

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
(ORDER XXXVIII, S.C.R, 2013)
UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA
WRIT PETITION (CIVIL) NO. 419 OF 2016

IN THE MATTER OF:

Indian Ex-Servicemen Movement

& Ors.

... Petitioners

versus

Union of India & Ors.

... Respondents

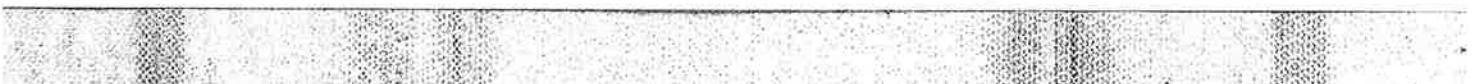
COUNTER AFFIDAVIT ON BEHALF OF PETITIONERS

PAPER BOOK

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ADVOCATE FOR THE PETITIONER:

BALAJI SRINIVASAN

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COUNTER AFFIDAVIT ON BEHALF OF PETITIONERS

I, Gp Capt V.K. Gandhi , S/o Sh. I.S. Gandhi , aged about 72 years, R/o 801 Narmada 5, D-6 Vasant Kunj New Delhi-110070 General Secretary of the Indian Ex-Servicemen Movement, do hereby solemnly and sincerely affirm that I am the authorized representative of the petitioners herein and am well acquainted with the facts and circumstances of the case and hence am competent to submit this counter affidavit as against the affidavit dated 03.12.2019 submitted by the Union Government.



PRELIMINARY SUBMISSIONS:

- I. It is submitted that the affidavit filed by the respondents has not addressed the anomalies based on differential pension of the same ranked soldiers with same length of service. In many cases, the past pensioners with same rank and same length of service are receiving lesser pensions compared to present retirees in Defence Services. Such differential treatment for the past pensioners with the present pensioners is a clear violation of Article 14 of the Constitution of India.

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II.

It is submitted that the anomalies introduced by the Government of India has violated the principle of OROP as stated in the writ petition.

It is submitted that the judgment of This Hon'ble Court in *Union of India v. SPS Vains*, (2008) 9 SCC 125 clearly establishes that creating a class within a class is unconstitutional and that a senior ranking soldier cannot have pension lesser than a junior ranking soldier.

PARAWISE REPLY ON MERITS:

1. The contents of corresponding Paragraph 1 of the affidavit submitted by the respondents are a matter of record.
2. The contents of corresponding Paragraph 2 of the affidavit submitted by the respondents are a matter of record.
3. The contents of Paragraph 3 are denied for being incorrect and false, except to the extent admitted and are responded to point-wise as under:

(A) It is a matter of record whether the Government of India has given Rs. 10795.4 crores as arrears of pension for two years under OROP and 20,10,004 past pensioners have been benefited from this. It is however submitted that the anomalies underscored in the writ petition have not been addressed by the respondent in the affidavit. It is pertinent to submit that the Government of India has not denied the existence of the anomalies in the affidavit. This implies the acceptance of the anomalies by the GOI. The Prime Minister of India has also accepted in the public address to soldiers in October 2017



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while celebrating Diwali with troops that the anomalies exist in OROP and will be resolved soon.

- (a) It is reiterated that the anomalies have not been resolved yet. The Prime Minister has publicly accepted the existence of anomalies in OROP but the Joint Secretary to GOI, in the affidavit filed, is refusing to accept and rectify the anomalies.
- (b) It is submitted that the GOI is selectively quoting the Koshyari committee report. The GOI is affirming that the Koshyari committee report has not been accepted by the GOI but at the same time is also quoting the recommendation of equalization of pension at every five years from the same report. It was in fact an Air Force representative who briefed the Committee and suggested that if it was difficult to equalize pensions every year then it could be done every five years. However, the suggestion was neither accepted nor included in the recommendation. The Koshyari committee had recommended *automatic* revision of pension of past pensioners under OROP. The reasons given by the GOI for not implementing the OROP is denied as being false and incorrect. The Koshyari committee has overruled this objection at that stage itself. The relevant recommendations of Koshyari committee are reproduced here:



The Committee is not convinced with the hurdles projected by the Ministry of Defence (D/o Ex-

Servicemen Welfare) in implementing of OROP for defence personnel. They have categorized the hurdles into administrative, legal and financial. The financial aspect has already been dealt with by the Committee. So far as the administrative angle is concerned, the Committee is given to understand that all the existing pensioners/ family pensioners are still drawing their pension/ family pension based upon the lawfully determined pension/ family pension. In that case, revision of their pension/ family pension, prospectively, as a one-time measure should not pose any administrative hurdle. So far as the legal aspect is concerned, the Committee is not convinced by the argument put forth against the implementation of OROP because the pension/ family pension is based upon the service rendered by personnel while in service and comparison of services rendered during two sets of periods does not seem to be of much relevance. If seen from a strict angle, in each set of periods, the army officer performed the duties attached to his post and it may not be proper to infer that the officers who served at a later period performed more compared to the officers of earlier period. On the contrary, facts tilt towards treating past pensioners/family pensioners at par with the more recent ones.



- (c) It is submitted that the ex-servicemen are a class by themselves. The differential pension for ex-servicemen in the same rank leads to a class within a class like pre and post 2006 retirees which goes against the principle of equality under Article 14.
- (d) It is submitted that the definition of OROP recommended by the Koshyari committee reads as: One Rank One

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Pension (OROP) implies that uniform pension be paid to the Armed Forces Personnel retiring in the same rank with the same length of service irrespective of their date of retirement and any future enhancement in the rates of pension to be automatically passed on to the past pensioners. This implies bridging the gap between the rate of pension of the current pensioners and the past pensioners, and also, future enhancements in the rate of pension to be automatically passed on to the past pensioners. It should be noted that the same definition of OROP had been accepted by the government at six different occasions.

- (i) First time: On 30 June 2009, A committee headed by Cabinet Secretary, Committee of Secretary report para 2.1
- (ii) Second time: On 19 Dec 2011 Rajya Sabha Committee (comprising MPs from all parties) headed by Shree Bhagat Singh Koshyari recommended the same definition for OROP.
- (iii) Third Time: Honorable Raksha Mantri headed a meeting of Govt officials on 22 Feb 2014 and then 26 Feb 2014 and ordered CGDA to implement OROP with the same definition.
- (iv) Fourth Time: On 22 April 2014 Hon'ble RM approved OROP again in a meeting held on 22.04.2014. MOD had issued an order for implementing OROP on 24.04.2014.



- (v) Fifth Time: On 2 Dec 2014 Hon'ble RM in a written reply to the question asked by MP Shree Rajeev Chandrashekhar in Rajya Sabha gave same definition of OROP.
- (vi) Law Ministry had opined on a file noting (procured through RTI) that any deviation from this definition will be infringement of law and order of Honorable Supreme Court dated 16.02.2015.
- (e) It is submitted that there are two components of equality in service in the armed forces, namely, rank and length of service. The importance of rank is inherent in armed forces as it has been granted by the President of India and signifies command, control and responsibility in consonance with ethos of service. These ranks are even allowed to be retained by the individual concerned after his/her retirement. It is pertinently submitted that the principle of equality, therefore, prohibits different pension for the same class with respect to the rank and length of service. Hence, two armed forces personnel in the same rank and equal length of service should get same pension irrespective of date of retirement and any future enhancement in rates of pension be automatically passed on to the past pensioners.
- (f) The GOI has given long time as a reason for rejection of yearly equalization which is vehemently denied and is completely false and untrue. It is difficult to believe that in the age of digital computing and India being one of the



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leaders in it, the technology cannot solve this issue. It is to be reiterated that this reason has also been criticized in the Koshyari committee report.

- (B) The contents of the corresponding paragraph are incomplete and untrue. It is submitted that the ex-servicemen are thankful to the GOI for bringing out OROP but such OROP is just partial. The justice to ex-servicemen will only be complete when the OROP is granted in the true sense and the anomalies in impugned letter dated 7 Nov. 2015 are removed.
- (C) It is submitted that the government is selectively quoting Koshyari Committee. On one hand the GOI is confirming that Koshyari Committee report has not been accepted by GOI and at the same time the affidavit by the GOI is quoting the same report to say that GOI had recommended equalization of pension in Koshyari committee at every five years. It was suggested by an Air Force representative that if it was difficult to equalize pensions every year then it can be done every five years. Koshyari Committee had, however, not accepted this suggestion. The Koshyari Committee had clearly recommended automatic revision of pension of past pensioners under OROP. The GOI had provided administrative reasons for not implementing OROP in the true sense. The Koshyari Committee had overruled this objection by the GOI at that stage itself. Further, the Koshyari Committee had strongly recommended automatic equalization of pension as and when rates of pension were changed. The GOI has approved partial OROP vide MOD letter no 12(01)/2014/D (Pen/Pol) part II



dated 07.11.2015. It is submitted that the conditions enumerated in this letter have introduced the anomalies provided by the petitioner (IESM). These conditions have completely gone against the spirit of OROP, put past pensioners in financial loss as compared to present pensioners, lowered their status, hurt their prestige and are against the various judgements of this honorable court. The important judgement is *Union of India v. SPS Vains*, (2008) 9 SCC 125 wherein it was held that creation of a class within a class is illegal, unconstitutional and violative of the Fundamental Rights guaranteed by the Constitution.

- (D) It is submitted that the GOI had introduced four conditions in the impugned letter dated 7.11.2015 while approving OROP. These conditions completely destroy the true sense of OROP as it has introduced many anomalies and has resulted in One Rank Many Pensions. It has also brought in the condition wherein a junior rank (post 2014 retiree) soldier with same length of service will be getting higher pension than a senior rank soldier (pre 2014 retiree). This is against the principle of natural justice and is also against various judgements of Honorable Supreme Court. These anomalies if not corrected will completely take away the spirit of OROP.

- (E) Lack of reference to the Koshyari Committee report in the budget speech on 17.02.2014 and 10.07.2014 are a matter of record. However, the Hon'ble Defence Minister had presided over a meeting with the government officials on 22.02.2014 (soon after presentation of Budget on 17.02.2014) and issued



orders approving the definition of OROP as ***"One Rank One Pension (OROP) implies that uniform pension be paid to the Armed Forces Personnel retiring in the same rank with the same length of service irrespective of their date of retirement and any future enhancement in the rates of pension to be automatically passed on to the past pensioners. This implies bridging the gap between the rate of pension of the current pensioners and the past pensioners, and also, future enhancements in the rate of pension to be automatically passed on to the past pensioners."*** (emphasis in underline supplied). This definition was never refuted in any meeting of ex-servicemen with the MOD officials. Even the same definition is reiterated in the file noting of MOD while discussing the OROP. The Law Ministry had also advised that any deviation from this definition will be deviation from the established position of OROP.

It is to be reiterated that the administrative reasons provided in affidavit does not hold as this was dismissed by the Koshyari committee in its recommendations. It is submitted that the file noting clearly points to the definition of OROP approved by the RM in the meeting held on 22/26 Feb 2014 as stated above. However, there are no facts to establish at what stage and why the approved definition was changed, and a distorted definition of OROP was released vide letter dated 07.11.2015. It is claimed in the affidavit that the OROP approved by the government has fulfilled the demand of ex-servicemen of forty years. However, it is submitted that such claims are completely



untrue, erroneous and are vehemently denied. The present implementation of OROP has taken away the legitimate dues of the ex-servicemen, hurt their prestige and status, created a group within a group (not permitted), lowered their status in society and is clearly against the judgements of this Hon'ble Supreme court.

- (F) The contents of the corresponding paragraph are completely denied as being incorrect and baseless. It is submitted that the OROP in the present form was not approved after the consultation with the ex-servicemen. The definition of OROP in the current form was never accepted by the delegation of ex-servicemen at any meeting. Even the slightest of deviation from the original definition was strongly objected by the ex-servicemen in every meeting with the MOD. The ex-servicemen representatives have always maintained that yearly equalization is essential for honoring the definition of OROP approved by Hon'ble RM on 22/26 Feb 2014. They have always maintained that the Hon'ble Defence Minister had presided a meeting on 22/26 Feb 2014 and had approved the definition of OROP as stated above and also provided in the Koshyari Committee recommendations. This meeting was attended by Hon'ble Defence Minister, Defence Secretary, Secretary (ESW), the three vice Chief of armed services, FADS, CGDA and concerned joint secretaries of Ministry and had approved the principle of OROP and had ordered it to be implemented. Hon'ble Raksha Mantri had also directed that CGDA may initiate steps in consultation with three services and MOD



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Finance and Department of ESW to give effect to the decision.

He had also emphasized that family pensioners and disability pensions would be included. Further, he also asked the Secretary (ESW) to issue necessary orders in this regard. Accordingly, MOD had issued an order for implementing OROP on 24.04.2014 after the Hon'ble RM approved OROP again in a meeting held on 22.04.2014.

Noting of File are that "A series of meetings were held in this Ministry for this purpose. After discussion, the following methodology has been considered as appropriate for implementation of OROP for Armed Forces:

- (i) Weighted average of qualifying service for each rank shall be determined with reference to retirees pertaining to year 2013, which shall be taken as the representative qualifying service for that particular rank.
- (ii) Taking maximum pension drawn in year 2013 for each rank and group in case of PBORs (Personnel below Officer Rank), on the weighted qualifying service, as the representative pension for all officers and PBORs of that rank and group.
- (iii) The maximum pension shall be determined from the pension drawn in rank and group across the three Services. The pensioners drawing pension above the proposed pension, shall continue to draw the same. The protection in pension of post-2006 retiree shall also be allowed.



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- (iv) Linkage of disability element and family pension shall also be established with the revised pension.
- (v) The effective date of implementation of the proposal shall be 1st April 2014.
- (vi) The tentative financial implication has been assessed a Rs 8,298.48 crore per annum (details annexed)."

(G) The contents of the corresponding paragraph do not require any reply.

(H) The contents of the corresponding paragraph are incorrect and false and are vehemently denied. The reasons for the same are mentioned in a point-wise manner below.

- (i) It is submitted that OROP was approved in the budget of year 2014 and every proposal of the budget comes in effect from 01 April of that year unless it is specifically mentioned in the budget. The same can be vividly seen in the noting within MOD regarding the approval of OROP. No one knows at what stage it was diluted and changed to 01.07.2014. The noting on the file does not indicate any time frame for this and there was no mention of it in the noting. OROP had been approved in the budget of 2014 and hence it should be applicable from 01.04 2014.



- (ii) It is reiterated that the delegation of the ex-servicemen never agreed for any deviation of OROP definition and had always insisted that OROP must be applicable from 01.04.2014. Further, it was clearly communicated to MOD in every meeting that pension of past pensioners needs to be brought at par with highest pension as on 31 Mar 2014

for OROP to be in the true sense. The introduction of the two clauses providing for the pension of past pensioners to be equal to the average of minimum and maximum pension of 2013 and equalization of pension at every five years have introduced these anomalies and taken away the principle of OROP. These clauses have distorted the definition of OROP, are not acceptable and need to be corrected without delay if OROP demand is to be met in the true sense. The ex-servicemen are perturbed by being deceived because of the introduction of these two clauses. It is reiterated that the ex-servicemen have never been consulted for introduction of these two clauses and have never given their consent to it. This petition has been filed because these clauses have completely distorted the definition of OROP. It is submitted that the OROP granted vide order dated 07.11.2015 is not OROP but it is only one time increase in pension and is being given in name of OROP. This is not acceptable to ex-servicemen and hence this petition to this court seeking justice and keeping up the morale of 25 lakhs ex-servicemen, 15 lakhs serving soldiers (these soldiers will also be ex-servicemen soon) and 6.5 lakhs widows.



The GOI has stated in its affidavit that some soldiers who retire today are getting lesser pension than past pensioners who were given OROP. It is submitted that there cannot be bigger flouting of pay and pension rules to say that the pay of present pensioners (post 2016) has

been reduced than past retirees (pre 2014) and if it true then great injustice is being done with the present serving soldiers by reducing their pay than it was prevalent in pre 7th Central Pay Commission. It is hard to believe that the salary of present employees in 2020 (post 2016) has been fixed less than past employees of pre 2014. In case it is true, this is the most perverse decision and needs to be corrected without any delay. The Army Headquarter is justified in demanding that the pay of present serving soldiers be correctly calculated keeping in mind that it should not be less than the past retirees. The GOI is probably referring to some post 2016 soldiers who had been given loss of pay and seniority because of indiscipline or have not been found fit for promotion. Comparing pay and pension of these soldiers with the pensioners is the most perverse way to deny due pensions to the pensioners. We have in our note also submitted the pension orders of soldiers who retired post 2016 and have displayed that they are getting more pension than past pensioners (under OROP). It is also submitted that IESM has procured more PPOs of present retirees from the Army units and these PPOs also prove that present retirees are getting higher pension than pre 2014 retirees for same rank and same length of service. The affidavit submitted has not refuted the PPOs and related submissions already placed on record. It is also to be noted that even the noting on MOD file has



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recommended that the maximum pension of present soldiers be taken and passed on to past soldiers. Hence pension of past pensioners needs to be recalculated based on highest pension of retirees as on 31 Mar 2014. Further the pension needs to be equalized in 2015 and updated to 31 Dec 2015 and then multiplied with multiplication factor of 7th Central Pay Commission to arrive at basic pension of 7th Central Pay Commission. Past soldiers need to be given full justice by updating their pension to 31 Dec 2015 and then multiplying with factor of approved multiplication factor (2.57, 2.67 or 2.81 as the case may be) of 7th Central Pay Commission.

It is submitted that the judgement of *Union of India v. SPS Vains*, (2008) 9 SCC 125 is the most appropriate judgement for this case as the judgement clearly establishes that creating a class within a class is unconstitutional and that a senior ranking soldier cannot have pension lesser than a junior ranking soldier. The claim in the affidavit that this case does not deal with OROP is incorrect and completely false. IESM has procured copies of the noting of MOD dated 24 April 2014 wherein OROP definition as given in Government letter dated 26 Feb 2014 has been again accepted.



- (iii) (a) The claim that OROP in its current form was implemented after extensive consultation with the ex-servicemen is untrue and incorrect. The definition of OROP in the current form as given in the letter dated 07-

11-2015 was never accepted by the delegation of ex-servicemen at any meeting. Even the slightest of deviation from the original definition was strongly objected by the ex-servicemen in every meeting with the MOD. The ex-servicemen representatives have always maintained that yearly equalization is essential for honoring the definition of OROP approved by Hon'ble RM on 22/26 Feb 2014. In every meeting with MOD the ex-servicemen have maintained that OROP can be real only if equalization is done instantly or at least on yearly basis. The issue of five-year equalization and the average of minimum and maximum of 2013 salary was never discussed with Hon'ble RM and MOD officials in any meeting. Hence there is no question of IESM or any delegation of ex-servicemen agreeing to these conditions. The concept of five-year equalization and fixing of pension as the average of minimum and maximum of 2013 salary has completely taken away the true meaning of OROP. OROP means bringing past pensioners equal to present pensioners. It was never seen as narrowing the gap between past and present pensioners. The essence of OROP is to bring past pensioners at par with present pensioners and equalize instantly if at any time a difference in rate of pension is detected between past and present pensioners. This has been distorted and the reliefs are denied to the past pensioners. The principle of OROP has not been followed by the introduction of these



two clauses and has finally distorted soul of OROP.

Hence, this petition to Hon'ble Supreme Court to correct the anomalies and resurrect the soul of OROP.

- (b) It is submitted that the equalization of pension at every five years has completely affected the soul of OROP and this will result in a senior getting lesser pension than his junior for five years. It will also result in two soldiers with same rank and same length of service getting different pension for five years and thereby killing true definition of OROP. The pension of past pensioners needs to be fixed at highest pension as on 31 Mar 2014 and thereafter if any deviation is noticed it is to be equalized at every year to ensure full justice with OROP.
- (c) It is admitted in the affidavit submitted by the GOI that pro rate reduction in the pension has been done away with. It is admitted that the GOI had paid arrears for removing this rule. However, any increase in basic pension because of withdrawal of this rule has not been extended to past pensioner and their basic pension has not been corrected. It is submitted that this benefit should be given to past pensioners before multiplying with multiplication factor to arrive at basic pension of 7th Central Pay Commission. The GOI in its affidavit has admitted that OROP tables had been prepared based on the data of 2013 and the letter for withdrawal of this rule had been issued on 30.09.2016 and hence there was no question of revising the tables (amounting to denial of the



benefit to past pensioners, approx. 20 lakhs soldiers, especially when the judgement is applicable from 01.07.2006). It is submitted that the letter for withdrawal of pro rate reduction in pension had been issued on 30.09.2016 but this rule is effective from 01.07.2006. The pension arrears for past pensioners had also been calculated from 01.07.2006. Hence pension rate will need to be revised first and then multiplied with the factor to arrive at the basic pension of the 7th Central Pay Commission.

(d) It is submitted that IESM or any delegation of ex-servicemen has not consented for five-year equalization of OROP pension for past pensioners. IESM had many meetings with RM in 2014 and had always maintained that pensions of past pensions should be brought at par with the maximum pension as on 31 Mar 2014 and thereafter to be equalized every year. The RM Shree Manohar Parrikar had worked out the financial implications of OROP to be Rs 8296.48 crore per annum (as is quoted in noting in MOD notes procured through RTI) based on this discussion. This has been reflected in every discussion with MOD as is evident from the file noting by MOD received through RTI. It was also explained to the RM that the five-year equalization plan is not acceptable as it will introduce many anomalies in the OROP. The Hon'ble RM had accepted this demand. It is to be reiterated that the administrative reason given in



affidavit by GOI has been overruled by Koshyari Committee. It is submitted that the technology can be used to develop a software to work out any deviation in pension of past and present pensioners on touch of a button.

- (I) The contents of the corresponding paragraph are denied.
- (J) The contents of the corresponding paragraph are denied.
- (K) The contents of the corresponding paragraph are incorrect and true and is vehemently denied. This will be clear from the following example:

- a) A Sepoy with 17 years of Service group 'Y' who retired prior to 01.07.2014 is getting a pension of Rs 17129/- per month (as per OROP Govt of India Min of Def letter No 12(1)/2014/D(Pen/Policy)-Part -II dated -03 Feb 2016 copy attached) whereas the same class of Sepoy who retired on 31 Jan 2019 is getting a pension of Rs 21325.
- b) A Havildar who retired with 24 years of service Group 'Y' who retired prior to 01.07.2014 is getting a pension of Rs 20067/-(as per OROP Govt of India Min of Def letter No 12(1)/2014/D (Pen/Policy)-Part -II dated -03 Feb 2016 copy attached). However, the same class of Havildar is getting Rs 23025/- who retired on 28 Feb 2019. It is important to note here that a Havildar rank soldier who retired pre 2014 is getting pension of Rs 20067/ with 24 years of service whereas a soldier of sepoy rank (two ranks junior to Havildar) retired on 21.01.2019 is getting pension of Rs 21325/ with 17 years of service. Hence a



sepoy who retired in 2019 is getting more pension than a Havildar, this is very humiliating and demoralizing for past soldiers and needs to be corrected at the earliest as it is contrary to established law and against natural justice. Hence this petition to correct injustice with past gallant soldiers.

- c) In this connection Table showing difference in pension of 2018/2019 defence retirees Vs OROP pension of the same class along with PPOs are enclosed herewith.
 - d) Therefore, from the above example it is proved without doubt that present pensioner is getting more pension than the defence pensioner of the same class who retired prior to 01 Jul 2014.
- (L) The contents of the corresponding paragraph are completely untrue and incorrect and is vehemently denied. It is submitted that the correct definition of OROP is *"One Rank One Pension (OROP) implies that uniform pension be paid to the Armed Forces Personnel retiring in the same rank with the same length of service irrespective of their date of retirement and any future enhancement in the rates of pension to be automatically passed on to the past pensioners. This implies bridging the gap between the rate of pension of the current pensioners and the past pensioners, and also, future enhancements in the rate of pension to be automatically passed on to the past pensioners."* (emphasis in underline supplied). The principle of OROP is to bring past pensioners (pre 2014) at par with present pensioners (post 2016). Therefore, if pension of pre 2014 pensioners is



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fixed at the level of average of 2013, it is not OROP. Further, if this pension is not equalized every year and is done at five-years then the injustice with past pensioners will continue for five years and thereafter in perpetuity. The IESM in every meeting with Hon'ble RM had explained that pensions need to be updated to 31 Mar 2014 and thereafter equalized every year for OROP to be true. It was accepted by Hon'ble RM and accordingly financial projection of Rs 8296.48 crore per annum was made. This is evident from the MOD file noting procured through RTI. It is pertinent to submit that the IESM delegation never agreed for pensions of past pensioners to be fixed at average of minimum and maximum salary of 2013 and equalization at every five years. There is no question of equating with civil employees as OROP is not applicable to them. OROP that was introduced vide letter dated 07.11.2015 has resulted in many anomalies which has completely taken away the spirit of OROP and hence to meet ends of justice these anomalies need to be rectified to give justice to the brave

soldiers and to give them their legally correct dues. *No new facts which have been pleaded before this Court below in this Counter Affidavit.*

The contents of the paragraph 4 are misleading, untrue and baseless.

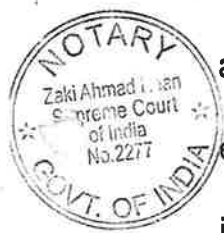
The executive decision of the GOI is that the GOI decided to give OROP. Once this decision is taken the definition of the OROP cannot be changed to distort the definition and soul of OROP. Definition of OROP was agreed by Government at at-least six occasions, as already submitted with dates and details hereinabove (and therefore not being reiterated for the sake of brevity). It is further submitted that the GOI had approved this definition of OROP in the MOM of the



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meeting held on 26.02.2014 and subsequently in an order dated 22.04.2014 and then confirmed by Hon'ble RM in Rajya Sabha on 02.12.2014. This has been affirmed by MOD in the file noting procured through RTI. Therefore, it will be unethical to change the definition of OROP under the garb of administrative and financial implication and executive decision. Executive decisions are taken to upkeep spirit of Indian constitution and not to violate the spirit of constitution. A wrong decision taken in the garb of executive decision needs to be challenged and hence this decision of very principle of OROP and denying past soldiers their legally correct dues is challenged in this petition. It is to be reiterated that 25 lakh ex-servicemen and 6.5 lakh widows are looking up to Hon'ble Supreme Court and request for justice for OROP.

5. The contents of the paragraph 5 are incorrect and erroneous. It is submitted that OROP has been approved in principle by the GOI but has been denied to ex-servicemen under the garb of administrative and financial difficulty. It is also submitted that OROP is a legal right of ex-servicemen under article 14. According to Article 14 and many judgements of Hon'ble Supreme Court it has been established that pension of two soldiers of the same rank and same length of must be similar and two soldiers with same rank and same length of service cannot be paid different pension. Further, it is against the law and the principle of natural justice to fix lesser pension of a senior rank soldier than the pension of a junior rank soldier. The OROP approved by Government vide letter dated 07.11.2015 has resulted in two soldiers of same rank with same length of service getting different pension. The situation of the pensioners, who have done service to nation with full



sincerity and sometimes even at the cost of their limbs and life, has been aggravated by giving higher pension to junior rank soldiers retiring post 2016 than their senior rank soldiers. Any reasons either administrative or financial cannot justify this violation of law and Supreme Court Judgements.

6. It is submitted that this Hon'ble Court has given many judgements in which time and again it has been established that a senior rank soldiers cannot be given lesser pension than their junior rank soldiers. Further, two soldiers of same rank and same length of service must get same pension as per principle of OROP. Any deviation from this principle, because of any reason, cannot be justified and is against natural justice and law. It is to be reiterated that 25 Lakhs ex-servicemen and five lakh widows through this petition are requesting Hon'ble Supreme Court to give justice to them and give them OROP in the true sense as per its agreed definition which will ensure that two soldiers of same rank with same length of service get same pension and whenever any deviation is noticed it is automatically corrected but not later than one year. Further, under any situation a senior rank soldier should never get pension lesser than a soldier of lower rank.



VERIFICATION:

Verified at New Delhi on this 07/02/2020 that the statements made hereinabove are true and correct to the best of my knowledge and belief.

ATTESTED
07/02/2020
NOTARY DELHI

IDENTIFIED BY
Advocate/ Regd Clerk

DEPONENT