

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

4-70.

OA 741/2015

Col Karunesh Kumar etc.

..... ..Applicant

Vs.

UOI & Ors

.....Respondents

For Applicant : Mr. A S Mathur, Advocate

For Respondents : Mr. Harish V Shankar, Advocate

WITH

OA 742/2015, OA 743/2015, OA 749/2015, OA 750/2015, OA 751/2015, OA 752/2015, OA 753/2015, OA 754/2015, OA 757/2015, OA 599/2015, OA 609/2015, OA 645/2015, OA 674/2015, OA 761/2015, OA 762/2015, OA 763/2015, OA 774/2015, OA 780/2015, OA 781/2015, OA 823/2015, OA 827/2015, OA 828/2015, OA 841/2015, OA 853/2015, OA 854/2015, OA 855/2015, OA 887/2015, OA 888/2015, OA 897/2015, OA 906/2015, OA 925/2015, OA 938/2015, OA 967/2015, OA 968/2015, OA 975/2015, OA 976/2015, OA 977/2015, OA 989/2015, 1023/2015, OA 1042/2015, OA 1103/2015, OA 22/2016, OA 23/2016, OA 40/2016, OA 123/2016, OA 131/2016, OA 212/2016, OA 789/2016, OA 886/2016, OA 1157/2016, OA 71/2017, OA 116/2017, OA 117/2017, OA 118/2017, OA 140/2017, OA 153/2017, OA 688/2017, OA 690/2017, OA 691/2017, OA 707/2017, OA 1599/2016, OA 591/2017, OA 632/2017, OA 643/2017, OA 1244/2017 and OA 1614/2017.

For petitioner:

Mr. Abhishek R Shukla, proxy for Mr SS Pandey (Items 4-23, 30,31,41-44), Mr. Abhishek R Shukla (45,46, 47,49 and 69) Mr. Rajiv Manglik (42, 52,53 56 to 58, 64 &66), Mr.Y.P. Singh, (3,5,12,14,40 & 57), Mr. I.S.Yadav (55,59,60,61,62&63), Mr. AngsumanOjha (73), Mr. Karan Bhardwaj proxy for Mr. AjitKakkar (71& 72), Mr. U.K. Shandilya (70), Ms. Jyoti Singh, Ms. TinuBajwa, Mr. HimanshuGautam, Mr. Dinesh Yadav (25-29, 32-37, 40,45,47,48,51,62,64).

For respondents:

Mr. Karan Singh Bhati, Sr CGSC (1,2,52, 69 & 70) Dr. Vijendra Singh Mahndiyani (45,47,50,61& 73), Mr. SR Swain (8 & 54), Mr. Anil Gautam (13,16,21,28,68& 72) Mr.Arvind Patel (15), Ms. BarkhaBabbar (31 & 56), Mr. Ashok Chaitanya (9& 43), Mr. PraneethRanjan (63), Mr. Prabodh Kumar (27,

59 & 66), Mr. V.S. Tomar (44, 49 & 51), Mr. SP Sharma (6,17,22,30, 32,36,38,42,55& 67), Mr. YP Singh (5, 12,14, 40), Mr. Harish V. Shankar (46,65,71), Mr. Abhishek Shukla (4-23, 30, 31, 41-44)

CORAM:

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

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

ORDER

20.12.2017

Order partly allowing the OAs pronounced, signed and dated.

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

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

20.12.2017/Sp

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For Applicant

: Mr. AS Mathur, Advocate

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OA 976/2015, OA 977/2015, OA 989/2015, 1023/2015, OA 1042/2015,
OA 1103/2015, OA 22/2016, OA 23/2016, OA 40/2016, OA 123/2016,
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OA 71/2017, OA 116/2017, OA 117/2017, OA 118/2017, OA 140/2017,
OA 153/2017, OA 688/2017, OA 690/2017, OA 691/2017, OA 707/2017,
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For respondents:

Mr. Karan Singh Bhati, Sr CGSC (1,2,52, 69 & 70) Dr. Vijendra Singh Mahndiyan (45,47,50,61& 73), Mr. SR Swain (8 & 54), Mr. Anil Gautam (13,16,21,28,68& 72) Mr.Arvind Patel (15), Ms. Barkha Babbar (31 & 56), Mr. Ashok Chaitanya (9& 43), Mr. Praneeth Ranjan (63), Mr. Prabodh Kumar (27, 59 & 66), Mr. V.S. Tomar (44, 49 & 51),Mr. SP Sharma (6,17,22,30, 32,36,38,42,55& 67), Mr. YP Singh (5, 12,14, 40), Mr. Harish V. Shankar (46,65,71), Mr. Abhishek Shukla (4-23, 30, 31, 41-44)

CORAM:

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

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

ORDER
20.12.2017

1. These are bunch of applications under Section 14 of the Armed Forces Tribunal Act 2007 in which the Colonels from Indian Army are agitating against their alleged discriminatory policies of the Government in which they are made to retire at the age of 54, whereas their counterparts in Indian Air Force and Indian Navy are now retiring at higher ages of 56 or 57 years after the orders of Armed Forces Tribunal and Hon'ble Supreme Court in *Group Captain Atul Shukla vs Union of India and Ors 2014 (10) SCC 432 in the case of the Indian Air Force and also Capt CS Panda vs Union of India & Ors in OA No. 324/2014* in the case of Indian Navy.

2. The facts of the case in brief are as follows: -

(a) Central Government vide order dated 15.12.1976 issued orders for prescribing the age of retirement for officers of the rank of Colonel which was fixed at the maximum age of 52 years for the officers upto the rank of Colonel.

(b) The existing Army Rule was amended vide SRO No. 188 dated 04.06.1979 and the retirement age in respect of Colonel of Army Service Corps was fixed at 52 years though for other Arms and Service the same was 50 years extendable by 52 years.

(c) Government of India took a policy decision to enhance the age of retirement of the Central Government Employees by two years and the said policy was extended to all the officers of Army, Navy and Air Force. Based on such amended retirement policy dated 03.09.1998 the retirement age of Selection Grade Colonel of India Army except for few minor branches was uniformly fixed at 54 years of age.

3. The applicants have prayed for following reliefs in these bunch of OA:

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(a) To call for the records based on which the respondents have fixed the age of retirement of the officers holding the rank of colonels like the applicants including the policy instructions dated 03.09.1998 as well as policy letter dated 21.12.2004 at the age of 54 years, not revising the said age inspite of the dire need of the same and issuing the order of retirement vide impugned orders in the cases of each and thereafter quash all such orders including the order of retirements along with the policy dated 03.09.1998 as well as policy dated 21.12.2004.

(b) Direct the respondents to revise the policy to ensure that the applicants are allowed to serve up to the age of 57 years with all consequential benefits including continuity in service, seniority, pay and allowances etc.

4. It has been contended by the learned counsel for the applicants, led by Senior counsel Mrs Jyoti Singh that: -

(a) The action of the respondents of persisting with the age of retirement for the colonels at the age of 54 years in respect of the officers of some selective Arms and services based on the impugned instructions dated 03.09.1998 as well as policy dated 21.12.2004 in spite of the drastic changes in the facts and circumstances in last almost two decades is highly wrongful, arbitrary, unfair and discriminatory in nature which requires immediate interference by this Tribunal.

(b) It is the specific case of the applicants that the respondents have fixed the retirement age in respect of colonels of select Arms and Services at the age of 54 years based on the policy instruction dated 03.09.1998 as well as policy dated 21.12.2004 and in spite of the urgent need of revision of the same have not done so which is highly illegal and arbitrary and devoid of any justification.

(c) The officers holding the equivalent rank in Navy and Air Force under the same executive authority that is Ministry of Defence have a retirement age of 56 or 57 years and there is no justification available on record or can be pleaded for creating such differentiation. There has been a historical parity in service conditions, pay and allowances and rank superiority between officers of the three services, as evidenced in various government orders.

(d) The respondents are in fact allowing the officers holding the rank of colonel to selected branches in Army to serve up to 57 years and the difference in the working condition and the functions is not qualitatively very different as compared to these branches to justify a significantly lower retirement age less than three years.

(e) The respondents are allowing the officers holding the rank of colonel through SCO Commission to serve up to 57 years of age even though they belong to same Arms and Services as the applicants and serve under exactly same type of combat conditions which clearly establishes the fact that these officers can serve upto 57 years without any complication.

(f) The respondents are facing acute shortage of the officers up to the rank of colonel to the extent of almost nine thousand therefore allowing these officers to serve up to 57 years would mean retaining the officers from 54 to 57 years for a period of three years who can be adjusted against these vacant posts without affecting the efforts of the respondents to keep the younger profile of the officers.

(g) The respondents as it is are allowing the officers on re-employment for four years which clearly shows that the respondents not only have the employability of these officers up to the age of 58 years but also the fact that these officers are quite capable of serving till 58 years whereas the applicants are seeking an opportunity to serve upto 57 years with a benefit of continuity of service as the respondents during the re-employment make the officers work in a lower status and adverse service conditions eg. lesser Annual Leave, than what they have in the original rank.

(h) If the respondents should allow the officers to serve up to 57 years, it will not only enable them to get the pay and allowances in normal manner but will also save the huge amount required to be paid as post retirement benefits for at least three years.

(i) The fixation of retirement age may be an executive act but the same has to be based on some rationale and must stand the scrutiny of reasonableness because the early retirement if not legally justified would result in denial of right to life and lively hood which is a fundamental right.

(j) The respondents had fixed the age of retirement about two decade earlier when the entire socio economic situation has completely transformed. The officers retiring at the comparatively young age of 54 years get in to a situation where after giving prime of their youth, they are forced to proceed on retirement when their children are not yet settled thereby making them susceptible to the vagaries of life when their liability is at its peak, searching for a new job when the corporate acceptability is minimal due to the age.

(k) As a matter of fact due to such harsh conditions and self contradictory policies, the respondents are finding hard to attract the young generations to join the Armed Forces in spite of spending Crores of Rupees in putting the advertisement in every nook and corner all over the country but still battling the acute shortage for the last more than a decade.

(l) The respondents were required to reconsider such eschewed policy which though supposed to strike a balance between the interest of the organization and the aspirations of the officers but has ended up a most disadvantageous situation for all the stake holders.

(m) The Tribunal and Supreme Court has always come to the rescue of the officers against such unreasonable, unfair and arbitrary policy instruction and has never hesitated to set the things right as happened in case of Gp Capt Atul Shukla and other cases. Hence the respondents cannot take refuge of the tag of discipline and national interest to cover up their wrong action as this Tribunal has all the authority to lift the veil and examine the reasonableness and justification of the impugned policy cutting short the tenure of the applicant without any justification and contrary to all applicable norms.

(n) In the changed circumstances, the respondents were required to look into the whole issue and thereafter were supposed to eliminate the anomaly present in different corps of Army thereby bringing parity among them. However, the respondents have not deliberated on this issue at all before fixing such different age of retirement and they are put to strict proof to satisfy this Tribunal about any deliberation in which any rationale was established by the respondents which in the facts and circumstances of the case appears to be a mechanical exercise of power by the respondents.

(o) Most of the defence personnel working in the Indian Armed Forces get superannuated at very young ages which has extremely detrimental effects not only on the concerned defence personnel and their families and seems to be discriminatory against them but it also comes as a National loss because the Nation as a whole seems to be losing the services of some of the most capable, well skilled and physically and mentally alert employees. Thus, the instant matter of the applicants is a matter of larger public interest.

(p) Instead of disturbing the functional requirements of the individuals of the armed forces, a better way could be to restructure these services in such a manner that the age of superannuation of the defence personnel remains the same as that of any other central government employee as per their skills and abilities, on a case to case basis and if the same is not possible at least it should be regularly reviewed to make it in tune with the changing socio-economic conditions but no such efforts have been made by the respondents thereby presenting a very bleak scenario in front of the officers who are put in a most difficult situation.

(q) The defence personnel including the applicants herein are amongst the fit, active and efficient employees as they are bound to constantly keep themselves physically fit, mentally alert and intellectually imbued. Not only this, the Armed Forces Personnel undertake various courses which are both indoor and outdoor in nature. In addition to it, the individuals on the posted strength of Army earn their promotions through their hard work through various kinds of in-service examinations which are of very stiff nature. Thus, getting rid of these extremely useful human resources at very young age comes as being a national waste which must be stopped.

(r) There ought to be a very compelling and convincing reason to justify such a policy which does not keep pace with the prevailing scenario. Without a clear and legally tenable nexus between the executive action and the objectives sought to be achieved, the impugned policy deserves to be struck down.

(s) The re-employment is being granted to all applying officers after their retirement who are found fit, shows that the respondents actually need officers like the applicant but due to re-employment they are denied the benefit of regular service which clearly shows the unfair action of the respondents who as a matter of course after retiring the officers at the age of 54 years offer them re-employment for four years and allow them to serve till the age of 58 years but do not give them their entitled benefits and emoluments and hence will not benefit from Seventh Pay Commission and there would be huge difference in salaries of reemployed officers and the regular officers in same rank.

(t) Air Force and Navy have recently introduced retirement ages for their officers who are equivalent to colonel in Army up to 57 years respectively and the same ought to have been considered for remaining arms and services officers holding the rank up to colonel.

(u) The officers serving among the different Corps of Indian Army such as AEC, JAG, SL, Record, Special Commission Officers, Dental and AMC Officers have been allowed to serve for 57 years by the respondents however, the same is being denied to the applicant herein which is clearly discriminatory in nature.

(v) The respondents are offering re-employment due to shortage of officers and the officers on reemployment are supposed to perform same duties which result in denial of continuity of service which does not help the officers like the applicants who get promoted the rank of Colonel.

(w) The offices belonging to Arms/Services in the rank of Colonel have same kind of functional duties as that of the SCO officers therefore, the impugned policies of 1998 and 2004 based on which two different age of superannuation was introduced is totally discriminatory, arbitrary being violative of Article 14 of the Constitution of India.

(x) The officers on reemployment are given the appointments of two ranks lower than the existing rank which not only results in loss of increment and other such added financial benefits. In addition to it, the annual leave of the officers on reemployment is further curtailed by one month to which he is duly entitled which is not only a mental harassment of such officers but is also an exploitation of the individual's rights.

(y) The issue involved in the present matter is comparable to the case of Group Capt Atul Shukla where due to lack of justification Supreme Court in Civil First Appeal No. 4717-2719 of 2013 vide its judgment dated 24.09.2014 wherein the ages of retirement of similarly placed officers of the rank of Group Captain has been enhanced from 54 to 57 years. On similar grounds and following the ratio passed in the above case, this Tribunal had further passed its judgment dated 18.11.2014 in OA No. 324/2014 between Capt CS Panda vs UOI & Ors. In case of Navy wherein the retirement age of the officers of Indian Navy of the rank of Captain were increased from 54 years to 57 years.

5. The respondents led by learned Sr CGSC Mr KS Bhati, have strongly objected to averments of the applicants in their counter affidavit as follows:

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(a) The applicants have filed the instant OAs citing Supreme Court judgment dated 24.09.2014 in CA No. 4717-4719/2013 titled Union of India vs Gp Capt Atul Shukla. The applicant has compared his age of retirement with that of the age of superannuation as applicable in Indian Air Force and Indian Navy. It is submitted that the contention the applicant is ab initio misconceived on merits in this context.

(b) It is submitted that in the case of Gp Capt Atul Sukla Supreme Court has held that both the officers are of same rank ie. Group Captain in Air Force and having different retirement ages between Group Captain (Selection Grade) and Group Captain (TimeScale) cannot be tenable under the law. The ibid judgment is not applicable to the instant case as in the Army the retirement age of colonel (Selection Grade) and colonel (Time Scale) is the same. ie. 54 years.

Hence the ratio of *ibid* judgment is not applicable as the applicant is governed by a different set of terms and conditions in comparison to the Air Force and Navy.

(c) The officers of Regular Army are governed by the Army Act, 1950 and Army Rules, 1954. Under Army Rule 16A, aspect related to retirement of officers has been specified. Army Rule 16A and other administrative instructions had been revised in course of time. Age of retirement of Army officers under the Army Rule 16A has been increased vide GoI, MoD letter dated 03.09.1998. The retirement ages so specified as per the initial enactment of the Army Rules, officers of different Arms/ services and holding different ranks retire at different ages of superannuation. Since the applicants are retiring in the rank of colonel, the retirement ages of colonel at different points of different arms/ services are specified as under: -

Arms / Services	Age of retirement under Army Rules 16A	
	Original	Revised per Govt letter dated 03.09.1998
Infantry, Armoured Corps Artillery, Engineers, ASC, AOC, EME and Signals	52	54
JAG, AEC, MF, SL & SCO	55	57
AMC, ADC	57	58
RVC	55	58

That the fixation of retirement age of officers is exclusively policy matter and as such is in the domain of Executive functions. That there is no vested right available to an employee in the matter of retirement age or to seek increase in retirement age and the employer is free to frame the policy as to what it considers best suited for the organization.

(d) On the issue raised by the applicant was decided by the Tribunal in OA 456 of 2015 titled Colonel Parvat Singh vs Union of India and others and decided on 13.07.2015. the issue brought before the Tribunal was as follows: -

“Issue directions to grant three years of service to the applicant by amending the rules to make it 57 years of age for retirement at par as Colonel with the other inter se departments in the Army as also the Indian Navy and the Indian Air Force to meet the ends of equity, justice and fair play.”

(e) The Tribunal in the *ibid* case, observed that

“The petitioner is virtually asking them to given a direction to the government to frame the rules/amend the rules which in our opinion and in the facts of the case cannot be justified.”

The Tribunal further observed that

“Applicant had served up to the age of 54 years, took all the service benefits, other officer on the same service condition have retired from service on the same age and have no material to show or to examine any issue as no factual foundation has been laid down with respect to the similarity of work and the job assignment of the Colonel (equivalence) in two services”

With these observations, the Tribunal was pleased to dismiss the OA being invalid.

(f) The judgment of Tribunal in OA No. 28/2014 titled *Maj Gen Sunil Chandra vs. Union of India*, dated 21.08.2014 is also relevant to the issue.

(g) All the issues raised in the instant OA pertain to the domain of policy making and terms and conditions of service of officers commissioned in various Arms and Services in the Army, which are exclusively within the purview of the Executive Power of the Central Government. It is humbly submitted that the same is beyond the scope and purview of judicial review under Section 14 of the Armed Forces Tribunal Act, 2007 and on this ground alone the OA is liable to be dismissed.

(h) It is well settled legal position that the matters relating to the conditions of the service including the eligibility and suitability of an officer for grant of commission in the Indian Army, the terms and conditions thereof, fixation of retirement age of officers are exclusively policy matters and as such are in the domain of Executive function. That there is no vested right available to an employee in the matter of retirement age or seek increase in retirement age and the employer is free to frame the policy as to what it considers best suited for the organization.

(i) It is also well settled that retirement age is not a condition of service and hence the employer is free to fix the retirement age of its employees. Fixation of retirement age of Commissioned Officers including officers belonging to Artillery is governed by terms and conditions of service framed by the Central Government from time to time. The retirement age has been fixed based *inter alia* on the terms and conditions of service, overall authorization including strength in

various ranks, pyramidcall rank structure, functional considerations, mobility, medical and physical standards of the personnel etc.

(j) Appointment, creation, abolition of posts, promotion, fixation of pay and allowances, retirement terms and conditions of service, etc. are executive functions and scope of interference in such matters is extremely limited. It is submitted that the Supreme Court has held that it is dangerous for Courts to interfere in fixation of retirement age of employees, which is the domain of the executive.

(k) The relationship between the government and its employees is not like an ordinary contract of service between master and servant, but it is something in the nature of status. This is the position as well in respect of personnel subject to the Army Act, 1950. The terms and conditions of service may be framed and altered by the Government unilaterally and the employee has no vested right in regard to the terms and conditions of his service in matters like grant of ante date seniority, retirement age and grant of reemployment. It is well settled by the Supreme Court in law that once appointed, the government servant has no fundamental or any other right to claim that he ought to be retired at a particular age.

(l) The nature of Public Interest Litigation as the applicant is seeking a direction from the Tribunal for increase in retirement age up to 57 years. It is also submitted that the instant OA seeking such relief is in the nature of public interest litigation, which is not maintainable under section 14 of the Armed Forces Tribunal Act, 2007.

(m) The relief claimed in these OAs are hit by estoppels as the applicants having enjoyed the benefit of the increased retirement in the rank of Colonel up to 54 years for commissioned officers of combat arms like Infantry, Artillery, AOC etc. in terms of para 2 (a) (iv) of Government of India, Ministry of Defence letter dated 03.09.1998 and having enjoyed the benefit of serving up to 54 years of age instead of 52 years prior to such enhancement, now seeks quashing of the very same order. The applicant therefore cannot approbate and reprobate and thus the instant OA is liable to be dismissed.

(n) The applicants have prayed for records on which the respondents have fixed the retirement of officers of the rank of colonel and for revising the same. The applicants have further sought quashing of the Government order dated 03.09.1998 after more than 17 years. Therefore, the applicants were very much aware and had knowledge of the said policy and yet chose not to challenge

the same all these years. The applicants having enjoyed the benefit of serving up to 54 years of age instead of 52 years prior to such age enhancement, now seek quashing of the very same order. It is only at the fag end of career when they were about to retire in the rank of Colonel on reaching the retirement ages of 54 years that they chose to file the instant OAs seeking the relief set out above for their personal advancement. It is submitted that in term of Section 22 (1) (c) of the Armed Forces Tribunal act, 2007 the OAs are barred by limitation and it is thus liable to be dismissed in limine.

(o) Government order dated 03.09.1998 is regarding sanction of the President to increase the existing retirement age of Army Officers by two years, except the Chief of Army Staff. In Army retirement age of commissioned officer is based on the rank held at the time of retirement and the Arms / service to which the retiring officer belongs. If the enhance age of retirement had not been notified vide the Government order dated 03.09.1998 the applicants would have retired on attaining the age of 52 years.

(p) The applicants compare their retirement with that of the age of superannuation of officers of the rank of Colonel equivalent as applicable in Indian Air Force and Indian Navy. In Army, there is no uniform age of retirement, and it varies as per Arms/ Service and rank held at the time of retirement. The applicants have cited judgment of Supreme Court in CA NO. 4717-4719/2013 titled Union of India Vs Gp Capt Atul Shukla, dated 24.09.2013. The issue was regarding anomaly in the retirement age of Air Force of the rank of Group Captain (Select) and Group Captain (Time Scale) wherein the Supreme Court held that both the officers are of the same rank in Air Force and having different retirement age between select rank and time scale rank cannot be discriminated and held it untenable in law. The ibid judgment has no relevance to the issue at hand as there is no such anomaly in the rank of Colonel (Time Scale) and Colonel (Select) as both retire on attaining the age of 54 years.

(q) A number of commissioned officers retire from the Indian Army every month based on retirement age prescribed by the Government vide order dated 03.09.1998 and a large number of officers have retired based on such age fixed by the Government. Therefore, no challenge can be laid to the said government order.

(r) The applicants have laid challenge seeking increase in retirement age on the basis of acute shortage of officers and significant enhancement of life expectancy. It is further submitted that the fixation of age of retirement of different Arms/ Services is a well thought out policy of the Government to keep the defence forces

fit, young and alert. Moreover, the age of retirement is not based on the factors as spelt out by the applicants, rather it is based on the employability and overall organizational interest. It is submitted that the age of retirement as defined under Army Rule 16A read with Government order dated 03.09.1998 specify the retirement age of different Arms/ Services. It is further submitted that the different ages of retirement of different Arms/ Services is an integral part of cadre management of Armed Forces.

(s) It is impermissible to equate the terms and conditions of service of Army officers with officers of Air Force and Navy, as officers belonging to various Arms/ Services are granted commission under different instructions/ orders with different terms and conditions of service. Therefore, application of Article 14 in such cases is not attracted. In other words, Article 14 will have application only when a discrimination is made between persons who are absolutely similarly situated and not otherwise. The terms and conditions of service of officers in the Army being different from that of Air Force and Navy officers, it cannot be assailed on the anvil of Article 14 or 16 of the Constitution of India.

Deliberations by the Bench

6. We have heard the learned counsels for the parties. The genesis of the complaint arises from the fact that the retirement ages of equivalent level officers in Indian Air Force and Indian Navy have got enhanced by two years from original 54/55 years to now 56/57 years as a result of judicial orders in the cases of Group Captain Atul Shukla vs Union of India & Ors (Supra) of Indian Air Force and Capt CS Panda vs Union of India (Supra) of Indian Navy. Traditionally, the Colonels in Indian Army, Group Captains in the Indian Air Force and Captains in the Indian Navy are equivalent ranks for their placements, seniority, pay and allowances, and accordingly had common ages of retirement, which initially was 52 years and then got extended to 54 years in 1998. There are of course specialized services like Judge Advocate Generals, Education Corps, Medical Corps, Dental Corps etc. in all three services, wherein the officers of equivalent rank retire at higher ages. However, the bulk of these applicants are feeling aggrieved by the disparity that has got created as a result of Colonels in the Army retiring two years earlier than their equivalent rank officers in Indian Air

Force and Indian Navy, as a result of above two judgments in the case of Group Captain Atul Shukla of the Indian Air Force and Captain CS Panda of the Indian Navy.

7. The respondents in their counter have contended that the requirement of three services are quite different and they cannot be compared at the same level. However, this argument appears to be flawed on the grounds that the three services were different right from the start, but the ages of retirement of most of the Colonel's and equivalent level officers in Indian Air Force and Indian Navy was common till the anomaly was created by judicial orders in the cases of Group Captain Atul Shukla of the Indian Air Force and Captain CS Panda of Indian Navy. No change in the service conditions in respect of the Group Captains of Indian Air Force or Captains of Indian Navy has been brought out vis-à-vis the Army Colonels to justify their higher ages of retirement now. To the contrary, it has very forcefully been argued by Learned Senior Counsel Ms Jyoti Singh that all these Colonel and equivalent level officers from Indian Air Force and Indian Navy manning similar appointments in common or inter-services organizations like National Cadet Corps, Integrated Defence Services Headquarters, deputation assignments, Strategic Force Command, Andaman and Nicobar Command, Movement Control Organization etc. will now have Colonels of Army retiring two years earlier than their counter parts in other two services holding the same appointments, which is not at all a healthy working environment which has been created only due to judgments in case of Group Captain Atul Shukla and Captain CS Panda. This is precisely the reason that a large number of Colonels have come for justice to this Tribunal and we cannot close our eyes to the problem.

8. In the second counter filed on 29.08.2017 the respondents have taken a defence that Group Captains in Flying Branch of Indian Air Forces are still retiring at the age of 54 years, whereas the ground duty officers retire at 57 years. We feel that the comparison here is totally flawed, as we cannot compare the physical fitness and medical standards of a pilot to that of a Colonel in Army, who has to operate on land and do ground duties.

9. It has also been argued by the respondents that in Navy the retirement ages of Captain/ Commodore is 56 yers, and the Captains are automatically upgraded to Commodore, who are equivalent to Brigadiers in the Army, who retire at the age of 56 years. This again is a totally flawed argument. Not all Captains in the Indian Navy are promoted/ upgraded to Commodores. The Captains, who are equivalent to Colonels in the Army, who used to retire earlier at the age of 54 years have been granted the retirement age to 56 years in bulk. In this regard our attention is drawn to Naval Headquarters letter dated 14.10.2015 which has settled the anomalies in retirement ages arising out various judgments by this Tribunal and upheld by the Hon'ble Supreme Court. This letter is reproduced below:

"Restricted

Tele: 011-23014346

Integrated Headquarters
Ministry of Defence (Navy)
Directorate of Personnel
New Delhi – 110 011

NA/3102/Policy

14 Oct 15

The Flag Officer Commanding in Chief

.....

Visakhapatnam

The Flag Officer Commanding in Chief

.....

Mumbai

The Commander in Chief

....

Port Blair 744 102

The Flag Officer Commanding-in-Chief

.....

Kochi

CONTINUATION IN SERVICE OF CAPT (TS) RANKED OFFICERS TILL 56/57
YEARS AGE

1. Refer to the following: -

(a) MoD Id No. NA/3102/Policy/751/US(MP)/D(N-II)/2015 dated 08 Oct 15 (Copy enclosed).

(b) MoD Id No. 3(4)/DO(P)/D(N-II) dated 17 Mar 99.

2. Subsequent to Hon'ble AFT judgment regarding revision of superannuation age of Capt (TS) ranked officers from 54 years to 56 years (57 years for Education branch officers), MoD vide Note at Para 1.

9a) *ibid*, has directed that all Capt (TS) officers in service in Indian Navy, who are due for superannuation on attaining the age of 54 years, are to be allowed to continue in service till they attain the age of 56 years (57 Years for Education branch).

3. Corrigendum to Gol letter No. 3(4)/DO(P)/D(N-II) dated 17 Mar 99 regarding retirement ages would be issued separately.
4. It is requested that contents of this letter may be given wide publicity.

(Mahesh Singh)
Commodore

PDOP
Encl MoD Note NA/3102/Policy/751/US(MP)/D(N-II)/2015 dated 08 Oct 15

Internal
NA /CNSAll APSOs”

10. In view of above facts, we strongly feel that the anomalies in retirement age of Colonels in Army in relation to their counter parts in Indian Air Force and Indian Navy, which have got created due to recent judgments in the cases of Group Captain Atul Shukla of Indian Air Force and Captain CS Panda of Indian Navy need to be removed at the earliest by passing a comprehensive order, increasing the age of retirement of Army Colonels, as has been done in the case of Indian Navy vide letter dated 14.10.2015, quoted above. If this is not done by the respondents on their own as a matter of policy then apart from the fact that it would open the flood gate of litigation in the Armed Forces apart from making a particular level official of the Army perennially dissatisfied. The necessary consequence of the same would be neither such dissatisfied officers would give their best nor respondents would be able to extract optimum. Such a situation in the uniformed force which is to protect the Nation and its sovereignty and integrity can be ill afforded.

11. We therefore, allow the OAs partially with directions to the respondents to consider to increase the retirement age by two years for Colonels from the present 54 years to 56 years, and where they were earlier retiring at 55 years to 57 years and pass a comprehensive order to remove anomalies in retirement ages of the Colonels in Army with their counter parts in other two services as has been done by the Indian Navy vide their letter dated 14.10.2015. The Colonels who have retired during the pendency of their OAs be given consequential benefits. The aforesaid

direction should be given effect to as expeditiously as possible but not later than 30.04.2018. No order to costs.

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

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

20.12.2017/rao