

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”

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,

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 xx xx

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'

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
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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 Forced 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.**

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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,

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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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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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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 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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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.

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(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.

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(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

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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 Forced 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.**