicant is neither an ESM nor he is drawing pension from Army, therefore, ECHS facilities cannot be granted to him. As such, it is submitted that the action has to be taken by the Department of Posts, Idukki Division for release of pension and other benefits, and so far as this respondent is concerned, OA is liable to be dismissed.

11. It was further submitted that the applicant is entitled for pensionary benefits. However, since he had been shown as repatriated to his parent department, his pension cannot be processed by APS Accounts Section, Nagpur and his claim can be processed only by his parent circle i.e. Idukki Circle. Department of Posts (Personnel Division), vide Memorandum

No. X-17/1/2018-SPN-II dated 21.11.2019, has intimated that sanction for payment of provisional pension @ Rs. 26,800/- plus appropriate DA from 01.08.2017 to 30.04.2020 has been issued by the O/o the Superintendent of Post Offices, Idukki Division vide Memorandum No. C2/PEN/444 A/Dlg/19-20 dated 18.11.2019 and gratuity amount of Rs. 6,77,290/- (90% of entitled gratuity) issued vide Memorandum No. C2/PEN/444 A/Dlg dated 19.11.2019 with reference to representation made by the applicant at NHRC.

12. Respondents 5 and 7 filed a joint reply wherein it was submitted that the APS Directorate vide letter No 90024/APS-1A dated 12.07.2017 accorded approval for relinquishment of temporary Commission in APS by the applicant and simultaneously voluntary retirement from Department of Posts with effect from 01.08.2017 (F/N) also became effective. The pension papers of the officer were accordingly received in September, 2017 from P&T Adm Cell (APS) vide their letter No.3203/TC-31510H/ Pen/19 dated 28.08.2017. Meanwhile vide Adjutant General Branch of IHQ, MoD (Army) letter No. A/20037/APS/MP-8 (I of R) dated 31.08.2017 addressed to QMG Br, the Voluntary Retirement of the applicant was objected to as it was against relevant rules of Army and it was recommended to repatriate the applicant to his parent department for his substantive appointment (as per civil status)

held in the Department of Posts, where he becomes eligible for voluntary retirement from the substantive post holding in the Department. Also, AGs branch directed APS Directorate to rectify the discrepancies in retirement order vide their letter No. B/320006/APS/AG/PS2(a) dated 10.08.2017. As per AGs Branch' objections, the matter was referred for clarification to APS Directorate vide office letter No APS-1/TC31510/VR Retirement/834 dated 26.09.2017 and followed by reminder on 06.12.2017. Due to non-receipt of the clarification, the Pension papers along with Service Book returned to P&T Adm Cell on 16.02.2018 vide latter No. APSI/TC/31510/Vol Retirement/1566. The APS Directorate was once again reminded on 10.04.2018 for clarification on the matter.

13. It was further submitted that the APS Directorate vide their letter No 90024/APS1A dated 24.04.2018 cancelled the voluntarily retirement orders dated 12.07.2017 and ordered repatriation of the officer on relinquishment of temporary commission to the Superintendent of Post Offices, Idukki Division, Kerala Circle with effect from 30.07.2017 (A/N). Further, the APS Directorate has cancelled the above order dated 24.04.2018 and issued fresh order vide their letter No.90024/APS-1A dated 18.05.2018 wherein the date of repatriation to the office of the Superintendent of Post Offices, Idukki Division, Kerala was revised as 31.07.2017 (A/N) instead

of 30.07.2017 (A/N) and directed them to release pensionary benefits to the officer under Rule 33 of CCS Pension Rules, 1972 and Note 6 below 33 of said Rules. After receipt of letter dated 18.05.2018 from APS Directorate, the respondent's office addressed APS Directorate and requested vide this office letter No APS-1/ TC31510/ Relinquishment/431 dated 01.06.2018 that since the officer has been repatriated from Army Postal Service to his parent department i.e. Department of Posts, by the APS Directorate, his pension case can only be processed in Department of Posts. It was requested to instruct the officer to submit the pension papers to the Superintendent of Post Offices, Idukki Division for processing pension case. Simultaneously, the matter was again referred to AGs Branch, IHQ MOD (Army) vide letter No. APS-I/TC31510/1155 dated 01.11.2018 and requested to clarify whether pensionary benefits have to be considered on Army Scale of Pay or otherwise as the officer approached to the Armed Forces Tribunal for sanction of pensionary benefits.

14. Further, Postal Directorate also clarified that as per provisions of their order No X-17/1/2018-SPN-II dated 10.01.2019 and 24.01.2019, the Head Of Circle was asked to direct all the appointing authorities not to accept request for voluntary retirement directly from APS without being repatriated to Civil side and that such request for voluntary

retirement would be considered only after repatriation of the officer to the parent unit to the civil side.

15. It was submitted that the repatriation case along with the service book of the applicant for final settlement of the accounts of the officer was received from P&T Adm Cell vide their letter No. PTCCell/TC-31510H/PA-1 dated 18.10.2019 and as per instruction therein last pay certificate of the officer along with Service Book was dispatched to the Superintendent of Post Offices, Idukki Division Kerala vide this office letter No. APS-1/1C31510/ Relinquishment dated 22.10.2019 for processing pension case at Idukki Division, Kerala, even before the high level meeting. Further, the Circle Office, Thiruvananthapuram vide their letter No. ST/9-2/CR/2016 (pt) dated 18.11.2019 has directed PMG Central Region Kochi to immediately process the provisional pension taking into and arriving at presumptive pay of the retired official in substantive grade of PA had he continued in civil side, granting due financial upgradation, if any, and the amount thus arrived at be taken as emoluments for calculating pension and other retirement benefits. The Instructions of the Ministry of Defence and Minutes of the above referred meeting have not been received at the office of the respondents so far. However, as per copy of the affidavit on behalf of the Superintendent of Post Offices, Idukki Division (Respondent No.6) received from the RO Central Region Kochi

vide their letter No CC-2/77/2018 Vol. 1 dated 01.03.2021 it is noticed that as per CCS Pension Rules, 1972, the SPOs Idukki Division (Respondent No. 6) is the competent authority to grant pension in Postal Assistant Cadre and the Superintendent of Post Offices, Idukki Division has already granted provisional pension which is yet to be collected by the applicant.

16. Respondent No. 6 originally filed a reply statement on 29.07.2019, wherein it reiterated the averments made by Respondents Nos. 1 to 3 in their counter affidavit. It was submitted that as the Additional Director General (Offg.) APS, Integrated HQ of MoD, Delhi Cantt has issued letter dated 17.10.2018 to DDG (Pers), Deptt. of Posts, Dak Bhawan, New Delhi to look into the matter and directed the APS Section, Office of the DAP, Nagpur to release all pensionary benefits in the case, the matter has been taken with Directorate and reply is awaited.

17. Since it had not stated specifically as to who is liable to pay pensionary benefits to the applicant, an additional affidavit was filed on 22.01.2021, wherein the factual matrix of the case has not been disputed. It is submitted that the Ministry of Defence letter No. 32006/AVSC/AG/PS-2(a) dated 24.08.2006 (Annexure R-3) states as follows :

“6. APS officers granted quasi-substantive ranks in the Army will hold such ranks for so long as they

are serving in APS. Officers will have no claim to any benefits by virtue of holding the same on reversion to the parent cadre."

18. It was submitted that the applicant has relinquished his service in APS as per Annexure A-5 order dated 24.04.2018. Hence, as per Annexure R-3, the applicant cannot claim any benefit as he ceases to be an APS Officer consequent to his relinquishment from Army Postal Service. The extract of Annexure A-5 i.e. order dated 24.04.2018 is reproduced as under:

"Under the provisions of Para 9 of Annexure 'A' to AI 29/85 as amended, approval of the competent authority is accorded for relinquishment of Temporary Commission in Army Postal Service by TC-31510H Lt Col Shaji Joseph, Officer Commanding, 8 Mtn Div Postal Unit and simultaneous voluntary retirement from Department of Posts on 01 Aug 17 (F/N)."

19. As such, it is submitted that as per Annexure R-3 and Annexure A-5, the applicant is eligible for pension in his parent cadre i.e. in the cadre of Leave Reserve Postal Assistant only. The sanction for provisional pension and provisional gratuity to the applicant was issued on 18.11.2019 and 19.11.2019, respectively, by Respondent No.6, but the applicant has not taken payment of provisional gratuity and is not drawing any provisional pension as of now. As per CCS Pension Rules,

1972, Respondent No. 6 is the Competent Authority to grant pension in the Postal Assistant Cadre, which has been granted by Respondent No. 6. However, same is yet to be collected by the applicant.

20. Respondent No. 9 submitted that, to be part of ECHS, a person has to fulfill twin conditions as per Govt. of India letters dated 30.12.2002 and 31.10.2010, which are as under :

- (a) Individual should have an Ex-serviceman status; and
- (b) individual should be in receipt of Pension/Family Pension/Disability Pension drawn from Controller of Defence Account.

Since the applicant does not fulfill these conditions, as such, he is not entitled for the said benefit and OA is liable to be dismissed.

21. No separate affidavit has been filed by the remaining respondents.

22. Applicant filed rejoinder to the counter affidavit filed by Respondents Nos. 1 to 3, wherein he denied the allegations made in the written statements and reiterated the stand taken in the OA.

23. We have heard Mr. Alex Joseph, Advocate for the applicant; Dr. Vijendra Singh Mahndiyan, Advocate for all the

Respondents except Respondent No. 6 and Mr. Neeraj, Sr. CGSC for Respondent No. 6, and have carefully perused the record.

24. The main thrust of the arguments of the learned counsel for the applicant is on the fact that his case is squarely covered by Office Memorandum dated 16.05.2017 issued by the Ministry of Defence. Reliance was placed on Rule 67 of the CCS Pension Rules, 1972 for submitting that the pension and gratuity of the applicant is required to be given by the Head of Office of the borrowing department, which in this case is Respondent No. 4. The defence of the respondents that voluntary retirement does not fall within the term 'retirement' mentioned in Rule 67 of the CCS Pension Rules, 1972 is untenable and, therefore, the parent department be directed to process the case of pension and other benefits of the applicant. It is further submitted that the applicant has been unnecessarily dragged into various litigations, hence he is also entitled for compensation in addition to interest on the late payment.

25. *Per contra*, it is the submission of the learned counsel for the respondents-APS, that Rule 67 of the CCS Pension Rules, 1972 does not help the applicant and as it is applicable in the case of the government servant who 'retires' while on

deputation to another Central Government department. It is submitted that there is no provision in Army for voluntary retirement, therefore, this rule is not applicable and hence the Competent Authority to process the case of pension and gratuity and other benefits of the applicant is the parent department and not the borrowing department. The parent department has already issued the provisional pension and gratuity which the applicant has not accepted. As such, no such direction as desired by the applicant is called for and OA is, therefore, liable to be dismissed.

26. Having heard the learned counsel for the parties, it will be in fitness of things to narrate the undisputed factual matrix of the case as follows :

- (i) The applicant joined the Department of Posts in Respondent No. 6 as Short Duty Postal Assistant during August, 1985.
- (ii) He joined the Army Postal Service (APS) on 28.12.1988 in the rank of Warrant Officer from where he was promoted several times and finally got promoted to the post of 'Lt Col' with effect from 01.05.2010.
- (iii) Applicant submitted an application under Rule 48A of CCS Pension Rules, 1972 seeking voluntary retirement without repatriating to the Department of Posts.

- (iv) The request was approved by Respondent No. 6 and voluntary retirement of the applicant was approved and sanction for relinquishment of temporary commission in APS and simultaneous voluntary retirement from the Department of Posts in the forenoon of 01.08.2017 was accorded.
- (v) Movement Order was issued and the applicant retired from service in the forenoon of 01.08.2017.
- (vi) Vide order dated 24.04.2018, Respondent No. 4 cancelled the order dated 12.07.2017 and order the applicant to repatriate to the Office of the Respondent No. 6 with effect from 30.07.2017.
- (vii) Vide letter dated 18.05.2018, the date of relinquishment of temporary commission in the APS was changed from 30.07.2017 to 31.07.2017.
- (viii) Initially, the case for pension and gratuity was processed by Respondent No. 4. However, in view of repatriation of the applicant to his parent department, the same was withheld and Provisional Pension Order (PPO) was issued by Respondent No. 6.

27. The short question for consideration is as to whether the borrowing authority of the applicant i.e. Respondents Nos. 4, 5 and 8, are duty bound to release the retirement benefits to him,

as prayed by the applicant in the OA instead of Respondent No. 6 as submitted by the respondents in their counter affidavit.

28. Record reveals that the applicant applied for voluntary retirement from service under Rule 48A of the CCS Pension Rules, 1972 on 21.04.2017 (Annexure R-5). For the sake of convenience, the said letter is reproduced as under :

"21 Apr 17

**Superintendent of Post Offices
Idukki Division
Thodupuzha
PIN - 685584**

(Through proper channel)

**VOLUNTARY RETIREMENT FROM SERVICE UNDER RULE
48A OF CCS (PENSION) RULES 1972**

Sir,

1. *With due respect, it is submitted that I had joined the Dept of Posts in Aug 1985 as an SDPA in your Division and was deputed to APS on 27 Dec 1988 after granting appointment as PA on an adhoc basis and enrolled in the Army Postal Service on deputation wef 28 Dec 1988. At present I am holding the civil lien as Postal Assistant in your Division. I have completed more than 28 years of service in the APS. In this connection, a copy of Director of Accounts (Postal), Nagpur letter No. APS/TC-31510H/1772 dated 19 Jan 17 is enclosed as a proof of the qualifying service for your ready reference.*

I hereby apply for voluntary retirement from the service, directly from APS without repatriation to the parent Department, wef 01 Aug 2017 (F/N). This may kindly be treated as notice under the provisions of Rule 48-A of CCS (Pension) Rules, 1972.

I earnestly request you to accept my application for voluntary retirement and necessary orders may kindly be issued at your earliest.

Thanking you,

Yours faithfully,

Sd/-

(TC-31510H Lt Col Shaji Joseph)"

29. A bare perusal of this letter goes to show that since the applicant had joined the Department of Posts and as per the letter itself although he was on deputation to APS since 27.12.1988, he was still holding the civil lien as Postal Assistant in the Department of Posts, therefore, the letter was addressed to Superintendent of Post Offices seeking their permission to accept his application for voluntary retirement. This letter was sent through APS as such, vide Annexure R-6, Deputy Director, APS wrote the letter to Superintendent of Post Offices seeking approval of the Competent Authority for voluntary retirement of the applicant without reverting back to the parent department with effect from 01.08.2017. Vide Annexure R-7, permission was granted by the Department of Posts to retire from service voluntarily with effect from the forenoon of 01.08.2017 under the provisions of Rule 48A of the CCS Pension Rules, 1972. Movement order was also issued vide Annexure R-9. Thereafter, discrepancies were observed by the Integrated Headquarters of Ministry of Defence (Army) vide Annexure R-10. It was pointed out that the date of relinquishment of temporary commission in APS has not been mentioned. Moreover, relinquishment and assumption of charges in other department cannot be on the same date. The date of relinquishment of appointment in APS has to be

distinctively different from the date of VRS. Moreover, VRS is granted from the Department of Posts. The only provision of retiring directly from APS without reversion to Department of Posts for officers holding temporary commission is for officers retiring on attaining the mandatory age of retirement in the Army as per Para 9(3)(d) of AI 29/85. The letter dated 12.07.2017 is in violation of this AI. Hence, discrepancies were required to be rectified and fresh order was required to be issued. Pursuant thereto, vide Annexure R-17, the letter dated 12.07.2017 was cancelled. Accordingly, the APS Directorate, vide letter dated 24.04.2018 accorded *ex-post facto* approval for relinquishment of temporary commission in APS by the applicant and repatriated to the Office of the Superintendent of Post Offices with effect from 20.07.2017 (AN) as per Annexure R-17.

30. The repatriation of the officer with effect from 30.07.2017 was also not in order. Therefore, vide letter dated 18.05.2018 (Annexure R-18), the relinquishment of temporary commission was amended from 30.07.2017 to 31.07.2017. Although the applicant did not physically join the Department of Posts as he had already proceeded on retirement with effect from 01.08.2017 (FN) prior to issue of Repatriation Order but for practical purposes, his pensionary benefits were to be processed by the parent department.

31. Learned counsel for the applicant has laid emphasis on the Office Memorandum dated 16.07.2017 issued by the Ministry of Defence which reads as under :

*"Sena Bhavan, New Delhi
Dated 16th May, 2017*

OFFICE MEMORANDUM

**Subject : VRS from APS in respect of persons of D/o Post
on deputation with APS**

Reference AG/MP—8(I of R) dated 6th December, 2016 on the subject mentioned above. It is intimated that a decision has already been taken by the Government with regard to this issue and has been mentioned at Sl. No. 2 of Government of India decision, given under Rule 67 of CCS Pension Rules. A copy of the same is enclosed herewith for ready reference.

2. The VRS case of Non-gazetted DoP personnel on deputation with APS may be dealt as per the provision of the GOI decision mentioned in the above para. With regard to query of extension of their deputation the issue has to be examined considering the man power requirement of APS."

32. Rule 67 of the CCS Pension Rules, 1972 reads as under :

"67. Government Servant on deputation

(1) In the case of the Government servant who retires while on deputation to another Central Govt. Department, action to authorize pension and gratuity in accordance with the provisions of this Chapter shall be taken by the Head of Office of the borrowing Department."

33. A bare perusal of the above Rule goes to show that it is applicable in the case of a government servant, who 'retires' while on deputation. It is the case of the respondents that

there is no provision of voluntary retirement in the Army and, therefore, this Rule 67 is not applicable in the case of the applicant.

34. In fact, the Ministry of Defence letter dated 24.08.2006 (Annexure R-3), as reproduced above, states that APS officers granted *quasi*-substantive rank in the Army will hold such ranks for so long as they are serving in APS. Officers will have no claim to any benefits by virtue of holding the same on reversion to the parent cadre.

35. Further, AI 29/85 dealing with the terms and conditions of service with regard to temporary commission in APS, indicate that for service pension, officer will be covered by civil rules. The submission of learned counsel for the applicant that the respondents themselves admitted that in the past they have granted the benefit to other individuals and, therefore, the respondents cannot be allowed to deviate from that practice, is untenable because a wrong practice cannot be allowed to be perpetuated. Even if the Department of Posts had initially wrongly approved the application of the applicant for voluntary retirement directly from Army Postal Service without repatriation to Department of Posts, since there is no provision for voluntary retirement in Army and the only provision of retiring directly from the Army without repatriation to the


Department of Posts is on attaining the age of compulsory retirement in the Army, it cannot be said that the wrong committed by the Department of Posts should be allowed to be perpetuated and cannot be allowed to be corrected subsequently. When these facts were brought to their notice, then corrective measures were taken and the applicant was ordered to be repatriated to the parent department as per CCS Pension Rules, 1972. Vide orders dated 10.01.2019 and 24.01.2019, Postal Directorate also asked the Head of Circle not to accept request for voluntary retirement directly from APS without repatriation to civil side and such request for voluntary retirement is to be considered only after repatriation to the present unit. Moreover, since the applicant had joined the Department of Posts and was still holding lien in that department, therefore, he himself had applied for voluntary retirement to the Directorate of Post only and approval was also accorded by the Department of Posts. Therefore, Department of Posts is the Competent Authority to grant pensionary benefits to the applicant and not the borrowing department i.e. APS. Department of Posts i.e. Respondent No. 6 also processed the case of pensionary benefits of the applicant. As revealed from the counter affidavit of Respondent No. 6, sanction for payment of provisional pension and gratuity were accorded by the Superintendent of Post Offices vide Office Memorandum dated


18.11.2019 and 19.11.2019 although it is a different matter that the applicant did not accept the same. That being so, it cannot be said that the applicant suffered any mental agony or financial loss because once the matter was processed by Respondent No. 6 and the pension and gratuity were sanctioned by the office, it was for the applicant to accept the same and he cannot claim any compensation or interest from Respondent No. 6 for his own fault for not accepting the pensionary benefits.

36. The net result of the aforesaid discussion is that it is the Respondent No. 6, who is the Competent Authority to issue pensionary benefits to the applicant, therefore, the applicant is not entitled to the declaration as stated in Para 8 (i) to (iv) of the OA. Since he was only on deputation to APS, he is also not entitled either for 'Ex-serviceman' status or for 'Ex-servicemen Contributory Health Scheme (ECHS)', as prayed for. So far as his claim for interest is concerned, he is not entitled for the same as it was due to his own fault that he did not get the pensionary benefits from Respondent No. 6 and he cannot be allowed to take advantage of the same.

36. In view of the foregoing, the OA is dismissed. Pending MAs, if any, also stand disposed of. In the facts and circumstances of the case, parties are now left to bear their own costs.

Pronounced in open Court on this 16th day of February,
2022.


[JUSTICE SUNITA GUPTA]
MEMBER (J)


[VICE ADMIRAL P. MURUGESAN]
MEMBER (A)

/ng/

Major M.R. Penghal vs Union Of India (Uoi) And Ors. on 30 April, 1998

Supreme Court of India

Equivalent citations: AIR1999SC543, (1999)ILLJ1211SC, (1998)5SCC454, AIR 1999 SUPREME COURT 543, 1998 AIR SCW 3855, 1999 LAB. I. C. 222, (1998) 5 JT 624 (SC), 1998 (5) SCC 454, (1998) ILR (KANT) 2177, (1998) 80 FACLR 300, (1999) 1 LABLJ 1211, (1999) 1 SCT 139, (1998) 6 SERVLR 355, 1998 SCC (L&S) 1373

Bench: [V.N. Khare](#), [M. Srinivasan](#)

JUDGMENT

1. Out of these two civil appeals before us, Civil Appeal No. 556 of 1998 arises out of the judgment and order dated 18-12-1995 passed by the High Court of Judicature at Bombay in Writ Petition No. 2923 of 1995 filed by the appellant, whereby the High Court dismissed the writ petition on the ground that it has no jurisdiction to entertain the writ petition. Whereas, Civil Appeal No. 557 of 1998 arises out of the judgment and order dated 31-1-1997 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No. 1647 of 1996 rejecting the application of the appellant on the ground that the appellant being still in army service, it has no jurisdiction to decide such an application.

2. It appears that the Posts and Telegraphs Service Selection Board issued an advertisement inviting applications to fill in 1200 vacancies of clerks in the Posts & Telegraphs Department. The appellant herein, in response to the said advertisement, submitted an application to appear in the competitive examination. The appellant came out successfully in the said examination, but due to want of vacancies he could not be offered appointment in the unit of his choice. However, by a memorandum dated 31-10-1996 he was informed that the Postal Department required a number of clerks for enrolment on deputation in the Indian Army Postal Service and if he was willing to accept the offer he should communicate his willingness by a telegram to be followed by a confirmation in writing. The condition mentioned in the aforesaid memorandum for the said offer of appointment is reproduced below: "From the date of a candidate's enrolment in the Army Postal Service, he will be treated as a clerk of the Posts and Telegraphs Department on deputation to the Indian Army Postal Service...."

3. Clause 4 of this memorandum is as under: "He will be required to serve in the Indian Army Postal Service for a minimum period of three years or for such time as his services may be required in the Army. He will revert to civil appointment in this Department, on release from the Indian Army Postal Service. He will be given a choice to elect the unit in which he would like to serve on reversion to the civil appointment. His rights and interests in the Department during the period of his deputation to the Army Postal Service will be protected."

4. The appellant accepted the offer of appointment and consequently he was posted as a civilian in the army service on deputation. While working on deputation in the Army, the appellant was promoted to various higher ranks, including the rank of a Major. However, the appellant was given a temporary commission in the Army. Subsequently, the appellant alleged that he was entitled to further promotion to the rank of Lieutenant Colonel, which he was denied. Aggrieved, he gave a representation to the Military Secretary. The appellant was informed by the Military Secretary that since he was a civilian in the army service, he should represent to the Director General of Posts. In the meantime, the appellant was served with an order dated 6-7-1995 relinquishing his temporary commission and repatriating him to the Department of Posts. The appellant was directed to report to the Chief Postmaster, GPO, New Delhi. On receipt of the said letter, the appellant wrote a letter dated 7-7-1995 to the Chief Postmaster, GPO, New Delhi whereby he sought voluntary retirement from the Department with effect from 6-10-1995 and further, he be permitted to retire voluntarily direct from the Army Postal Service without reversion to civil duties. The request of the appellant to retire voluntarily was accepted by the Assistant Postmaster General (Staff).

5. The appellant, after submitting the application for voluntary retirement took a somersault and sought permission to withdraw his application seeking voluntary retirement. Since his representation was not accepted, he filed a writ petition challenging the order dated 6-7-1995 against relinquishment of his commission and repatriation to the Department of Posts and also acceptance of his request to retire voluntarily without rejoining the Department of Posts on relinquishment of commission on 7-10-1995. The appellant in the said writ petition contended that his commission should not be relinquished and he should not be repatriated to the Postal Department and he should rather be allowed to continue in the Army Postal Service. The High Court found that the appellant was not a member of the Armed Forces and his status was that of a civilian in the army service on deputation and, therefore, the High Court had no jurisdiction to entertain the said writ petition. Consequently, the writ petition was dismissed.

6. The appellant thereafter preferred an original application before the Central Administrative Tribunal, Bench at Nagpur. The Tribunal vide its order dated 1-1-1996 quashed the order dated 7-9-1995 as well as the letter dated 25-7-1995 and the appellant was directed to prefer an appeal within 15 days on receipt of the said order to the competent authority, i.e., the Chief Postmaster General. However, the remaining part of the order repatriating the appellant to the Postal Department remained intact and was not quashed.

7. Subsequently, the appellant alleged that on 2-1-1996 he was forcibly removed from army service and retired from civil service with retrospective effect. Aggrieved, the appellant filed a second original application before the Tribunal wherein he insisted or at least claimed to be an army personnel. The Tribunal accepted the claim of the appellant that he is an army personnel and as such returned the application since it has no jurisdiction to entertain it, with liberty to file the same in an appropriate forum. That is how the two civil appeals are before us.

8. The question that arises for consideration is, whether the High Court or the Central Administrative Tribunal has jurisdiction to entertain the applications of the appellant. This question depends upon the status of the appellant, viz., whether he is an army personnel or a civilian posted on deputation in the army service.

9. As stated above, although the appellant was selected by the Postal Department for appointment to the post of clerk, but he could not be given any appointment due to want of vacancy in the unit of his choice. Under such circumstances, the appellant was offered an appointment to work as a clerk in the Army Postal Service on the condition that he would remain a civilian employee on deputation in the Army. The appellant accepted the aforesaid offer and agreed to the conditions that he would revert to the civil appointment in Posts and Telegraphs Department on his release from the Indian Army Postal Service. With these conditions, the appellant continued to serve in the Army as a permanent employee of the Posts and Telegraphs Department on deputation and was promoted up to the rank of a Major in the Indian Army. However, the appellant was only given a temporary commission and he worked as such till the date when his relinquishment was ordered. The aforesaid facts clearly demonstrate that the appellant has a lien with the Posts and Telegraphs Department working on deputation in the Indian Army Postal Service and at no point of time the appellant became a full-fledged army personnel. Since the appellant was not a member of the Armed Forces and continued to work as a civilian on deputation to the Army Postal Service, his case was covered under [Section 14\(1\)\(a\)](#) of the Administrative Tribunals Act. In that view of the matter, the High Court was right in rejecting the writ petition filed by the appellant, whereas the Central Administrative Tribunal erroneously accepted the claim of the appellant that he is an army personnel. We, therefore, uphold the judgment and order of the High Court dismissing the writ petition filed by the appellant. Since the appellant while holding civil post was working in the Army Postal Service on deputation, the Central Administrative Tribunal had jurisdiction to entertain and decide the original application filed by the appellant. We accordingly set aside the order dated 31-1-1997 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, and remand the case to it to decide expeditiously Original Application No. 1647 of 1996 of the appellant, on merits.

10. Consequently, Civil Appeal No. 556 of 1998 is dismissed and Civil Appeal No. 557 of 1998 is allowed. There shall be no order as to costs.

CORRECTED

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8139 OF 2019
(DIARY NO. 38432 OF 2017)

UNION OF INDIA & ORS.

.....APPELLANT(S)

VERSUS

LT. COL. OM DUTT SHARMA (RETD.) DEAD
THROUGH LRS & ORS.

.....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

- 1) The challenge in the present appeal is to an order passed by the Armed Forces Tribunal, Regional Bench, Jabalpur¹ on 9th February, 2017 whereby, an Original Application filed by the respondent - Lt. Col. Om Dutt Sharma was allowed holding that the respondent is entitled to the benefit of One Rank One Pension².
- 2) The respondent died during pendency of the appeal. His legal heirs have been brought on record, whereas respondent Nos. 3 to 86 have been impleaded as intervenors vide order dated 14th May,

1 for short, 'Tribunal'

2 for short, 'OROP'

2018 in view of the fact that the said intervenors claim the same benefit as claimed and granted to the deceased respondent. Since the issue is purely legal and the fact that large numbers of personnel of Army Postal Service³ are involved, we have heard learned counsel for the parties on merits in respect of their entitlement to OROP in terms of Government of India's Circular dated 7th November, 2015.

- 3) The respondents were working on the non-gazetted posts in the Department of Posts under the Government of India and were taken on deputation in the APS from time to time. The deceased respondent was taken on deputation in the year 1962. He relinquished his Temporary Commission in the Army as Lt. Colonel on 31st December, 1984 and retired on 14th May, 1985 after repatriation to his parent department i.e. Department of Posts. The stand of the intervenors is that they joined APS on deputation either as Junior Commissioned Officer (JCO) or the Warrant Officer (WO) and were not repatriated to their parent department. All the intervenors retired from the APS on attaining the age of superannuation, therefore, they claim benefit of OROP.
- 4) Learned counsel for the appellants refers to the different Army Instructions issued from time to time to contend that for service pension, officers of APS on deputation from the Department of Posts are governed by civil pension rules, whereas in respect of

3 for short, 'APS'

disability or special family pension, the option is available to be governed by military or civil rules. It is also contended that age of superannuation of a Lt. Colonel in the Army is 54 years, whereas a person holding civil post under the Union continues to discharge the duties up to the age of superannuation i.e. up to the age of 58 or 60 Years. It is also contended that the members of APS on deputation from the Department of Posts serve till the age of superannuation meant for civil employees of the Union. The personnel of the Department of Posts are not granted pension by the Ministry of Defence but are in receipt of pension from the Department of Posts as the members of the Union holding civil posts.

- 5) The relevant extracts of the different Army Instructions issued from time to time read as under:

“Army Instructions Nos. 107 of 1953⁴

1. Temporary Commissions of a period of one year and for so long thereafter as their services may be required will be granted in the Army Postal Service or the Regular Army on the terms and conditions laid down in the Annexure to this AI.

2. Eligibility:- JCOs of the APS and such WOs as have passed the IPOs/IRMs examination of the P and T Department.

3. Length of Commission:- The Commission will be granted for a period of one year and for so long thereafter as their services may be required.

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4 For short “Army Instructions 1953”

Annexure to Army Instructions No. 107 of 1953

2. Rank, seniority and Promotion:-

(b) Officers will be governed by the Acting Promotion Rules in force from time to time. All gazetted service will count as Commissioned service for the purpose of acting promotions.

6. (a) Disability and family pensions:-

(ii) Those governed by Central Civil Services (Extraordinary Pension) Rules will be eligible for disability/family pensions under military rules. The disability element of pension will be as for regular I.C. Os.

Army Instructions No. 295 of 1959⁵

1. In supersession of the orders contained in A.I. 107/53, insofar as they relate to the grant of commissions to gazetted officers of the Post and Telegraphs Department, temporary commission in the Army Postal Service will be granted in future on the terms and conditions laid down in annexure 'A' to this Army Instruction.

2. Eligibility:- Gazetted officers (substantive or officiating)

4

of the Posts and Telegraphs Department, preferably with previous service in the Army, Navy or Air Force, will be eligible.

3. Length of Commission:- The Commission will be granted for a period of one year and for so long thereafter as their services may be required but not exceeding the age of compulsory retirement in the Army. The officers will, however, normally be retained in the Army Postal Service for minimum period of four years.

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12. Option - All officers of the Posts and Telegraph Department at present serving in the Army Postal Service will be allowed to opt for the terms and conditions contained in Annexure 'A' to this Army Instructions from the date of its issue provided that they satisfy the conditions laid down therein. On exercising such option, they will be regarded as newly commissioned for purposes of the option to draw civil or military rates of pay under paragraph 3(b) of annexure 'A'. The existing orders will continue to apply to other serving officers.

Annexure 'A' to Army Instructions No. 295 of 1959

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2. Rank, Promotion and seniority-

(a) On commissioning in the Army Postal Service, officers will be ranked as follows:

| | |
|--|-------------------------------|
| Class II Officers with less than 2 years gazette service | 2 nd Lieutenant |
| Class II/Class I officers with over 2 years but not over 4 years gazetted service | Lieutenant |
| Class II officers with over 5 years but not over 8 years gazetted service and class I officers with over 3 years but not over 5 years gazetted service | Captain |
| Class I officers with over 5 years but not over 12 years gazetted service | Major |
| Class I (Senior scale) officers with over 12 years gazetted service | Lieutenant Colonel |

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The Director General, Post and Telegraphs, may, however,

(e) An officer serving in the rank of Major, who is promoted to the grade of Director, Postal Service, in his parent department, will be reverted to civil employment. Such an officer may however be retained in the Army Postal Service for a period not exceeding four months at the discretion of the Quartermaster General.

(a) xx xx xx

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

(c) Pay and allowances during the joining period prior to being commissioned as well as during transit on reversion will be on the Civil rates only, and no deputation allowance will be allowed in addition.

XX XX XX

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

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the election, his family will be eligible to receive awards under the civil or the military rules whichever was more favourable. Those who elect military rules for disability pension will be entitled to only disability element of disability pension as for regular commissioned officers in addition to civil pay and allowances or service pension as the case may be.

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9. Special Provisions Applicable to Officers Electing Civil Rates of Pay -

(a) In regard to other conditions service including dearness and compensatory allowances and other concessions, officers on civil rates of pay will be governed by the rules applicable to them in their civil appointments except to the extent indicated on the succeeding sub-paragraphs.

Army Instructions No. 29 of 1985⁶

In supersession of the orders contained in A.I. 107/53, and AI 295/59, terms and conditions laid down in annexure 'A' to this Army Instructions will apply to the Temporary Commissions granted in the Army Postal Service of Regular Army.

Annexure 'A'

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2. Rank, Promotion and seniority -

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

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

| | | |
|----------------------------|---|---------|
| PSS/PMS Group 'B' Officers | - | Lt/Capt |
|----------------------------|---|---------|

⁶ For short "Army Instructions 1985"

- | | | | |
|----|----|----|----|
| 7. | xx | xx | xx |
| 8. | xx | xx | xx |

9. Relinquishment of Commission and repatriation to the Department of Posts

(1) An officer shall relinquish his temporary commission in Army Postal Service and be repatriated to the Department of Posts or proceed on compulsory retirement on superannuation by order of the Central Government or the authority specified in sub-para (2) with effect from the afternoon of the date specified in the orders.

(2) The authority specified in Sub Para (1) shall be the Additional Director General Army Postal Service.

(3) Approval of the Central Government will be obtained by the Additional Director General Army Postal Services prior to the issue of orders in all cases except the following:-

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

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

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

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

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

- 6) Mr. Huzefa Ahmadi, learned senior counsel for the respondents argued that the respondents are not the Gazetted Officers of the Department of Posts to whom the Army Instructions 1959 are

applicable. In fact, Mr. Ahmadi relies upon Army Instructions 1953 and Army Instructions 1985 to contend that the respondents are entitled to the benefit of OROP. It is submitted that the argument of the appellants that the respondents held a lien on equivalent posts in the Department of Posts when they retired from APS, is not tenable as the pension of the respondent is higher than their respective counterparts in the Department of Posts, therefore, there is no parity with the pension drawn by the respondents with the person who continue to work in the Department of Posts.

- 7) It is argued that the pension of the respondent is calculated on the basis of last pay drawn which includes the components of Military Pay Scale, Military Service Pay, whereas, the civil posts in the Postal Department do not have such component of Military Service Pay. Therefore, their last pay drawn is not comparable to any other civil pay and also their pension. Their pension has always been equal to other Army Officers.
- 8) It is argued that the Instructions to grant OROP on 7th November, 2015 w.e.f. 1st July, 2014 is a beneficial provision for the 'Ex-servicemen'. Since the respondents were holding Army rank and were entitled to the benefits of medical and other benefits at par with the officers of the Army, therefore, the respondents being Ex-servicemen are entitled to the benefit of OROP. Learned counsel for the respondents refers to the Ex-servicemen (Re-employment in

Central Civil Services and Posts) Rules, 1979⁷. In terms of Rule 2(c) as amended, the Ex-servicemen include the personnel retired from APS. Learned counsel also refers to Army Instructions 1953 to contend that the Annexure attached to the said Instructions permits service pension. Mr. Ahmadi argued that the respondents were conferred Army rank and carry such rank even after retirement. It is argued that it cannot be imagined that in the Department of Posts, a civilian would hold a rank of Lt. Colonel, therefore, the respondents as Ex-servicemen are entitled to the benefit of Circular dated 7th November, 2015 granting OROP. It is also argued that the Circular dated 3rd February, 2016 makes the policy of OROP applicable to all Commissioned Officers including honorary Commissioned Officers which would include Temporary Commissioned Officers such as the respondents. Therefore, the respondents are covered by the clarification dated 3rd February, 2016.

- 9) The Ministry of Defence, Department of Ex-Servicemen Welfare on 7th November, 2015 issued a letter to the Chiefs of Army Staff, Naval Staff and Air Staff to implement OROP for the Ex-servicemen w.e.f. 1st July, 2014. Relevant clause reads as under:

“2. It has now been decided to implement ‘One Rank One Pension’ (OROP) for the Ex-Servicemen with effect from 01.07.2014. OROP implies that uniform pension be paid to the Defence Forces Personnel retiring in the same rank with the same length of service, regardless of their date of retirement, which, implies bridging the gap between the

⁷ for short, ‘1979 Rules’

rates of pension of current and past pensioners at periodic intervals.”

- 10) Subsequently, another letter was issued by the Ministry of Defence, Department of Ex-Servicemen Welfare on 3rd February, 2016 wherein it was decided that the benefit of OROP was being conferred to Defence Forces Personnel and to all pensioners in the rank of honorary Commissioned Officers etc. Relevant clause reads as under:

“4. The provisions of this letter shall be applicable to all pensioners/family pensioners who had been retired/discharged/invalidated out from service/died in service or after retirement in the rank of Commissioned Officers, honorary Commissioned Officers, JCOs/Ors and Non-Combatants (Enrolled) of Army, Navy, Air Force, Defence Security Corps, Territorial Army & Ex-State Forces and are in receipt of pension/family pension as on 1.7.2014.

4.1. The provisions of this order, however, do not apply to UK/HKSRA/KCIO pensioners, Pakistan & Burma Army pensioners, Reservist pensioners and pensioners in receipt of Ex-gratia payments.”

- 11) We have considered the respective arguments of learned counsel for the parties. The JCOs of Armed Forces and Warrant Officers who have passed IPO/IRM examination of Posts & Telegraph Department are eligible for the grant of Commission for a period of one year and for such period, their service may be required. The Commission under such instructions was meant for Junior Commissioned Officers and the Warrant Officers who have passed examination of the Department of Posts for Commission which is for a period of one year and as long services are required. Thus,

the officials of the Department of Posts continue to have lien over the posts under the Union.

- 12) The next Army Instructions 1959 supersede the earlier Army Instructions in so far as they relate to the grant of the Commission to the Gazetted Officers of the Posts & Telegraph Department. The eligibility for grant of Temporary Commission was in respect of the Gazetted Officers, (substantive or officiating) of the Posts & Telegraph Department. In terms of Clause 12 of the Army Instructions 1959, all officers of the Posts & Telegraph Department, which will include Non-Gazetted Offices, were given an option to opt for terms and conditions contained in Annexure 'A' to these Instructions. On exercise of such option, they will be regarded as newly commissioned officers with an option to draw civil or military rates of pay. In respect of pension, there is no option and that the officers would be governed by civil rules for service pension.
- 13) As per Army Instructions 1985, the eligibility for grant of Temporary Commission in the APS is Gazetted Officers (substantive or officiating) of the Department of Posts and JCOs of the APS and such WOs who have earned competitive vacancies in the Rank of JAOs/IPOs/IRMs in examination of the Department of Posts. Clause 12 of such instructions gives an option to all officers which will include the Gazetted and Non-Gazetted Officers of the Department of Posts serving in the APS to opt for the terms and conditions contained in Annexure 'A' to these instructions. On exercise of

such instructions, they will be regarded as newly commissioned for the purpose of option to draw civil or military rates of pay. Such Annexure 'A' to the Instructions again has a clause that the officers will be governed by civil rules for service pension. There is no option to opt for military pension.

- 14) Therefore, we do not find any merit in the argument raised that Army Instructions only cover the Gazetted Officers. The eligibility for grant of a Temporary Commission is the Gazetted Officers and JCOs etc. but clause 12 of Army Instructions 1959 and 1985 cover all officers of the Department of Posts. It is not the case of the respondents that their lien in the Department of Posts was ever terminated.
- 15) The argument that the respondents were drawing more pension than their counterparts in the Department of Posts, therefore, they are entitled to the periodical increase of pension on the parity of the personnel of the Armed Forces, is not tenable. The respondents have discharged their duties as per Army Instructions issued from time to time. If they have drawn higher salaries while working in the APS than other counterparts in the Department of Posts that will not make them at par with the members of the Armed Forces. Their birth mark is with the Department of Posts which mark was never removed, when they were serving as members of APS. The Instructions provided for an option on promotion on every rank in the Army to draw either military pay and allowances or civil pay

plus deputation allowances meaning thereby that they continue to hold their lien on the civil posts in the Department of Posts. Since they hold a lien in the Department of Posts they could be recalled by the Department of Posts as well as they could seek reversion to their parent Department.

- 16) The respondents were appointed in the Department of Posts and were sent on deputation to the APS. They hold a lien in the Department of Posts inasmuch as they can be recalled by the Department of Posts and that they can seek reversion to the parent department. Clause 3 (a) of Annexure 'A' to Army Instructions 1959 gives an officer an option at the time of commissioning and a further option on each occasion of promotion in Army rank to draw either military pay and allowances or civil pay and the deputation allowance. Sub clause (c) further provides that pay and allowances during the joining period prior to being commissioned as well as during transit on reversion will be on the civil rates only, and no deputation allowance will be allowed. Such Instructions also state that an officer serving in the rank of Major, who is promoted to the grade of Director, Postal Service in his parent department will be reverted to civil employment but he can be retained in the APS for a period not exceeding four months at the discretion of the Quartermaster General. In respect of pension, there is a categorical instruction that the officers would be governed by civil rules for service pension. An option is available to opt for military or civil rules in respect of disability or special family pension.

- 17) In the subsequent Instructions 1985, superseding the earlier Instructions, the members of Department of Posts have an option at the time of Commission and further option on each occasion of promotion in Army rank to draw either military pay and allowances or civil pay plus a deputation allowance. The condition of pay and allowances of officers joining from the Department of Posts during the period prior to Commission as well as on transit on reversion will be on the civil rates and that no deputation allowance will be allowed remain unchanged. Again, the officers will be governed by civil rules for service pension, whereas for disability and family pension, Army Instructions No. 64 of 1976 is applicable.
- 18) In the first Army Instructions issued in the year 1953, there is no specific clause pertaining to pension but for disability and family pension, an option is given to opt for military or civil rules governed by Chapter XXXVIII of Civil Service Regulations. The service element of disability is contemplated on service share basis at the time of eventual retirement from the service. Such Instructions were superseded in 1959 and it was those Instructions or later Army Instructions of 1985 which were in force when the respondents joined APS.
- 19) Such Instructions clearly stipulate that the pension to the members of APS will be as per civil rules. Such Instructions also contemplate that at every stage of promotion in APS, an option is available to the officer to choose military pay or the civil pay. These conditions

show that the members of the APS continue to hold lien in the Department of Posts though they were conferred ranks in the Army and were also entitled to certain benefits as the members of the Armed Forces but being members of the Armed Forces during the period of their Temporary Commission does not make them a pensioner of the Armed Forces as contemplated in the Circular dated 7th November, 2015.

20) The said Circular confers benefit of OROP upon Ex-servicemen, whereas the subsequent Circular dated 3rd February, 2016 grants benefit of OROP to all pensioners in the rank of Commissioned Officers and honorary Commissioned Officers etc. who are in receipt of pension or family pension as on 1st July, 2014. This Circular, as explained by Circular dated 7th February 2016 is applicable only to personnel who are drawing pension from the Defence Establishments as the said Circular is addressed to the Chiefs of three armed forces of the country including personnel from Territorial Army. Such Circular has limited application and is not applicable to the other civil pensioners of the Union. Admittedly, none of the respondents are in receipt of the pension from Defence but were granted pension by the Department of Posts.

21) We do not find merit in the argument that the benefit of OROP is not extended to certain category of pensioners as mentioned in para 4.1 of the Circular dated 7th November 2015 only. Therefore,

the pensioners of APS having not been excluded in such Circular, would be covered by the decision to grant OROP. Such circular excludes only those pensioners who are in receipt of pension for the services rendered in the armed forces of the country or the armed forces prior to the Independence of the Country or the forces which are getting pension for the reason that they were members of the State forces at the time of merger of the States with Indian Union after independence. Such exclusion is of distinct category who are pensioners of the Army at some stage but have no relation with the pensioners of defence forces as on 1st July 2014. There was never any condition in any policy decision that the members of APS will be treated as pensioners of the Armed Forces.

- 22) The reliance of Mr. Ahmadi on 1979 Rules wherein the Ex-servicemen have been defined to include the members of APS, is again not tenable. Such Rules are applicable for the purpose of recruitment to certain posts in the Central Civil Services. The wide definition and purport of the Rules is to provide reservation for Ex-servicemen for the purpose of employment in the civil administration. Such provision is not of general application so as to extend the meaning assigned in a particular rule to another set of Instructions. Similarly, the Circular dated 3rd February, 2016 is applicable to the defence pensioners. The Circulars dated 7th November, 2015 and 3rd February, 2016 were addressed to the Chiefs of the Armed Forces in respect of the pensioners of the forces which is evident from clause 4 of the Circular dated 3rd

February, 2016 when, the benefit of OROP is conferred on all pensioners including the Commissioned Officers.

- 23) The respondents were holders of Temporary Commission only to facilitate the grant of rank and other benefits but they cannot be called as Commissioned Officers. Even the argument that the members of Territorial Army have been granted benefit of OROP is again not tenable for the reason that the Territorial Army is governed by a statute and is Armed Forces of the Union, who have been specifically included in the Circular dated 3rd February, 2016. This Court in exercise of judicial review will interpret the policy decisions as they exist rather than to expand the scope of Circulars when such benefits were not conferred on the members of APS.
- 24) This Court in a judgement reported as ***Major M.R. Penghal v. Union of India***⁸ examined somewhat similar question but in different context. In that case, a clerk of the Department of Posts was promoted as Major in the APS. He initially sought voluntary retirement from the Department of Posts but subsequently sought to withdraw his such request. The question was as to whether the appellant therein can invoke jurisdiction of the Central Administrative Tribunal or the High Court, it being a case prior to the enactment of Armed Forces Tribunal Act 2007. This Court held as under: -

“9. As stated above, although the appellant was selected by the Postal Department for appointment to the post of clerk, but he could not be given any appointment due to

8 (1998) 5 SCC 454

want of vacancy in the unit of his choice. Under such circumstances, the appellant was offered an appointment to work as a clerk in the Army Postal Service on the condition that he would remain a civilian employee on deputation in the Army. The appellant accepted the aforesaid offer and agreed to the conditions that he would revert to the civil appointment in Posts and Telegraphs Department on his release from the Indian Army Postal Service. With these conditions, the appellant continued to serve in the Army as a permanent employee of the Posts and Telegraphs Department on deputation and was promoted up to the rank of a Major in the Indian Army. However, the appellant was only given a temporary commission and he worked as such till the date when his relinquishment was ordered. The aforesaid facts clearly demonstrate that the appellant has a lien with the Posts and Telegraphs Department working on deputation in the Indian Army Postal Service and at no point of time the appellant became a full-fledged army personnel. Since the appellant was not a member of the Armed Forces and continued to work as a civilian on deputation to the Army Postal Service, his case was covered under Section 14(1) (a) of the Administrative Tribunals Act. In that view of the matter, the High Court was right in rejecting the writ petition filed by the appellant, whereas the Central Administrative Tribunal erroneously accepted the claim of the appellant that he is an army personnel..... “

- 25) Another undisputed fact that the respondents have retired from service corresponding to the age of the retirement of the Department of Posts i.e. 58 years or 60 years. It is not disputed that retirement age of a regular Commissioned Officer of the rank of Lt. Colonel is 54 years. Such fact only shows that the respondents are the holders of civil posts entitled to civil pension and are not the Ex-servicemen to which benefit of OROP was conferred. If the respondents are to be accepted as members of the Armed Forces in respect of retiral benefits, they would have been made to retire at the age of 54 years i.e. the age of the superannuation of the personnel of the Armed Forces in the rank of

Lt. Colonel.

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

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

**NEW DELHI;
NOVEMBER 05, 2019.**

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8139 OF 2019
(DIARY NO. 38432 OF 2017)

UNION OF INDIA & ORS.

.....APPELLANT(S)

VERSUS

LT. COL. OM DUTT SHARMA (RETD.) DEAD
THROUGH LRS & ORS.

.....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

27) The challenge in the present appeal is to an order passed by the Armed Forces Tribunal, Regional Bench, Jabalpur⁹ on 9th February, 2017 whereby, an Original Application filed by the respondent - Lt. Col. Om Dutt Sharma was allowed holding that the respondent is entitled to the benefit of One Rank One Pension¹⁰.

28) The respondent died during pendency of the appeal. His legal heirs have been brought on record, whereas respondent Nos. 3 to 86 have been impleaded as intervenors vide order dated 14th May,

⁹ for short, 'Tribunal'

¹⁰ for short, 'OROP'

2018 in view of the fact that the said intervenors claim the same benefit as claimed and granted to the deceased respondent. Since the issue is purely legal and the fact that large numbers of personnel of Army Postal Service¹¹ are involved, we have heard learned counsel for the parties on merits in respect of their entitlement to OROP in terms of Government of India's Circular dated 7th November, 2015.

- 29) The respondents were working on the non-gazetted posts in the Department of Posts under the Government of India and were taken on deputation in the APS from time to time. The deceased respondent was taken on deputation in the year 1962. He relinquished his Temporary Commission in the Army as Lt. Colonel on 31st December, 1984 and retired on 14th May, 1985 after repatriation to his parent department i.e. Department of Posts. The stand of the intervenors is that they joined APS on deputation either as Junior Commissioned Officer (JCO) or the Warrant Officer (WO) and were not repatriated to their parent department. All the intervenors retired from the APS on attaining the age of superannuation, therefore, they claim benefit of OROP.
- 30) Learned counsel for the appellants refers to the different Army Instructions issued from time to time to contend that for service pension, officers of APS on deputation from the Department of Posts are governed by civil pension rules, whereas in respect of

11 for short, 'APS'

disability or special family pension, the option is available to be governed by military or civil rules. It is also contended that age of superannuation of a Lt. Colonel in the Army is 54 years, whereas a person holding civil post under the Union continues to discharge the duties up to the age of superannuation i.e. up to the age of 58 or 60 Years. It is also contended that the members of APS on deputation from the Department of Posts serve till the age of superannuation meant for civil employees of the Union. The personnel of the Department of Posts are not granted pension by the Ministry of Defence but are in receipt of pension from the Department of Posts as the members of the Union holding civil posts.

31) The relevant extracts of the different Army Instructions issued from time to time read as under:

“Army Instructions Nos. 107 of 1953¹²”

1. Temporary Commissions of a period of one year and for so long thereafter as their services may be required will be granted in the Army Postal Service or the Regular Army on the terms and conditions laid down in the Annexure to this AI.
2. Eligibility:- JCOs of the APS and such WOs as have passed the IPOs/IRMs examination of the P and T Department.
3. Length of Commission:- The Commission will be granted for a period of one year and for so long thereafter as their services may be required.

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¹² For short “Army Instructions 1953”

of the Posts and Telegraphs Department, preferably with previous service in the Army, Navy or Air Force, will be eligible.

3. Length of Commission:- The Commission will be granted for a period of one year and for so long thereafter as their services may be required but not exceeding the age of compulsory retirement in the Army. The officers will, however, normally be retained in the Army Postal Service for minimum period of four years.

xx xx xx

12. Option - All officers of the Posts and Telegraph Department at present serving in the Army Postal Service will be allowed to opt for the terms and conditions contained in Annexure 'A' to this Army Instructions from the date of its issue provided that they satisfy the conditions laid down therein. On exercising such option, they will be regarded as newly commissioned for purposes of the option to draw civil or military rates of pay under paragraph 3(b) of annexure 'A'. The existing orders will continue to apply to other serving officers.

Annexure 'A' to Army Instructions No. 295 of 1959

1. xx xx xx

2. Rank, Promotion and seniority-

(a) On commissioning in the Army Postal Service, officers will be ranked as follows:

| | |
|--|-------------------------------|
| Class II Officers with less than 2 years gazette service | 2 nd Lieutenant |
| Class II/Class I officers with over 2 years but not over 4 years gazetted service | Lieutenant |
| Class II officers with over 5 years but not over 8 years gazetted service and class I officers with over 3 years but not over 5 years gazetted service | Captain |
| Class I officers with over 5 years but not over 12 years gazetted service | Major |
| Class I (Senior scale) officers with over 12 years gazetted service | Lieutenant Colonel |

xx xx xx

The Director General, Post and Telegraphs, may, however,

(e) An officer serving in the rank of Major, who is promoted to the grade of Director, Postal Service, in his parent department, will be reverted to civil employment. Such an officer may however be retained in the Army Postal Service for a period not exceeding four months at the discretion of the Quartermaster General.

(a) xx xx xx

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

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

XX XX XX

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

27

the election, his family will be eligible to receive awards under the civil or the military rules whichever was more favourable. Those who elect military rules for disability pension will be entitled to only disability element of disability pension as for regular commissioned officers in addition to civil pay and allowances or service pension as the case may be.

xx

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9. Special Provisions Applicable to Officers Electing Civil Rates of Pay –

(a) In regard to other conditions service including dearness and compensatory allowances and other concessions, officers on civil rates of pay will be governed by the rules applicable to them in their civil appointments except to the extent indicated on the succeeding sub-paragraphs.

Army Instructions No. 29 of 1985¹⁴

In supersession of the orders contained in A.I. 107/53, and AI 295/59, terms and conditions laid down in annexure 'A' to this Army Instructions will apply to the Temporary Commissions granted in the Army Postal Service of Regular Army.

Annexure 'A'

1.

xx

xx

xx

2. Rank, Promotion and seniority –

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

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

| | | |
|----------------------------|---|---------|
| PSS/PMS Group 'B' Officers | - | Lt/Capt |
|----------------------------|---|---------|

¹⁴ For short "Army Instructions 1985"

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

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

3. (a) xx xx xx

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

| | | |
|---|---|------|
| An officer below the grade of Director Postal Services | - | 20% |
| An officer of the grade of Director Postal Services and above | - | 12½% |

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

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

4. xx xx xx

5. xx xx xx

6. Pension

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

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

- | | | | |
|----|----|----|----|
| 7. | xx | xx | xx |
| 8. | xx | xx | xx |

9. Relinquishment of Commission and repatriation to the Department of Posts

(1) An officer shall relinquish his temporary commission in Army Postal Service and be repatriated to the Department of Posts or proceed on compulsory retirement on superannuation by order of the Central Government or the authority specified in sub-para (2) with effect from the afternoon of the date specified in the orders.

(2) The authority specified in Sub Para (1) shall be the Additional Director General Army Postal Service.

(3) Approval of the Central Government will be obtained by the Additional Director General Army Postal Services prior to the issue of orders in all cases except the following:-

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

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

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

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

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

32) Mr. Huzefa Ahmadi, learned senior counsel for the respondents argued that the respondents are not the Gazetted Officers of the Department of Posts to whom the Army Instructions 1959 are

applicable. In fact, Mr. Ahmadi relies upon Army Instructions 1953 and Army Instructions 1985 to contend that the respondents are entitled to the benefit of OROP. It is submitted that the argument of the appellants that the respondents held a lien on equivalent posts in the Department of Posts when they retired from APS, is not tenable as the pension of the respondent is higher than their respective counterparts in the Department of Posts, therefore, there is no parity with the pension drawn by the respondents with the person who continue to work in the Department of Posts.

- 33) It is argued that the pension of the respondent is calculated on the basis of last pay drawn which includes the components of Military Pay Scale, Military Service Pay, whereas, the civil posts in the Postal Department do not have such component of Military Service Pay. Therefore, their last pay drawn is not comparable to any other civil pay and also their pension. Their pension has always been equal to other Army Officers.
- 34) It is argued that the Instructions to grant OROP on 7th November, 2015 w.e.f. 1st July, 2014 is a beneficial provision for the 'Ex-servicemen'. Since the respondents were holding Army rank and were entitled to the benefits of medical and other benefits at par with the officers of the Army, therefore, the respondents being Ex-servicemen are entitled to the benefit of OROP. Learned counsel for the respondents refers to the Ex-servicemen (Re-employment in

Central Civil Services and Posts) Rules, 1979¹⁵. In terms of Rule 2(c) as amended, the Ex-servicemen include the personnel retired from APS. Learned counsel also refers to Army Instructions 1953 to contend that the Annexure attached to the said Instructions permits service pension. Mr. Ahmadi argued that the respondents were conferred Army rank and carry such rank even after retirement. It is argued that it cannot be imagined that in the Department of Posts, a civilian would hold a rank of Lt. Colonel, therefore, the respondents as Ex-servicemen are entitled to the benefit of Circular dated 7th November, 2015 granting OROP. It is also argued that the Circular dated 3rd February, 2016 makes the policy of OROP applicable to all Commissioned Officers including honorary Commissioned Officers which would include Temporary Commissioned Officers such as the respondents. Therefore, the respondents are covered by the clarification dated 3rd February, 2016.

- 35) The Ministry of Defence, Department of Ex-Servicemen Welfare on 7th November, 2015 issued a letter to the Chiefs of Army Staff, Naval Staff and Air Staff to implement OROP for the Ex-servicemen w.e.f. 1st July, 2014. Relevant clause reads as under:

“2. It has now been decided to implement ‘One Rank One Pension’ (OROP) for the Ex-Servicemen with effect from 01.07.2014. OROP implies that uniform pension be paid to the Defence Forces Personnel retiring in the same rank with the same length of service, regardless of their date of retirement, which, implies bridging the gap between the

15 for short, ‘1979 Rules’

rates of pension of current and past pensioners at periodic intervals.”

- 36) Subsequently, another letter was issued by the Ministry of Defence, Department of Ex-Servicemen Welfare on 3rd February, 2016 wherein it was decided that the benefit of OROP was being conferred to Defence Forces Personnel and to all pensioners in the rank of honorary Commissioned Officers etc. Relevant clause reads as under:

“4. The provisions of this letter shall be applicable to all pensioners/family pensioners who had been retired/discharged/invalidated out from service/died in service or after retirement in the rank of Commissioned Officers, honorary Commissioned Officers, JCOs/Ors and Non-Combatants (Enrolled) of Army, Navy, Air Force, Defence Security Corps, Territorial Army & Ex-State Forces and are in receipt of pension/family pension as on 1.7.2014.

4.1. The provisions of this order, however, do not apply to UK/HKSRA/KCIO pensioners, Pakistan & Burma Army pensioners, Reservist pensioners and pensioners in receipt of Ex-gratia payments.”

- 37) We have considered the respective arguments of learned counsel for the parties. The JCOs of Armed Forces and Warrant Officers who have passed IPO/IRM examination of Posts & Telegraph Department are eligible for the grant of Commission for a period of one year and for such period, their service may be required. The Commission under such instructions was meant for Junior Commissioned Officers and the Warrant Officers who have passed examination of the Department of Posts for Commission which is for a period of one year and as long services are required. Thus,

the officials of the Department of Posts continue to have lien over the posts under the Union.

- 38) The next Army Instructions 1959 supersede the earlier Army Instructions in so far as they relate to the grant of the Commission to the Gazetted Officers of the Posts & Telegraph Department. The eligibility for grant of Temporary Commission was in respect of the Gazetted Officers, (substantive or officiating) of the Posts & Telegraph Department. In terms of Clause 12 of the Army Instructions 1959, all officers of the Posts & Telegraph Department, which will include Non-Gazetted Offices, were given an option to opt for terms and conditions contained in Annexure 'A' to these Instructions. On exercise of such option, they will be regarded as newly commissioned officers with an option to draw civil or military rates of pay. In respect of pension, there is no option and that the officers would be governed by civil rules for service pension.
- 39) As per Army Instructions 1985, the eligibility for grant of Temporary Commission in the APS is Gazetted Officers (substantive or officiating) of the Department of Posts and JCOs of the APS and such WOs who have earned competitive vacancies in the Rank of JAOs/IPOs/IRMs in examination of the Department of Posts. Clause 12 of such instructions gives an option to all officers which will include the Gazetted and Non-Gazetted Officers of the Department of Posts serving in the APS to opt for the terms and conditions contained in Annexure 'A' to these instructions. On exercise of

such instructions, they will be regarded as newly commissioned for the purpose of option to draw civil or military rates of pay. Such Annexure 'A' to the Instructions again has a clause that the officers will be governed by civil rules for service pension. There is no option to opt for military pension.

- 40) Therefore, we do not find any merit in the argument raised that Army Instructions only cover the Gazetted Officers. The eligibility for grant of a Temporary Commission is the Gazetted Officers and JCOs etc. but clause 12 of Army Instructions 1959 and 1985 cover all officers of the Department of Posts. It is not the case of the respondents that their lien in the Department of Posts was ever terminated.
- 41) The argument that the respondents were drawing more pension than their counterparts in the Department of Posts, therefore, they are entitled to the periodical increase of pension on the parity of the personnel of the Armed Forces, is not tenable. The respondents have discharged their duties as per Army Instructions issued from time to time. If they have drawn higher salaries while working in the APS than other counterparts in the Department of Posts that will not make them at par with the members of the Armed Forces. Their birth mark is with the Department of Posts which mark was never removed, when they were serving as members of APS. The Instructions provided for an option on promotion on every rank in the Army to draw either military pay and allowances or civil pay

plus deputation allowances meaning thereby that they continue to hold their lien on the civil posts in the Department of Posts. Since they hold a lien in the Department of Posts they could be recalled by the Department of Posts as well as they could seek reversion to their parent Department.

- 42) The respondents were appointed in the Department of Posts and were sent on deputation to the APS. They hold a lien in the Department of Posts inasmuch as they can be recalled by the Department of Posts and that they can seek reversion to the parent department. Clause 3 (a) of Annexure 'A' to Army Instructions 1959 gives an officer an option at the time of commissioning and a further option on each occasion of promotion in Army rank to draw either military pay and allowances or civil pay and the deputation allowance. Sub clause (c) further provides that pay and allowances during the joining period prior to being commissioned as well as during transit on reversion will be on the civil rates only, and no deputation allowance will be allowed. Such Instructions also state that an officer serving in the rank of Major, who is promoted to the grade of Director, Postal Service in his parent department will be reverted to civil employment but he can be retained in the APS for a period not exceeding four months at the discretion of the Quartermaster General. In respect of pension, there is a categorical instruction that the officers would be governed by civil rules for service pension. An option is available to opt for military or civil rules in respect of disability or special family pension.

- 43) In the subsequent Instructions 1985, superseding the earlier Instructions, the members of Department of Posts have an option at the time of Commission and further option on each occasion of promotion in Army rank to draw either military pay and allowances or civil pay plus a deputation allowance. The condition of pay and allowances of officers joining from the Department of Posts during the period prior to Commission as well as on transit on reversion will be on the civil rates and that no deputation allowance will be allowed remain unchanged. Again, the officers will be governed by civil rules for service pension, whereas for disability and family pension, Army Instructions No. 64 of 1976 is applicable.
- 44) In the first Army Instructions issued in the year 1953, there is no specific clause pertaining to pension but for disability and family pension, an option is given to opt for military or civil rules governed by Chapter XXXVIII of Civil Service Regulations. The service element of disability is contemplated on service share basis at the time of eventual retirement from the service. Such Instructions were superseded in 1959 and it was those Instructions or later Army Instructions of 1985 which were in force when the respondents joined APS.
- 45) Such Instructions clearly stipulate that the pension to the members of APS will be as per civil rules. Such Instructions also contemplate that at every stage of promotion in APS, an option is available to the officer to choose military pay or the civil pay. These conditions

show that the members of the APS continue to hold lien in the Department of Posts though they were conferred ranks in the Army and were also entitled to certain benefits as the members of the Armed Forces but being members of the Armed Forces during the period of their Temporary Commission does not make them a pensioner of the Armed Forces as contemplated in the Circular dated 7th November, 2015.

46) The said Circular confers benefit of OROP upon Ex-servicemen, whereas the subsequent Circular dated 3rd February, 2016 grants benefit of OROP to all pensioners in the rank of Commissioned Officers and honorary Commissioned Officers etc. who are in receipt of pension or family pension as on 1st July, 2014. This Circular, as explained by Circular dated 7th February 2016 is applicable only to personnel who are drawing pension from the Defence Establishments as the said Circular is addressed to the Chiefs of three armed forces of the country including personnel from Territorial Army. Such Circular has limited application and is not applicable to the other civil pensioners of the Union. Admittedly, none of the respondents are in receipt of the pension from Defence but were granted pension by the Department of Posts.

47) We do not find merit in the argument that the benefit of OROP is not extended to certain category of pensioners as mentioned in para 4.1 of the Circular dated 7th November 2015 only. Therefore,

the pensioners of APS having not been excluded in such Circular, would be covered by the decision to grant OROP. Such circular excludes only those pensioners who are in receipt of pension for the services rendered in the armed forces of the country or the armed forces prior to the Independence of the Country or the forces which are getting pension for the reason that they were members of the State forces at the time of merger of the States with Indian Union after independence. Such exclusion is of distinct category who are pensioners of the Army at some stage but have no relation with the pensioners of defence forces as on 1st July 2014. There was never any condition in any policy decision that the members of APS will be treated as pensioners of the Armed Forces.

- 48) The reliance of Mr. Ahmadi on 1979 Rules wherein the Ex-servicemen have been defined to include the members of APS, is again not tenable. Such Rules are applicable for the purpose of recruitment to certain posts in the Central Civil Services. The wide definition and purport of the Rules is to provide reservation for Ex-servicemen for the purpose of employment in the civil administration. Such provision is not of general application so as to extend the meaning assigned in a particular rule to another set of Instructions. Similarly, the Circular dated 3rd February, 2016 is applicable to the defence pensioners. The Circulars dated 7th November, 2015 and 3rd February, 2016 were addressed to the Chiefs of the Armed Forces in respect of the pensioners of the forces which is evident from clause 4 of the Circular dated 3rd

February, 2016 when, the benefit of OROP is conferred on all pensioners including the Commissioned Officers.

- 49) The respondents were holders of Temporary Commission only to facilitate the grant of rank and other benefits but they cannot be called as Commissioned Officers. Even the argument that the members of Territorial Army have been granted benefit of OROP is again not tenable for the reason that the Territorial Army is governed by a statute and is Armed Forces of the Union, who have been specifically included in the Circular dated 3rd February, 2016. This Court in exercise of judicial review will interpret the policy decisions as they exist rather than to expand the scope of Circulars when such benefits were not conferred on the members of APS.
- 50) This Court in a judgement reported as ***Major M.R. Penghal v. Union of India***¹⁶ examined somewhat similar question but in different context. In that case, a clerk of the Department of Posts was promoted as Major in the APS. He initially sought voluntary retirement from the Department of Posts but subsequently sought to withdraw his such request. The question was as to whether the appellant therein can invoke jurisdiction of the Central Administrative Tribunal or the High Court, it being a case prior to the enactment of Armed Forces Tribunal Act 2007. This Court held as under: -

“9. As stated above, although the appellant was selected by the Postal Department for appointment to the post of clerk, but he could not be given any appointment due to

16 (1998) 5 SCC 454

want of vacancy in the unit of his choice. Under such circumstances, the appellant was offered an appointment to work as a clerk in the Army Postal Service on the condition that he would remain a civilian employee on deputation in the Army. The appellant accepted the aforesaid offer and agreed to the conditions that he would revert to the civil appointment in Posts and Telegraphs Department on his release from the Indian Army Postal Service. With these conditions, the appellant continued to serve in the Army as a permanent employee of the Posts and Telegraphs Department on deputation and was promoted up to the rank of a Major in the Indian Army. However, the appellant was only given a temporary commission and he worked as such till the date when his relinquishment was ordered. The aforesaid facts clearly demonstrate that the appellant has a lien with the Posts and Telegraphs Department working on deputation in the Indian Army Postal Service and at no point of time the appellant became a full-fledged army personnel. Since the appellant was not a member of the Armed Forces and continued to work as a civilian on deputation to the Army Postal Service, his case was covered under Section 14(1) (a) of the Administrative Tribunals Act. In that view of the matter, the High Court was right in rejecting the writ petition filed by the appellant, whereas the Central Administrative Tribunal erroneously accepted the claim of the appellant that he is an army personnel..... “

- 51) Another undisputed fact that the respondents have retired from service corresponding to the age of the retirement of the Department of Posts i.e. 58 years or 60 years. It is not disputed that retirement age of a regular Commissioned Officer of the rank of Lt. Colonel is 54 years. Such fact only shows that the respondents are the holders of civil posts entitled to civil pension and are not the Ex-servicemen to which benefit of OROP was conferred. If the respondents are to be accepted as members of the Armed Forces in respect of retrial benefits, they would have been made to retire at the age of 54 years i.e. the age of the superannuation of the personnel of the Armed Forces in the rank of

Lt. Colonel.

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

.....J.
(L. NAGESWARA RAO)

.....J.
(HEMANT GUPTA)

**NEW DELHI;
NOVEMBER 05, 2019.**

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A.No.13 of 2024

Monday, the 1st day of July, 2024

CORAM:

HON'BLE MR. JUSTICE K. HARILAL, MEMBER(J)

&

HON'BLE AIR MARSHAL S.R.K.NAIR, PVSM, AVSM, VM, M-in-D, MEMBER(A)

Applicant:

Lt Col VC Poulose (No.TC 31291 M) aged 81 years,
S/o Late VV Chacko,
Valakkattu House,
Janatha Road South End,
Vyttila Post, Ernakulam, Kerala-682 019.

By Adv. Shri T.R. Jagadeesh.

Versus

Respondents:

- 1.Union of India,
Represented by its Secretary,
Ministry of Defence, South Block, New Delhi – 110 011.
- 2.The Chief of Army Staff,
Integrated Head Quarters (Army), New Delhi – 110 011.
- 3.Additional Director General, APS,
Integrated HQ of MoD(Army), New Delhi – 110 011.
- 4.PCDA (Pensions), Draupadighat,
Prayagraj, Allahabad, UP – 211 014.
- 5.The Chief Manager, SBI CPPC,
3rd Floor, Chembikalom Building,
Vazhuthacaud, Thycaud, Thiruvananthapuram – 695 014.

R1 to R4 by Shri C.B.Sreekumar, CGSPC.
R5 by Adv. Smt. V.K. Hema.

ARMED FORCES TRIBUNAL, REGIONAL BENCH, KOCHI

O.A.No.13 of 2024

Lt Col VC Poullose
(No.TC 31291 M)

.....

Applicant

Versus

Union of India and 4 Others.

Respondents

For Applicant

: Adv. Shri T.R.Jagadeesh.

For Respondents

: Shri C.B.Sreekumar,
Central Govt.Senior Panel
Counsel for R1 to R4.
Adv. Smt. V.K.Hema for R5.

CORAM:

HON'BLE MR. JUSTICE K.HARILAL, MEMBER (J)

&

HON'BLE AIR MARSHAL S.R.K.NAIR, MEMBER (A)

O R D E R

01.07.2024

Aggrieved by the denial of additional quantum of pension at 20% of revised basic pension for 12 months from the beginning till the end of the 80th year of age,

i.e., from April 2021 to April 2022, the applicant has preferred this Original Application for the same.

2. The applicant V.C.Poulose, No.TC31291M, was Lieutenant Colonel, who was enrolled in the Army Postal Service as Warrant Officer on 21st September, 1965. Later, he was commissioned in the Army Postal Service on 28th July, 1976 and retired directly from Army Postal Service as Lieutenant Colonel on 1st May, 2000. He is in receipt of service element of pension, vide PPO No.15044/LPS/TVM (TRG 4696) for his qualifying service of more than 34 years with effect from 1.5.2000. He is in receipt of disability element of pension for his 60% disability also, vide Annexure A1. Annexure A2 is his service particulars. Accepting the recommendations of the VI Central Pay Commission, the Government of India issued a notification dated 11.11.2008 enhancing the pension of the aged pensioners. Accordingly, PCDA issued Circular 585 granting enhanced additional quantum of pension at various percentages from the age of 80 onwards till 100 years or more. As per the said enhancement, those who have attained 80 years to less than 85 years are entitled to get 20% of revised basic pension. There was a question in controversy as to

whether the pensioner is entitled to get enhanced rate when he enters the age of 80 years after the completion of 79 years or on the completion of 80th year. Later, the Principal Bench of this Tribunal answered the aforesaid question vide order dated 13.10.2022 in O.A.No.704 of 2022 and held that enhancement of additional pension is effective from the beginning of the 80th year of age and not on completion of 80th year of age. The applicant was born on 30th April, 1942, and he entered to his 80th year of age on 30th April, 2021. So, he was entitled to get enhanced additional pension at 20% from April 2021, but he was granted the said additional pension on completion of 80th year only. Though he had submitted an email representation to the fifth respondent, vide Annexure A4, the said request has been turned down by the fifth respondent, vide Annexure A5. In the above circumstances, he was left with no remedy other than approaching this Tribunal. These are the averments in the Original Application.

3. Respondents 1 to 4 filed reply statement challenging the jurisdiction of this Tribunal for entertaining this Original Application. While in service of Department of Posts, he volunteered to serve in Army

Postal Service on deputation. Subsequently, he was enrolled as Warrant Officer on 21st September, 1965 and was granted Temporary Commission in Army Postal Service with effect from 28th July, 1976 in the rank of Second Lieutenant. The above Temporary Commissioned Officer, who was volunteered to serve Department of Posts, was further promoted to the rank of Lieutenant Captain, Major and Lieutenant Colonel, and subsequently relinquished the commission and retired from Department of Posts with effect from 1st May, 2000 without reversion to civil parent department. Thus, he retired from civil Postal Department and not from Army Postal Services, and he is drawing service element of pension from the civil Postal Department. As he relinquished the Commission, he is not permitted to prefix the rank, but he may use the rank with the approval of the Government of India, vide AO 12/1984. Hence, he is not a retired Army pensioner. Since he is drawing service pension from civil organization, i.e., DA(P) Kerala Circle and not from Ministry of Defence, this Tribunal has no jurisdiction to entertain this Original Application, more particularly, in view of the reliefs sought for, and he may be advised to file case before the Central

Administrative Tribunal (CAT) for redressal of his grievance. Hence, this Original Application is liable to be dismissed at the threshold due to the lack of jurisdiction.

4. The fifth respondent filed a reply statement stating that the reliefs sought in the Original Application will exclusively come under the authority and consideration of Pension Sanctioning Authority alone, and the fifth respondent is the Centralized Pension Processing Centre of the State Bank of India at Thiruvananthapuram, which facilitates processing of pension only. The applicant retired from Postal Department of Army on 30.04.2000, and he is drawing service pension from the Department of Posts, India. In addition to the service pension, he was granted with disability pension vide PPO No.M/DIS/31/2006 & M/DIS/22/2007. So, the PSA and the PCDA concerned are the competent authorities to decide the correct amount of pension entitled by the Original Applicant and the fifth respondent is the Pension Disbursing Agency only, as per the instruction of PSA and the fourth respondent herein.

5. Heard the learned counsel appearing for the applicant, the learned Central Government Senior Panel Counsel appearing for respondents and the learned counsel appearing for the fifth respondent.

6. The preliminary question to be considered is whether this Tribunal has jurisdiction to entertain this Original Application?

7. As regards jurisdiction, the reliefs sought for are very important. Hence, the reliefs sought for are extracted below:

- i) To declare that the applicant is entitled to enhanced rate of pension @ 20% of revised basic pension from the beginning of his 80th year of age i.e. from April 2021.
- ii) To direct the respondents to grant enhanced pension @ 20% of revised basic pension for 12 months from the beginning till the end of 80th year of age i.e. from April 2021 to April 2022.
- iii) To direct the respondents to grant interest at 12% on arrears of pension.

Going by the aforesaid reliefs sought by the applicant, we find that he has not prayed for enhanced additional disability element of pension and he has sought for granting 20% of revised basic pension for 12 months from 1st April, 2021 to 1st April, 2022. Admittedly, the applicant has been receiving basic service pension from the Department of Posts and not from the Army. It is true that he has been receiving disability element of pension from the Indian Army. But, he has not prayed for the enhancement of disability element of pension for 12 months from April 2021 to April 2022. The Pension Sanctioning Authority under the Department of Posts is the competent authority to determine the question whether the applicant is entitled to get 20% of revised basic pension for 12 months from April 2021 to April 2022. Indisputably, Pension Sanctioning Authority under the Department of Posts will not come under the jurisdiction of this Tribunal. Therefore, we find that this Bench of the Tribunal has no jurisdiction to entertain this Original Application. We observe that the applicant has not claimed enhanced disability element of pension for 12 months from April 2021 to April 2022. So, he is at liberty to move for the

same at the appropriate time before the fourth respondent. Since he has not exhausted the statutory remedy for getting enhanced disability element of pension, this Original Application is not maintainable in respect of that relief, at present. Thus, this Original Application is dismissed with liberty to the applicant to approach the competent authorities or Tribunal for the redressal of his grievances.

Sd/-
JUSTICE K. HARILAL
MEMBER (J)

Sd/-
AIR MARSHAL S.R.K. NAIR
MEMBER (A)

sha/

-True copy-

PETITIONER:
KUNAL NANDA

Vs.

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT: 24/04/2000

BENCH:
S.S.Ahamad, Doraiswami Raju

JUDGMENT:

Raju, J.

Special leave granted.

The appellant, who lost before the Tribunal as well as the High Court, has come up before this Court challenging the judgment of the High Court declining to interfere with the order dated 16.4.99 of the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No.241 of 1999 which, in turn, repelled a challenge to the repatriation of the appellant to his parent department. The appellant, a member of CRPF and serving as an Assistant Sub-Inspector in the said parent department w.e.f. 1.1.87, joined the service of CBI on deputation in the same capacity as ASI on 1.8.91. He continued to work as ASI on the deputation terms for the initial period, which came to be extended from time to time with the mutual consent of the lending and borrowing department. In the year 1994, no doubt, the borrowing department expressed an inclination for permanent absorption in the CBI and sought for the concurrence of the CRPF to which, it appears, the lending department also conveyed its clearance.

It may be noticed at this stage that while on such deputation in the CBI, the appellant was also appointed as Sub-Inspector on 1.6.95 and in his parent department also he was promoted as such. There are no specific statutory rules as such governing the question of absorption of a deputationist. On the other hand, the said subject is governed by departmental instructions and circular orders as per which the qualification and experience of the Officers to be selected should be comparable to those prescribed for direct recruits to such posts where direct recruitment has also been prescribed as one of the methods of the appointment in the Recruitment Rules. In consonance with such procedure, the appellant was asked to undertake a written test. He made a formal application disclosing his credentials and on the basis of his performance in the written test, the record relating to last five years A.C.Rs. (Part-I - Personal Data) for the period 1993-94 to 1997/98 in which the appellant mentioned about his basic educational qualification as B.A. and his performance in the interview, the Screening Committee constituted for the purpose recommended the absorption of the appellant in the CBI as Sub-Inspector. But when the appellant was asked to

produce the documents in original in support of his educational qualifications etc., the appellant started explaining that for a person of his standing in service the basic educational qualification of passing Senior Secondary Examination is enough and passing of degree examination, may not be insisted upon. This was not only contrary to his earlier representation that he was a graduate but the Screening Committees recommendation for absorption in CBI was also on the basis that the appellant was a graduate, as disclosed by him. This seems to have been taken also as proof of his doubtful integrity in furnishing wrong information about his educational qualification to be graduation to some how gain absorption. Since, in terms of the relevant rules the total period of deputation in the rank of ASI/SI including that of deputation in any other cadre/cadre post cannot be for more than five years, the appellant was repatriated to his parent department and also relieved with effect from 31.1.99. (A.N.) with a direction to report for duty to the parent department. Apprehending the same, the appellant moved the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No.241 of 99.

The Tribunal by its order dated 16.4.99, rejected the claim of the appellant holding that he had no vested right to absorption, that he was not totally an indispensable person in CBI and that he being not a graduate cannot be absorbed, under the relevant rules. The grievance of alleged differential treatment has also been found to be not substantiated - in that the absorption erroneously made of N.N. Mishra (a mistaken reference to N.P. Mishra) is sought to be undone by already initiating action in that direction and that the case of N.P. Pandey - a departmental officer has to be treated as regular promotion and not to be treated as a deputationist. It was ultimately held for those reasons that the CBI cannot be compelled to absorb the appellant, and consequently the order of repatriation dated 29.1.99 did not call for any interference. Not satisfied the appellant moved the Delhi High Court by means of Writ Petition (Civil) No.2533 of 1999 and a Division Bench of the High Court, by an order dated 26.7.99 rejected the same observing that there are no merits in the petition and find no grounds to interfere with the order of the Tribunal under challenge. Relentless, the appellant has approached this court.

Heard the learned counsel for the appellant and Shri R.N. Trivedi, learned Additional Solicitor General. The least said about the conduct of the appellant is better for him. The appellant, indisputably, is only a deputationist so far as CBI is concerned and his parent department is only CRPF and his substantive position and appointment is only in that department and ordinarily a deputation, as per governing rules, cannot last for a period more than five years. The frivolous claim that a person like him need not be a graduate for absorption and appointment in CBI, apart, the appellant appears to have rendered himself unreliable by making, to put it in most mild terms, an incorrect representation of his basic educational qualification to be a graduate while factually it is not so, and this one ground, strongly urged is enough to non-suit him. This itself will be sufficient to dis-entitle him to even continue in the CBI any longer. The Screening Committee which appears to have initially recommended for absorption also seem to have proceeded on the basis of the erroneous representation of the appellant of his basic educational

qualification and the copy of the proceedings made available disclose this serious lapse and consequently no advantage can be claimed on the basis of the recommendation, made on a mistaken view of the facts more so, when such mistake was the making of the appellant himself. This assertion of the respondent- CBI Department was specific and reiterated in unmistakable terms from the beginning before the Tribunal (vide para 4 (h) and 5 of the reply) and thereafter before the High Court in the counter filed (vide para 3 (e) and finally before this Court also (vide para 5 (c) of the counter filed on behalf of the respondent). Throughout, the response of the appellant to those assertions at various stages was evasive and nebulous and neither direct nor specific in refutation of facts in particular. Being an appeal under Act 136 of the Constitution of India, this Court will be justified in even rejecting this appeal, on this ground alone.

On the legal submissions made also there are no merits whatsoever. It is well settled that unless the claim of the deputationist for permanent absorption in the department where he works on deputation is based upon any statutory Rule, Regulation or Order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in Rameshwar Prasad vs M.D., U.P. Rajkiya Nirman Nigam Ltd. and Others [1999 (8) SCC 381] is inappropriate since, the consideration therein was in the light of statutory rules for absorption and the scope of those rules. The claim that he need not be a graduate for absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree need mention, only to be rejected. The stand of the respondent department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e., a degree is a must and essential and that there could no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim.

For all the reasons stated above, we see no merit in this appeal which shall stand dismissed. No costs.

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

...

(i)OA No.4445 of 2013 :

...

DJ Goswami

...Petitioner

Versus

Union of India & others

...Respondent(s)

...

For the petitioner : Mr. Sham Lal Sharma, Advocate
For the Respondent(s) : Mr.Vibhor Bansal, CGC

...

(ii)OA No.4449 of 2013 :

...

Rakesh Kumar

...Petitioner

Versus

Union of India & others

...Respondent(s)

...

For the petitioner : Mr. Sham Lal Sharma, Advocate
For the Respondent(s) : Mr.Rajesh Sehgal, CGC

...

**CORAM:JUSTICE SURINDER SINGH THAKUR, JUDICIAL MEMBER
AIR MARSHAL (RETD) SC MUKUL, ADMINISTRATIVE MEMBER**

...

**ORDER
23.11.2015**

...

As common questions of fact and law are involved in both these cases, and
a similar prayer has been made by the petitioners seeking discharge from the

Army Postal Service ('APS' for short) and repatriation to the respective parent offices, these are being disposed of by this common order.

2. The aforesaid prayer made by both the petitioners is also based upon the same Notification/ Circular No.4 dated 22.10.1977 issued by the Indian Posts & Telegraph Department containing the terms of conditions for retention of non-gazetted personnel in Chapter III, Para 20 thereof which, inter alia, provides as under:-

“Personnel volunteering for APS are enrolled on short term basis of their engagement being 18 months and for so long thereafter as the services of the individuals may be required.”

The aforesaid term of 18 months has been revised from time to time, but, kept finally as it is as per Addl Dte APS letter dated August 2010 (Annexure A-1) which also prescribes the procedure for discharge from APS of PAs, SAs, specially recruited to APS.

3. The case set up by the petitioner in **OA No.4445 of 2013** is that he was recruited by the Chief Postmaster, Cachhar Division, Silchar (Assam) and joined the P & T Services Department of the said Division on 23.03.2005 wherefrom he came on deputation to the Army Postal Service as a Warrant Officer (referred to as 'WO' hereinafter) on 29.02.2005 for a term of 18 months as per terms and conditions contained in Circular No.4 of 1997 dated 22.10.1977 of the Indian P & T Department, above said. After completion of the term of engagement for 18 months and further retention of about five years in APS, he made a request for

repatriation to his parent department i.e. the Post & Telegraph Department, Cachhar Division (Assam) on Extreme Compassionate Grounds ('ECG' for short). His request was accepted and approved by the respondents and he was placed in the waiting list for discharge. However, before his turn could come, natural calamities befell at his native place whereby his entire family, including the old parents, got badly affected due to heavy rains and floods causing large scale devastation and destruction. His parents became destitute, without any shelter and medical assistance due to destruction of the house and the property. His case was recommended by the Zila Sainik Board Navgaon (Assam) as well vide letter dated 22.01.2008 but still no action was taken by the respondents. The APS Corps also sought confirmation and approval of his discharge from APS and repatriation to the P & T Department which was accorded and confirmed and vide letter dated 18.10.2013 and his name figured at Sr.No.157 in the waiting list in the ECG discharge personnel. Still he has not been repatriated to his parent office, hence the present petition.

4. The case of the petitioner in **OA No.4449 of 2013** is that he was employed by the Chief Postmaster, Eastern Division at Varanasi (U.P.) as Warrant Officer on 16.06.2010 and joined the Army Postal Unit as a deputationist on 13.05.2011 after serving against on a civil post for about two years after his recruitment. When he was not repatriated after completion of the term of engagement for 18 months and even an year thereafter, he made a request for his repatriation to his parent unit of Post & Telegraph Department, Eastern Division, Varanasi (U.P.) on Extreme Compassionate Grounds. His request was also accepted and approved by the respondents and he was also kept in the waiting list at Sr.No.366

but not discharged on ECGs. Pending his discharge, his widowed mother suffered acute health problems and she is in dire need of him. Despite pursuing the matter vigorously by way of repeated written and personal requests, he has not been repatriated. Hence this petition.

5. On notice, the respondents have filed written statements in the respective cases, taking almost an identical stand. It is submitted that the petitioners were appointed as Postal Assistants exclusively for APS Corps by the concerned parent departments i.e. the office of Senior Superintendent of Post Offices, Cachar Divison, Silchar and the Senior Superintendent of Post Offices, East Division, Varanasi (U.P.), as per appointment orders dated 22.03.2005 and 14.06.2001 placed on record as Annexure R-1 with the respective Written Statements, as a part of special recruitment of PAs/SAs to serve the APS. The terms and conditions of appointment were clearly spelt out in the said appointment orders which in the case of the petitioner in O.A. No.4445 of 2013 were as follows:-

- “(a) The candidate selected exclusively for Army Postal Service, appointed in the cadre of Postal Assistant in the Pay band of Rs.4000-100-6000 w.e.f. 23 Mar 2015(AN).*
- (b) The appointed candidate should serve in APS as long as his services are required by the APS, up to the maximum age limit fixed by the Govt. from time to time. However, he is not eligible to be repatriated to civil Postal Division before completion of minimum 10 years mandatory service in APS in the same cadre/ rank.*
- (c) The candidate should report to BRO for documentation and collection of Rahadari Patra on the date and time specified. He has to report to APS Centre Mamptee immediately on receipt of Bahadar Patra issued by BRO.*

He should understand that the day Rahadar Patra issued to him, that he is recruited as a soldier. If he fails to report to APS centre within 14 days of issue of Rahadari Patra, he will be termed as deserter and necessary action will be taken for his apprehension by the Army Authorities.”

The appointment order in case of the petitioner in OA No.4449 of 2013 stipulated the following terms and conditions:-

- “(a) The candidate selected exclusively for Army Postal Service Corps in the cadre of Postal Assistant in the Pay band of Rs.5200 – 20200 + GP 2400 w.e.f. 16.06.2010(F/N).*
- (b) The appointed candidate should serve in APS as long as his services are required by the APS, up to the maximum age limit fixed by the Govt. from time to time. However, he is not eligible to be repatriated to civil Postal Division before completion of minimum 10 years mandatory service in APS.*
- (c) The candidate should report to Army Recruiting Office “Fort Road Bareilly Cantt” for medical certificate and Warrant for Rahadari Patra on the date and time specified. He is expected to report to APS Centre Kamptee immediately on receipt of Rahadari Patra issued by Army Recruiting Office Fort Road Bareilly Cantt. He should understand that the day Rahadar Patra issued to him, that he is recruited as a soldier. If he fails to report to APS Centre within 14 days of issue of Rahadari Patra, he will be termed as deserter and necessary action will be taken for his apprehension by the Army Authorities.*
- (d) During the military training if the candidate found to be “unlikely to become as efficient soldier” his training should be terminated. In such eventuality such candidates has not have any right to claim appointment in their Civil Division.”*

6. The common stand of the respondents in both the written statements is that the petitioners accepted the terms and conditions of engagement and joined the respective civil offices wherefrom they were deputed to the Army Postal Service. They successfully completed the basic military/ technical training at APS Centre and, thereupon, were conferred the rank of Warrant Officer. The petitioner DJ Goswami was initially posted to O/ADG APS (PLI Cell), New Delhi w.e.f. 25.12.2005 and is presently serving with 40 Arty Division, Postal Unit Ambala, w.e.f. 21.09.2011. The petitioner Rakesh Kumar has been posted to 1 Armed Div PU Patiala w.e.f. 27.04.2011.

7. Further contention of the respondents is that as per the instructions, issued vide IHQ of MoD (Army) (APS) letter dated 16.05.2011 (Annexure R-2), amended vide letter dated 22.06.2011 (Annexure R-3), specially recruited WOs can apply for discharge from APS Corps after completion of their initial term of engagement i.e. after 18 months from their date of enrolment in APS Corps. If a person applies for discharge from APS Corps on compassionate ground, his application is required to be got invariably verified from '*DS & A Board*' as deemed fit. Approval for discharge is accepted by *ADG APS, IHQ of MOD(Army)* on yearly basis subject to 3.5% PMR quota. Accordingly, such persons can be discharged from APS Corps and repatriated to their parent civil departments as per the Discharge Seniority Roster, maintained by Army Postal Service Records on authority of IHQ of MOD (Army) (APS) letter dated 16.05.2011 (Annexure R-2).

8. Further stand of the respondents is that the personnel, selected exclusively for APS Corps, cannot claim their discharge from APS as a matter of right, but, a provision has been made that a person can apply for discharge on Extreme Compassionate Grounds (ECGs)/ Completion of Initial Term of Engagement (CITE). Notwithstanding the above facts, the petitioners herein applied for discharge from APS on ECGs. Accordingly, their names have been waitlisted for discharge in the Discharge Roster, maintained by the APS Records and they still in the waiting list at Sr.Nos.121 and 157, respectively.

9. From the terms and conditions of engagement, accepted by the petitioners as reflected in their appointment orders and reproduced hereinabove and the stand taken by the respondents, it clearly emerges that the petitioners cannot claim their discharge from the APS and repatriation to their civil departments as a matter of right. However, their cases can be considered and appears to have been considered by the respondents on compassionate grounds whereby they have been waitlisted and can be repatriated only when their turn comes according to the waiting list and on fulfilment of the requisite terms and conditions. No mandamus can, thus, be issued on priority and out of turn by this Tribunal for their repatriation forthwith, as such a discretion lies with the competent authorities of the APS Corps.

10. However, keeping in view the compassionate grounds taken by the petitioners in these OAs, we consider it necessary and expedient in the interest of justice to direct the respondents to consider their respective cases for release from the APS and repatriation to their parent civil departments independently

(i)OA No.4445 of 2013
&
(ii)OA No.4449 of 2013

by taking into account the Extremely Compassionate Grounds taken by the petitioners in the present OAs and pass appropriate orders within a period of three months from the date of receipt of a certified copy of this order. In case the decision to be taken as aforesaid finds favour with the respondents, the petitioners may be discharged from the APS by passing appropriate orders to that effect.

10. Both the OAs stand disposed of with the aforesaid observations and directions, however, with no order as to costs.

11. Originally signed copy of this order be placed in the respective files.

(Justice Surinder Singh Thakur)

(Air Marshal(Retd)SC Mukul)

Chandigarh

Dated:23.11.2015

`bss'

Whether the judgment for reference to be put on internet – Yes/ No