

**2023 LiveLaw (SC) 264**

**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**DR. DHANANJAYA Y. CHANDRACHUD; CJI., PAMIDIGHANTAM SRI NARASIMHA; J., J.B. PARDIWALA; J.**

**March 20, 2023**

**MISCELLANEOUS APPLICATION NO 219 OF 2023 IN WRIT PETITION (CIVIL) NO 419 OF 2016**

**Indian Ex Servicemen Movement (an All India Federation of Military Veterans  
Organisation represented by its General Secretary**

*versus*

**Union of India Department of Ex Servicemen Welfare Ministry of Defence Secretary**

**One Rank One Pension (OROP) - Supreme Court extends the time for Centre to  
disburse pension arrears for ex-servicemen under the OROP scheme.**

(Arising out of impugned final judgment and order dated 16-03-2022 in W.P.(C) No. 419/2016 passed by the Supreme Court of India)

*For Petitioner(s) Mr. Huzefa Ahmedi, Sr. Adv. Mr. Balaji Srinivasan, AOR Ms. Garima Jain, Adv. Mr. Arunava Mukherjee, Adv. Mr. Rohan Diwan, Adv. Mr. Rohan Sharma, Adv.*

*For Respondent(s) Mr. R Venkatramani, Attorney General for India Mr. Tushar Mehta, Solicitor General Mr. N Venkatraman, A.S.G. Ms. Chinmayee Chandra, Adv. Mr. Akshay Amritanshu, Adv. Mr. Apoorva Kurup, Adv. Mr. Rajat Nair, Adv. Mrs. Priyanka Das, Adv. Mr. Ankur Talwar, Adv. Mr. Rajan Kumar Chourasia, Adv. Mr. Shyam Gopal, Adv. Mr. Anand Venkatramani, Adv. Mrs. Vijay Lakshami Venkataramani, Adv. Mr. Vinayak Mehrotra, Adv. Ms. Mansi Sood, Adv. Mr. Chitvan Singhal, Adv. Ms. Sonali Jain, Adv. Mr. Abhishek Kumar Pandey, Adv. Mr. Raman Yadav, Adv. Ms. Sneha Kalita, Adv. Mr. Arvind Kumar Sharma, AOR Mr. Mukesh Kumar Maroria, AOR*

**ORDER**

**1** By the judgment of this Court dated 16 March 2022, the arrears on account of the One Rank One Pension (OROP) Scheme were directed to be paid over to all pensioners within a period of three months.

**2** Successive applications were filed by the Union of India seeking an extension of time.

**2** By the order of this Court dated 9 January 2023, time was extended until 15 March 2023.

**3** Mr R Venkataramani, Attorney General for India has placed on the record a “Compliance Note on behalf of the Union of India”. Besides the Attorney General for India, we have heard Mr Huzefa A Ahmadi, senior counsel appearing on behalf of the pensioners.

**4** While opposing the request which has been made on behalf of the Union of India for the extension of time, Mr Ahmadi, senior counsel submitted that

- (i) the payment of arrears fell due in 2019;
- (ii) sufficient time was granted by the judgment of this Court dated 16 March 2022; and,
- (iii) as a matter of fact, a circular was issued on 28 February 2023 by the Assistant Controller of Defence (Accounts) in which it has been stated as follows:

“In pursuance to Hon’ble Court order dt 27.02.2023 w.r.t. MA No. 219/2023 in WP(C) No. 419/2016, MoD has issued directions vide MoD ID No. 4(5)/2016-D(P/L), Vol-IV dated 27.02.2023 to pay full arrear in one instalment on account of OROP revision w.e.f. 01.07.2019 to all eligible pensioners by 15<sup>th</sup> March 2023. In order to ensure timely payment of arrears may be authorised before 15<sup>th</sup> March 2023 (in one go).”

**5** From the material which has been placed on the record, it emerges that the total number of ex-armed force pensioners ranges in the vicinity of about 25 lakh persons. The arrears which are due and payable are about Rs 28 thousand crores. The budgetary outlay

for the Union Ministry of Defence for financial year 2022-2023 is Rs 5.85 lakh crores. Of this, an amount approximately of Rs 1.32 lakh crores is the planned expenditure for total pension disbursement during the year. An amount of Rs 1.2 lakh crores has already been disbursed till February 2023 by the Ministry of Defence for 2022-2023. The quantum of Rs 28 thousand crores which has been referred to above relates to the arrears on account of the payment of OROP for 2019-2022 which is an additional component.

**6** The note which has been placed on the record states that :

“The planned budget outlay for 2022-23 is not in a position to assimilate this huge outlay in one go. Ministry of Defence being a strategic sector has to strike a fine balance between the financial outgo on its operational commitments and the expenditure incurred on its personnel including the Defence Pensioners. Since the resources are limited (despite being the highest amongst all departments) the expenses need to be regulated in such a way that the individual needs are met without compromising the operational readiness of our Armed Forces.”

**7** The Union Ministry of Defence had taken up the matter with the Ministry of Finance for provision of funds. The Ministry of Finance has indicated, as the note indicates, “their inability to provide it in one go” and has suggested a staggered payment. The reasons which have been set out in the response of the Union Ministry of Finance are extracted in the note and are set out below :

“The reasons for phased staggered pay out of the arrears component of Rs. 28,137.49 crore are as follows:

- During times of high fiscal deficit, the Government faces cash problems. This is because revenues accrue at a pace slower than its receipts. The mismatch is, inter-alia, met through a plan of market borrowings communicated in advance. Therefore, cash disbursement has to be prioritized to enable the Government to remain within its ways and means. These payment priorities, inter-alia, include interest/debt payments towards borrowings, salary and regular pension disbursements, development, social security and welfare payments for the most needy and the poor, such as food and fertilizer subsidy.
- Borrowings more to enable payment of pension arrears in cash will be against fiscal prudence. The Government has already completed its planned G-Sec borrowing from the market for the year based on the assumption of payment of OROP arrears in installments. Stoppage of borrowing at year-end by the Centre is part of a deliberate policy of leaving the space to States to borrowing in the last months of the financial year.
- Sudden changes or additional borrowing by the Centre will result in upward movement of interest rates effecting States and the private sector. Therefore, seeking fresh borrowing is likely to have very adverse macro-economic implications and is not feasible.
- It needs to be noted that Government’s immediate priorities are to revive and sustain economic growth, mitigate the inflationary pressures, and cushion the poorest and the needy from the deleterious impacts of economic difficulties.

Given the limits to the State’s fiscal capacity and the consequent need to balance and prioritize welfare needs of different sections of the society, it is imperative that the Government’s considered discretion in management of its cash balances is allowed and upheld. A Favourable consideration of this submission by the Hon’ble Supreme Court would foster the principles of equity and fairness in development/welfare delivery amongst various sections of the society.”

**8** In this backdrop, the proposal which has been placed before the Court by the Union Government is in the following terms

I. 4 lakhs pensioners out of 25 lakh pensioners do not qualify for OROP arrear as they are drawing higher pension than the average pension for the rank in 2018 and hence the number comes down to 21 lakhs.

II. Out of which 6 lakhs are family pensioners and gallantry award winners and their arrear payments would be settled by 31<sup>st</sup> March 2023, but considering the involvement of plural

disbursing agencies and to avoid inaccuracies it is respectfully prayed time may be granted to complete full settlement for 6 lakh family pensioners and gallantry award winners by 30<sup>th</sup> April 2023.

III. Next comes the pensioners who are above 70 years which accounts to roughly 4 lakh pensioners, considering the budget outlay restraints and the plurality of disbursing system and avoiding inaccuracies and operational issues at the last lap, an outer limit of 4-5 months is prayed for making full settlement of the arrears in one go in respect of this class, i.e. the arrears for this class shall be made on or before 31.07.2023.

IV. Coming to the last tranche of 10-11 lakh pensioners, considering the size of payment and the various operational factors, instead of a disbursement in 4 equal instalments (1 instalment is already paid), spread over a period of 2 years, Applicants undertake the payment of balance 3 instalments, within the financial year 2023-24 ending on 31<sup>st</sup> March 2024 and thus render justice.”

**9** The Union Government is duty bound to comply with the judgment of this Court in terms of the OROP Scheme. At the same time, the material which has been placed on the record now has a significant bearing on the nature of the order which should be passed by this Court in regard to compliance with time lines.

**10** The Union Government has stated that out of twenty five lakh pensioners, four lakh do not qualify for OROP arrears as they are drawing higher pensions than the average pensions for the rank in 2015. The total number of pensioners to whom the OROP component has to be paid over is, therefore, in the range of twenty one lakh. Of the twenty one lakh pensioners, the Union Government has undertaken that it would pay the entirety of the OROP dues by 30 April 2023 to six lakh pensioners comprising of Family Pensioners and Gallantry Award winners. Evidently, such a classification has been made bearing in mind that family pensioners have lost the bread winner and Gallantry Award winners have rendered exceptional service to the nation which has been recognised by the conferment of these awards.

**11** The Union Government has also proposed that pensioners who are above the age of seventy years, who number approximately four lakh, would be paid their dues within an outer limit of four to five months. As regards the remaining group of ten to eleven lakh pensioners, considering the size of payment and the operational requirements, it is proposed to disburse their dues in three installments within the financial year 2023-24.

**12** Having heard the parties, we issue the following directions :

(i) The payment of OROP dues to family pensioners and Gallantry Award winners shall be made in one installment on or before 30 April 2023;

(ii) The payment of OROP dues to pensioners who are of the age of 70 years or above shall be made on or before 30 June 2023. The Union Government shall either pay the entire dues in one installment or may spread out the payment in two or more installments within the outer limit of 30 June 2023; and

(iii) The outstanding payable to the remaining pensioners shall be paid in equal installments on or before 31 August 2023, 30 November 2023 and 28 February 2024.

**13** During the course of hearing, it has been clarified specifically by the learned Attorney General for India, on instructions, that the deferral of payments in terms of the present order shall not have any bearing on the computation of dues for the purpose of the next equalisation, when it falls due.

**14** The Miscellaneous Application is accordingly disposed of.

**15** Pending applications, if any, stand disposed of.