

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.17143 & 18294 of 2019
and
WMP Nos.16691 & 17646 of 2019

WP No.17143 of 2019
S.Durai Raj

... Petitioner

Vs.

1. The Union of India
rep. by its Secretary to the Government,
Department of Home Affairs,
New Delhi.

2. The Director General of Police,
O/o.Director General,
CRPF, Block No.1, CGO Complex,
Lodhi Road, New Delhi - 110 003.

3. The Special Director General of Police,
South Zone, CRPF,
Chandrakutta,
Hyderabad - 500 005.

4. The Inspector General of Police,
Southern Sector, CRPF,
Road No.10 C, Jubilee Hills,
Near MLA/MPs Colony, Gayathri Hills,
Hyderabad - 500 033.

5. The Deputy Inspector General of Police,
Group Centre, CRPF,
Avadi, Chennai - 600 065. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of declaration, declaring therein the Rule 43(a) of CRPF Rule, 1955, reading as "the retirement of a member of the Force shall take effect from the afternoon of the last day of the month in which such member attains the age of 57 years. In case, the date of birth of a member of the Force falls on the first day of a month, his retirement shall take effect from the afternoon of the last day of the month preceeding the month in which the member of the Force attains the age of 57 years", compared to the officers

holding posts higher than that of rank of Commandant shall retire from service on the afternoon of the last day of the month in which they attain the age of 60 years as arbitrary, unconstitutional, discriminatory, unjust, unreasonable classification, violation of Articles 14 and 16 of the Constitutional by striking out the same from the respective statues mentioned hereinabove together with a consequential direction to the respondents to amend the respective Rules referred to herein above, by way of enhancing the superannuation age from the present 57 years to 60 years, thus ensuring uniformity / non-discrimination in the aforesaid Rules.

For Petitioner : Mrs.R.Meenakshi

For Respondents: Mrs.S.S.Meenakumari
CGSC

WP No.18294 of 2019
P.Gunasekaran

.. Petitioner

Vs.

1. The Union of India rep. by the
Under Secretary to Government,
Personnel-II Desk, Police-II Division,
Department of Internal Security,
Ministry of Home Affairs,
North Block, New Delhi - 110 001.

2. The Director General,
Central Reserve Police Force,
Block No.1, CGO Complex,
Lodhi Road, New Delhi - 110 003.

3. The Inspector General of Police (Personnel),
Office of Directorate General,
Central Reserve Police Force,
Block No.1, CGO Complex,
Lodhi Road, New Delhi - 110 003.

4. The Deputy Inspector General / Principal,
Recruits Training Centre (RTC), Group Centre,
Central Reserve Police Force,
Avadi, Chennai - 600 065.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of declaration, declaring that Rule 43(a) of the Central Reserve Police Force Rules, 1955 together with the corresponding Rule 12 of the Central Reserve Police Force Group A (General Duty) Officer Recruitment Rules, 2001 amended in 2010, reading as other officers holding posts lower than the Deputy Inspector General shall retire from service on the

afternoon of the last day of the month in which they attain the age of fifty seven years as unconstitutional, discriminatory, unjust, violative of Article 14 and 16 of the Constitution of India and consequentially direct the respondents herein to amend the aforesaid rules referred to above, by way of enhancing the superannuation age from the present 57 years to 60 years for such 'other officers', thus, ensuring uniformity / non-discrimination in the aforesaid rules.

For Petitioner : Mr.J.Lakshmi Narayanan

For Respondents: Mrs.S.S.Meenakumari
CGSC

C O M M O N O R D E R

(Order of this Court was made by S.Manikumar, J.)

W.P.No.17143 of 2019, has been filed for a writ of declaration, declaring Rule 43(a) of CRPF Rules, 1955, which says that "the retirement of a member of the Force shall take effect from the afternoon of the last day of the month in which such member attains the age of 57 years. In case, the date of birth of a member of the Force falls on the first day of a month, his retirement shall take effect from the afternoon of the last day of the month preceeding the month in which the member of the Force attains the age of 57 years", compared to the officers holding posts higher than that of rank of Commandant shall retire from service on the afternoon of the last day of the month in which they attain the age of 60 years as arbitrary, as unconstitutional, discriminatory, unjust, unreasonable classification, violation of Articles 14 and 16 of the Constitution of India by striking out the same from the respective statutes mentioned hereinabove together with a consequential direction to the respondents to amend the respective Rules referred to herein above, by way of enhancing the superannuation age from 57 years to 60 years, thus ensuring uniformity/non-discrimination in the aforesaid Rules.

2. W.P.No.18294 of 2019, has been filed for a writ of declaration, declaring Rule 43(a) of the Central Reserve Police Force Rules, 1955 and the corresponding Rule 12 of the Central Reserve Police Force Group A (General Duty) Officer Recruitment Rules, 2001 amended in 2010, which says that officers holding posts lower than the Deputy Inspector General shall retire from service on the afternoon of the last day of the month in which they attain the age of fifty seven years as unconstitutional, discriminatory, unjust, violative of Article 14 and 16 of the Constitution of India and consequentially direct the respondents herein to amend the aforesaid rules referred

to above, by way of enhancing the superannuation age from the present 57 years to 60 years for such 'other officers', thus, ensuring uniformity / non-discrimination in the aforesaid rules.

3. Supporting the prayer sought for in W.P.No.17143 of 2019, petitioner has contended that, he joined Central Reserve Police Force as Assistant Sub-Inspector (Ministerial) with MA Degree. During his service, he was promoted to the rank of Sub-Inspector, Inspector, Subedar Major and subsequently, he was promoted as Assistant Commandant (M) in Group Centre, CRPF, Avadi from 01.03.2018. He has served at various places in our country, as per the details given below:-

Sl. No.	From	To	Unit/Office	Place
1	13.08.1987	02.02.1993	80 BN	Neemuch (MP) / Sikkim
2	08.02.1993	30.11.1998	Dte. Genl.	New Delhi
3	31.12.1998	21.07.2003	GC Imphal	Imphal, Manipur
4	06.08.2003	30.06.2008	105 RAF	Coimbatore
5	16.07.2008	15.10.2008	O/O IG Jammu	Jammu (J&K)
6	18.10.2008	04.06.2012	22 Bn	Hazaribagh
7	19.06.2012	15.12.2014	GC Gty	Guwahati (Assam)
8	26.12.2014	18.07.2016	GC KKT	Khakhatti (Assam)
9	13.08.2016	Till date	GC AVD	Avadi, Chennai

4. Petitioner has further contended that he reported to Group Centre, CRPF, Avadi on 13.08.2016 on promotion as Subedar Major and he was promoted to the rank of Assistant Commandant (Min) from 01.03.2018. Now, he has been ordered for superannuation from 30.06.2019 on completion of 57 years by the 4th respondent vide order No.R.VII-84/2018-19-SS-EC-I, dated 14.02.2019.

5. Petitioner has further contended that as per rule 43 of the Central Reserve Police Force Rules 1955, the retirement of a member of the Force shall take effect from the afternoon of the last day of the month in which such member attains the age of 57 years. In case, the date of birth of a member of the Force falls on the first day of a month, his retirement shall take effect from the

afternoon of the last day of the month preceeding the month in which the member of the Force attains the age of 57 years. Accordingly, he has been issued superannuation order with effect from 30.06.2019, vide impugned order.

6. Petitioner has further submitted that the Central Armed Police Forces (CAPFs), are functioning under the Ministry of Home Affairs. They are the Central Reserve Police Force (CRPF), Border Security Force (BSF), Central Industrial Security Force (CISF), Indo-Tibetan Border Police (ITBP), Sashastra Seema Bal (SSB), Assam Rifles (AR) and National Security Guard (NSG). Retirement age of members of the CRPF, BSF, ITBP and SSB upto the rank of Commandant is 57 years whereas the retirement age of the members above the rank of Commandant, ie. DIGP and above is 60 years. In CISF and Assam Rifle also, the retirement age of members up to the rank of Commandant is 60 years. In NSG, the personnel are deployed from the other CAPFs and they retire from their parent force.

7. Petitioner has further contended that due to disparity in the retirement age in the Central Armed Police Forces, some of the members of the CRPF, ITBP and BSF raised their fundamental rights that the retirement age should be enhanced to 60 years to be at par with the officers above the rank of Commandant. There are 19 personnel, ie. 8 from CRPF, 10 from ITBP and 1 from BSF in different ranks approached the Delhi High Court, by filing various writ petitions in WP No. 1951/2012 and 18 other writ petitions for a mandamus to the Respondents to consider enhancing the age of superannuation of each of the Petitioners to 60 years. The Delhi High Court, ordered in favour of the petitioners by judgment dated 31.01.2019. The Union of India and the concerned department filed SLP No. 11944/2019 before the Hon'ble Supreme Court and the SLP was dismissed on 10.05.2019.

8. Petitioner has further contended that in the Judgement of the Delhi High Court, it has explained the Rule position in the CISF that there is a CISF Act of 1968 and the CISF Rules of 2001. Prior to 1988 (the position in the CISF was governed by Rule 65 of the CISF Rules, 1969, which provided for superannuation. It reads as under:-

"Rule 65, CISF Rules, 1969 - Superannuation etc.,

The rules relating to superannuation pension, provident fund and gratuity of supervisory officers and members of the Force shall be the same as those applicable to the Central Government servants.

This underwent no change in the subsequent CISF Rules, 2001. The retirement age has been uniformly fixed at 60 years.

9. Petitioner has further contended that the rule position in the Assam Rifle is that the members of AR governed by the CCS (Pension) Rules, 1972. In terms of AR letter dated 25th January 1978, it was stated that the superannuation of members of the AR was 55 years. In terms of an order dated 31st August 1988 the superannuation age of ARs was made 58 years with the pension being regulated by the CCS (Pension) Rules 1972. The retirement age for all ranks was increased to 60 years by the letter dated 28th July 1999. A separate set of Rules for the AR was made only for the first time in 2010 after the Assam Rifles Act was passed in 2006. It stated that upon superannuation, pension shall be granted to a Government servant retiring at the age of 60 years and this would be available to all AR personnel. Therefore, both CISF and the AR which are part of the CAPFs, the uniform retirement age for all ranks is 60 years.

10. Petitioner has further contended that at para 68 of the Judgement dated 31.01.2019 of the Hon'ble High Court New Delhi held that the decision of the Respondent to prescribe retirement age of 57 years for members of the three CAPFs ie. the ITBP, the BSF and CRPF of the rank of Commandant and below in terms of Rule 43(a) of the CRPF Rules, and the corresponding Rules applicable to the said three CAPFs as against 60 years for Officers of the rank above that of Commandant to be discriminatory, violative of Articles 14 and 16 of the Constitution. Rule 43(a) of the CRPF Rules, 1955 and correspondingly Rule 14 of the CRPF Group (A) General Duty Officers Recruitment Rules, 2001, Rule 8(a) of the ITBP General Duty in Group A Posts Rules and Rule 12 of the BSF (General Duty Officers Recruitment Rules, 2001 to the extent they too prescribe a retirement age of 57 years for members of those CAPFs of rank of Commandant and below have also been struck down.

11. Petitioner has further contended that the High Court of Delhi has held in para 71 of the judgment as under:

"Accordingly a direction is hereby issued that within a period of four months from today the Respondents ie. the MHA in consultation with the CAPFs concerned will take all consequential steps by way of implementation of this judgment. This will include arriving at a decision as regards the retirement age which will uniform for all members of the CAPFs irrespective of their rank thus bringing all of them, including the CISF and the AR on par and fixing the date from which such changed retirement age will

take effect”.

12. Petitioner has further contended that in pursuance to the judgement of the Delhi High Court and subsequent dismissal of SLP No.11944/2019 by the Hon'ble Supreme Court, Shri Rohtash Kumar Gupta, Commandant of CRPF, SI/MT Dinesh Kumar of CRPF and Shri G. Rajan of SSB and some others have been permitted to continue their service after attaining the age of 57 years. In the same analogy, he submitted a representation dated 07.06.2019 to the 2nd respondent, requesting to allow him to continue to his service beyond 57 years of age ie. 30.06.2019, pending final decision of Govt, of India.

13. Supporting the prayer sought for in W.P.No.18294 of 2019, petitioner has contended that he was working as Inspector/GD in the Recruits Training Centre (RTC), CRPF, Avadi, Chennai. His service particulars, are as follows:-

Sl.No.	Designation	Date of Appointment/Promotion
1.	Constable/General Duty (GD)	04.12.1981
2.	Lance Naik/GD	09.10.1991
3.	Naik/GD	10.08.1994
4.	Head Constable (HC) / GD	10.10.1998
5.	Sub-Inspector (SI)/GD	11.08.2007
6.	Inspector/GD	01.04.2013

He is having unblemished service career in CRPF since 1981 without any cause of complaint or punishments till date.

14) Petitioner has further contended that the Deputy Inspector General/Principal, Recruits Training Centre, CRPF, Avadi, Chennai (the fourth respondent herein) issued an office order in No.P.III-1/2016-Estt.2 dated, the 29th August, 2016 notifying his age of superannuation as 30.06.2019 in accordance with Rule 43 of CRPF Rules, 1955. The aforesaid Rule 43 deals with age of superannuation in CRPF as under:

“Retirement of member of the Force shall take effect from the afternoon of the last day of the month in which such member attains the age of 57 years”. It requires to be noted here that the expression ‘member of force’ in terms of Rules 4 and 5 read with Rule 6 of the CRPF Rules 1955, connotes the rank of Commandant and below.

15) Petitioner has further contended that Rule 43 (a) of the CRPF Rules, 1955 and corresponding Rule 14 of the CRPF Group (A) General Duty Officers Recruitment Rules, 2001, Rule 8 (a) of the ITBP General Duty in Group "A" Posts Rules and Rule 12 of the BSF (General Duty Officers) Recruitment Rules, 2001 to the extent they too prescribe a retirement age of 57 years for members of those CAPFs of rank of Commandant and below have been struck down by the Hon'ble Division Bench of Delhi High Court in Dev Sharma vs Indo Tibetan Border Police & Anr., on 31st January, 2019. Appeal filed against the said order by the Union of India before the Hon'ble Supreme Court in SLP (Civil) No. 11944/2019 was dismissed on 10.05.2019.

16) Petitioner has further contended that similarly placed personnel in CRPF approached Hon'ble Delhi Court and obtained interim orders in their favour and the same were implemented by the Ministry of Home Affairs in Office Memorandum dated 31st May, 2019. He therefore, submitted a representation through proper channel to the Director, Central Reserve Police Force, New Delhi (the second respondent herein) on 12.06.2019 requesting him to continue in service beyond 30.06.2019 in the light of the Delhi High Court Judgment. The said representation was also forwarded by the competent authority on the same day itself. He further submitted that one Shri.D.Vincent Thomas, Commandant working in CRPF, Avadi filed W.P.No.4969/2019 before this Hon'ble Court and an interim order was granted by this Hon'ble Court on 28.02.2019. The said order was implemented by CRPF in No.J.II-82/2019-LWP-II dated 20.06.2019. He has also contended that similarly placed and he is entitled to continue in service till 60 years as orders passed by the Hon'ble Delhi High Court.

17) Petitioner has further contended that discrimination in the matter of age of retirement amongst members of two wings of the Central Armed Police Forces will contribute to lower the morale rather than bolstering it. Taking note of several factors into consideration Hon'ble Division Bench of Delhi High Court held Rule 43 (a) of the CRPF Rules, 1955 to be discriminatory and violative of Article 14 of the Constitution of India vis-a-vis members of the CRPF of the rank of Commandant and below. He has also entitled for similar benefit since he sought to be retired from service based on the aforesaid rule.

18. In the above said circumstances, petitioners have filed W.P.Nos.17143 and 18294 of 2019, for the prayers, stated supra.

19. On 19.06.2019. we passed the following order in WP.No.17143 of 2019.

"On behalf of Ms.S.S.Meenakumari, learned Central Government Standing Counsel for the respondents, Mr.D.Premkumar, learned counsel takes notice. He is directed to ascertain, as to whether final order made in WMP No.10429 of 2019 in WMP No.8442 of 2019 in WP No.7802 of 2019, has been stayed or not, challenged before the Hon'ble Apex Court. If so, the stage.

2. Post the matter on 24.06.2019, in the motion list."

20. On 28.06.2019, we passed the following order in WP No.18294 of 2019.

"Petitioner has sought for a writ of declaration, declaring that Rule 43(a) of the Central Reserve Police Force Rules, 1955 together with the corresponding Rule 12 of the Central Reserve Police Force Group A (General Duty) Officer Recruitment Rules, 2001 amended in 2010, reading as other officers holding posts lower than the Deputy Inspector General shall retire from service on the afternoon of the last day of the month in which they attain the age of fifty seven years as unconstitutional, discriminatory, unjust, violative of Article 14 and 16 of the Constitution of India and consequentially direct the respondents herein to amend the aforesaid rules referred to above, by way of enhancing the superannuation age from the present 57 years to 60 years for such 'other officers', thus, ensuring uniformity / non-discrimination in the aforesaid rules.

2. Delhi High Court in W.P.(C) Nos.1951 of 2012 etc batch dated 4.2.2019 between Dev Sharma Vs. Indo Tibetan Border Police and another and another, and in W.P.(C) No.695/2019 dated 4.2.2019 between Ram Chander Kasania Vs. Union of India, struck down Rule 43 of the CRPF Rules, 1955 and other incidental Rules to the extent they provide that a member of the Central and Allied Police Forces (CAPFs) including ITBP, BSF and CRPF upto the rank of Commandant would retire at 57 years to be discriminatory and violative of Article 14 of the Constitution of India.

3. Taking note of the said judgment after considering a similar similar prayer in WP No.4969 of 2019 and in continuation of the earlier order in WP No.4969 of 2019 and WMP

Nos.5672 & 5674 of 2019, on 28.02.2019, we passed the following order.

On 22.02.2019, we passed the following order:-

"Petitioner, a Commandant in CG Central Reserve Police Force, Avadi, Chennai has filed the instant writ petition No.4969 of 2019, for declaring that Rule 43(a) of the Central Reserve Police Force Rules, 1955 together with the corresponding Rule 12 of the Central Reserve Police Force Group "A" (General Duty) Officer Recruitment Rules, 2001 amended in 2010, reading as "other officers holding posts lower than the Deputy Inspector General shall retire from service on the afternoon of the last day of the month in which they attain the age of fifty seven years" as unconstitutional, discriminatory, unjust, violative of Articles 14 and 16 of the Constitution of India, together with a consequential direction to the respondents to amend both the Rules referred to above, by way of enhancing the superannuation age from the present 57 years to 60 years for such 'other officers', thus ensuring uniformity / non-discrimination in the aforesaid Rules.

2. Attention of this Court was invited to an order dated 31.01.2019, made by the Hon'ble Delhi High Court in W.P.(C) Nos.1951 of 2012 etc batch between Dev Sharma Vs. Indo Tibetan Border Police and another and another order dated 04.02.2019, made in W.P.(C) No.695/2019 between Ram Chander Kasania Vs. Union of India, wherein, Hon'ble Delhi High Court, while striking down Rule 43 of the CRPF Rules, 1955 and other incidental Rules to the extent they provided that a member of the Central and Allied Police Forces (CAPFs) including the ITBP, BSF and the CRPF up to the rank of Commandant would retire at 57 years to be discriminatory and violative of Article 14 of the Constitution of India. At paragraph No.70, Hon'ble Delhi High Court, observed as hereunder:

"70. The Court recognises that there are bound to be implications - both organisationally and financially - as a result of the implementation of this

decision. The respondents shall, unless this judgment is further challenged and subject to any interim order in such proceedings, implement it across the board to all members of the CAPFs without insisting on each of them approaching the Court for identical relief. For that matter, even though the members of the SSB have not yet approached this Court, if they are identically placed as these petitioners, it should be implemented for them as well."

3. Rule 43(a) of the CRPF Rules, 1955 together with corresponding Rule 14 of the Central Reserve Police Force Group "A" (General Duty) Officer Recruitment Rules, 2001 amended in 2010, is applicable throughout the Country and direction stated supra has been given by the Hon'ble Delhi High Court that there is no need for all the members of CAPFs to approach the Courts for identical relief.

4. Though the petitioner has chosen to file the instant writ petition, before this Court for the relief as stated supra, but for implementation of the above said Order, he has made a representation dated 12.02.2019, to the Director General of Police, Head Quarters, CRPF, New Delhi / second respondent herein and the same has been forwarded to the Inspector General of Police, Southern Sector HQr CRPF, Jubilee Hills, Hyderabad, Telangana on the same day and it reads as under:

"No.G.II-2/2019-GC Avd-PA

Dated the __Feb'2019.

To

The Inspector General of Police,
Southern Sector HQr CRPF,
Jubilee Hills, Hyderabad,
Telangana.

Subject: Forwarding of Application ::
regarding retirement age of 60
years in CAPFs

Shri D.Vincent Thomas, Commandant (IRLA - 4884) of this GC who is due for superannuation w.e.f 28/02/2019, has submitted an application addressed to the DG, CRPF, New Delhi with the request that

his Pension Payment Order (PPO) may not be issued till decision of Government of India on Court Order dated 31/01/2019 and 04/02/2019 of the Hon'ble High Court, Delhi in the case of DEV SHARMA versus INDO TIBETAN BORDER POLICE & ANR regarding retirement age of 60 years for the personnel of the rank Commandant and below. His application along with connected document is forwarded herewith for needful action.

Encl:- Leaves

(Sonal V MISRA) IPS
DIGP"

5. Mr.K.Ramanamoorthy, learned Central Government Standing Counsel appearing on behalf of all the respondents, submitted that, in this regard, a meeting has been convened on 27.02.2019 at 03.30 p.m. at the Head Quarters at New Delhi for taking appropriate decision.

6. Considering the fact that the writ petitioner is due to retire on 28.02.2019, on attaining the age of 57 years, and based on the decisions of the Hon'ble Delhi High Court in W.P.(C) No.1951 of 2012 and W.P.(C)No.695 of 2019, the Competent Authority is directed to take a decision on 27.02.2019 and report the same to this Court.

7. Post on 27.02.2019 at 04.00 p.m."

2. However, the learned counsel for the respondents, could not get any instructions. As the petitioner was due to retire on attaining an age of 57 years, we directed the Registry to post the matter on 28.02.2019 at 2.15 p.m. Thus, the matter is listed today.

3. Mr.K.Ramanamoorthy, learned Central Government Standing Counsel, appearing for the respondents submitted that no decision was taken in the meeting held on 27.02.2019 and the same has been postponed to 06.03.2019.

4. Though, inviting the attention of this Court to paragraph No.72 of the order made in W.P.(C).Nos.1951 of 2012 etc batch, dated 31.01.2019, in Dev Sharma vs. Indo Tibetan Border Police and another, submitted that till a decision is taken, petitioner cannot seek for

continuation in service beyond the age of 57 years, this Court is not inclined to accept the said submission for the reason that paragraph No.72 of the said order deals with persons who have already retired from service. For brevity, paragraph No.72, is extracted hereunder:-

"72. The Court clarifies that this judgment will not have the effect of reinstatement of the petitioners who have already retired. In view of the principle of 'no work, no pay', it will also not have the effect of their being entitled to any arrears of pay for any further period beyond their retirement. However, for the purposes of calculation of retiral benefits, including pension gratuity, the differential period (in the event of enhancement of the retirement age) will be added to period of service actually rendered by each of them. In other words, their notional date of retirement would be arrived at by adding the differential years to their actual date of retirement. On such calculation they would be entitled to the arrears of retirement benefits after adjusting the amount already paid."

5. On 14.06.2018, Director General, CRPF, New Delhi vide Proceedings No.M.V-2/2018-Personnel DA-3, has issued an office order to the effect that on attaining the age of superannuation, certain persons, would retire from service in the year 2019, on the date as against their names shown in the list. Petitioner Mr.D.Vincent Thomas, is at Serial No.1 and is a Commandant in CG Central Reserve Police Force, Aavadi, Chennai and he is due to retire on 28.02.2019.

6. In W.M.P.No.5674 of 2019 in W.P.No.4969 of 2019, petitioner has sought for interim stay of operation of the order made in M.V-2/2018-Personnel DA-3, dated 14.06.2018, issued by the fifth respondent, as regards the petitioner, at Sl.No.1 of the said Office Order, till the disposal of the writ petition.

7. In W.M.P.No.5672 of 2019 in W.P.No.4969 of 2019, petitioner sought for interim injunction restraining the respondents from retiring the petitioner

with effect from 28.02.2019, on completion of 57 years of age as well as from issuing Pension Pay Order thereof till the disposal of the writ petition.

8. The Hon'ble Division Bench of the Delhi High Court, has already struck down Rule 43 (a) of the Central Reserve Police Force Rules 1955 together with the corresponding Rule 12 of the Central Reserve Police Force Group A (General Duty) Officers Recruitment Rules, 2001 amended in 2010.

9. Mr.K.Ramanamoorthy, learned Central Government Standing Counsel, submitted that the decision of the Delhi High Court, has not been challenged neither by the Union of India nor Director General, CRPF, New Delhi.

10. Though decision of the Delhi High Court, is not binding on other High Courts but going through the said order, we are of the view that the petitioner has made out a prima facie case for admission of the instant W.P.No.4969 of 2019. We are also of the prima facie view that unless and until the proceedings No.M.V.-2/2018-Pers-DA-3, dated 14.06.2018 of the Director General, CRPF, New Delhi, is stayed, there would a irreparable loss, prima facie, balance of convenience and the other important factor, irreparable loss are in favour of the writ petitioner. Hence, proceedings No.M.V.-2/2018-Pers-DA-3, dated 14.06.2018, is stayed.

11. Inasmuch as, this Court has granted interim stay in W.M.P.No.5674 of 2019 in W.P.No.4969 of 2019, of the operation made in proceedings No.M.V.-2/2018-Pers-DA-3, dated 14.06.2018 and relief sought for in W.M.P.No.5672 of 2019, has become superfluous. Hence, W.M.P.No.5672 of 2019 in W.P.No.4969 of 2019, is closed.

12. Mr.K.Ramanamoorthy, learned Central Government Standing Counsel, appearing for the respondents, is directed to communicate the orders of this Court to the respondents forthwith, for effective implementation. Petitioner is also permitted to communicate the order of this Court, granting interim stay of the operation made in proceedings

No.M.V.-2/2018-Pers-DA-3,
dated 14.06.2018, to the respondents.

13. It is made clear that the writ petitioner should be allowed to continue, i.e from 01.03.2019."

4. Orders dated 28.02.2019 and 21.03.2019, in WP No.4969 of 2019 have been challenged in SLP (C) Nos.9081 - 9082 of 2019, in which, the Hon'ble Supreme Court on 15.04.2019, ordered as hereunder.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) Nos.
9081-9082/2019

(Arising out of impugned final judgment and order dated 28-02-2019 in WP No. 4969/2019 and 21-03-2019 in WP No. 4969/2019 passed by the High Court of Judicature at Madras)

UNION OF INDIA & ORS Petitioner(s)
VERSUS

D. VINCENT THOMAS (FOR ADMISSION and I.R.)
Respondent(s)
Date : 15-04-2019 These petitions were called on
for hearing today CORAM :
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s)
Mr. Aman Lekhi, ASG.
Mr. Adit Khorana, Adv.
Mr. Rekha Pandey, Adv.
Mr. Venkatesh, Adv.
Mr. B. V. Balaram Das, AOR

For Respondent(s)
Mr. S. Nagamuthu, Sr. Adv.
Mr. M. P. Parthiban, Adv.
Mr. A. S. Vairuwan, Adv.
Mr. R. Sudhakaran, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Issue notice.

Learned counsel for the respondent accepts notice and

waives service thereof.

In the meantime, there shall be stay only of the impugned order dated 21.03.2019.

5. Subsequently, Hon'ble Supreme Court in SLP (C) Nos.11944 of 2019 dated 10.05.2019, upheld the order of the Delhi High Court in Dev Sharma Vs. Union of India & Anr. Order reads thus.

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (c) No (s). 11944/2019

(Arising out of impugned final Judgment and order dated 31-01-2019 in WPC No. 1951/2012 passed by the High Court Of Delhi At New Delhi)
UNION OF INDIA & ANR.
Petitioner(s)

VERSUS

DEV SHARMA

Respondent(s)

(FOR ADMISSION and I.R.)

Date : 10-05-2019 This petition was called on for hearing today. CORAM :
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

HON'BLE MR. JUSTICE VINEET SARAN

For Petitioner(s) Mr. Tushar Mehta, SG
Mr. Sanjay Jain, ASG Ms. Seema Bengani, Adv.
Mr. Raj at Nair, Adv.
Anas Zaidi, Adv.
Mr. B. V. Balaram Das, AOR

For Respondent(s) Mr. Ankur chibber, Adv.
Mr. Santosh Kumar Pandey, AOR

UPON hearing the counsel the Court made the following

O R D E R

The Special Leave Petition is dismissed.
Pending applications, if any, stand disposed of.

(R. NATARAJAN)
COURT MASTER (SH)

(SUNIL KUMAR RAJVANSHI)
BRANCH OFFICER

6. Subsequently, pending review application filed in SLP (C) No.11944 of 2019, Ministry of Home Affairs, has issued an Office Memorandum dated 31.05.2019 in the matter of Sh.Rohtash Kumar Gupta [WP(C)No.6420/2019], SI/MT Dinesh Kumar [WP(C) No.6224/2019 and Sh.G.Rajan [WP(C) No.4580/2019], implementing the decisions rendered in the writ petitions filed by the abovesaid officers. Copy of the Office Memorandum dated 31.05.2019 of the Ministry of Home Affairs communicated to the DG, CRPF & DG SSB, is extracted hereunder.

COURT CASE
URGENT

F/N0.45020/I/2019/Legal-I
Ministry of Home Affairs
(Legal Cell Desk-I, P-II Division)
North Block, New Delhi
Dated the 31*. May, 2019

OFFICE MEMORANDUM

Subject: WP (C) No.6420/2019 filed by Sh.Rohtash Kumar Gupta Vs UOI & Ors, WP (C) No.6224/2019 filed by SI/MT Dinesh Kumar Vs UOI & Ors of CRPF and WP (C) No.4580/2019 filed by Sh.G.Rajan Vs UOI & Ors of SSB.

The undersigned is directed to inform DG, CRPF and DG, SSB that the above named petitioners who have obtained interim stay orders from Hon'ble High Court of Delhi on 22.05.2019 and 30.05.2019 respectively may be allowed to provisionally continue in service subject to a decision taken by MHA, as directed by the Hon'ble Court. It is stated that a Review Petition has been filed before the Hon'ble Supreme Court in SLP No.11944/2019 filed by UOI & Ors Vs Dev Sharma with reference to Delhi High Court order dated 31.01.2019 passed in WP (C) No.1951/2012 in Dev Sharma Vs UOI & Ors and accordingly implementation may be subject to a final decision with reference to above.

- 02. This issues with the approval of Competent Authority.

Sd/-31/05/2019
(Amitabh Gupta)
Legal Officer-I, MHA

To:

DG, CRPF

- DG, SSB.

7. On 12.06.2019, petitioner seemed to have sent a representation to the Director General, CRPF, New Delhi for continuation of his services

beyond 30.06.2019, subject to the outcome of the official decision taken by MHA in the review petition filed before the Hon'ble Supreme Court in SLP (C) No.11944 of 2019 filed by Union of India and the same is extracted hereunder.

To

The Director General, CRPF,
New Delhi,

(Through proper channel)

Subject REQUEST FOR PROVISIONALLY CONTINUE IN SERVICE

Respected Sir,

With profound respect and humble submission, I, No.811160565 Insp/GD P. Gunasekaran beg to draw your kind attention towards the following for your kind consideration.

2. Sir, the undersigned has to proceed on superannuation with effect from 30/06/2019 as per order No.P.Ill-1/2018 dated 04/04/2018. Whereas Supreme Court has passed orders that the case of retirement age of CAPF personnels has been raised to 60 years. (Copy enclosed). In this connection an Office Memorandum dated 31/05/2019 has been issued to DG CRPF & DG SSB by Legal Officer-I, MHA (Copy enclosed) that the petitioners who have obtained interim stay orders from Hon'ble High Court may be allowed to provisionally continue in service subject to a decision taken by MHA, as directed by the Hon'ble High Court.

3. Hence, it is kindly request that I may be allowed to provisionally continue in service beyond 30/06/2019 subject to outcome of final decision taken in the Review Petition filed before Hon'ble Supreme Court in SLP No. 11944/2019 filed by UOI & Ors Vs Dev Sharma with reference to Delhi High Court order dated 31/01/2019 passed in WP(c) No. 1951/2012 in Dev Sharma Vs UOI & Ors will be ever grateful for the needful action. Thanking you,

Yours sincerely,

Encl: (03 lvs)

Place: Avadi

Sd/-

Date: 12/06/2019

P.Gunasekaran

8. Request of the writ petitioner dated 12.06.2019 is stated to have been forwarded to the DIGP / Principal, Recruit Training Centre, CRPF, Avadi, for further action. Letter of the Officer Commanding, HQr Wing, RTC CRPF, Avadi, addressed to the DIGP / Principal, Recruit Training Centre, CRPF, Avadi, is extracted hereunder

To
The DIGP/Principal,
Recruit Training Centre,
CRPF, Avadi.

Subject: Regarding provisionally continue in Service

A self-explanatory application addressed to Director General in respect of No.811160565 Insp/GD P. Gunasekaran regarding permission for continue in service provisionally is forwarded herewith for further needful action.

Enclosure: (As above) Sd/-
Officer Commanding
HQr Wing, RTC CRPF
Avadi

9. Office Memorandum dated 31.05.2019 of the Ministry of Home Affairs addressed to the DG, CRPF and Staff Selection Board indicates that pending review petition filed before the Hon'ble Supreme Court in SLP (C) No.11944 of 2019, decision has been taken to implement the orders made in the writ petitions stated supra.

10. When SLP filed by Union of India, is dismissed, under Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all Courts within the territory of India. Therefore, respondents herein cannot take a different stand and respondents are bound by the decision of the Hon'ble Apex Court.

11. Instant writ petition could be even allowed at the threshold, however, principles of natural justice demand that adequate notice should be given to the respondents.

12. Ms.S.S.Meenakumari, learned Central Government Standing Counsel takes notice on behalf of respondents.

13. Taking note of the similarity in the facts of the cases, disposed of by the Delhi High Court and pending on the file of this court, we only observe that there should be uniformity in the matter of continuation of services of similarly situated persons.

14. In the light of the observations and taking note of the previous orders quoted supra, we direct DIGP / Principal, Recruit Training Centre, CRPF, Avadi, to forward the request of the writ petitioner to the Secretary to the Government of India, Department of Internal Security, Ministry of Home Affairs, New Delhi, 1st respondent herein, who shall consider the request of the petitioner and pass orders taking note of the observations of this court and earlier orders of this Court.

15. Ms.S.Meenakumari, learned Central Government Standing Counsel is directed to communicate the orders of this Court to the respondents forthwith.

16. Post on 10.07.2019.

21. On this day, when the matter came up for hearing, Mrs.R.Meenakshi, learned counsel for the petitioner in WP.No.17143 of 2019 submitted that order of this dated 28.2.2019 made in WP No.4969 of 2019 and suo motu contempt notice dated 21.03.2019, were challenged, in SLP(C) Nos.9081 - 9082 of 2019.

22. On 08.07.2019, when the matter was heard by the Hon'ble Supreme Court, it was reported that Mr.D.Vincent Thomas, respondent therein in the said SLP (C) Nos.9081 - 9082 of 2019, had already joined service on 26.06.2019. Taking note of the above, vide order dated 08.07.2019, Hon'ble Supreme Court, disposed of SLP (C) Nos.9081 - 9082 of 2019, as hereunder.

"We have been informed by the learned counsel for the parties that the respondent has already joined service on 26.06.2019 w.e.f. 01.03.2019.

Therefore, nothing further survives in these Special Leave Petitions and the same are disposed of.

Suo motu contempt action initiated by the High Court stands discharged."

23. on 28.06.2019, in WP No.18294 of 2019, we directed the respondents to consider the request of the petitioner therein and pass orders taking note of the observations of this Court and earlier orders.

24. Placing reliance on the Office Memorandum No.143020/30/2019- Pers II (3459497), Ministry of Home Affairs (Police -II Division), Government of India, New Delhi dated 02.07.2019 and another Office Memorandum No.J II-92/19-LWP Pers.II, Ministry of Home Affairs (Police -II Division), Government of India, New Delhi dated 09.07.2019, Mrs.S.S.Meenakumari, learned counsel for the revenue submitted that Hon'ble Supreme Court in SLP No.11944 of 2019, filed against the decision of the Delhi High Court dated 31.01.2019 in WP (C) No.1951 of 2012 in Dev Sharma Vs. Union of India, has been dismissed by the Hon'ble Supreme Court. However, a Review Petition (C) No.00155512019, has been filed. She further submitted that Ministry of Home Affairs, Government of India, has decided that in cases where officers / personnel, to whom interim stay has been granted by the Hon'ble High Court, to retain them in service beyond the age of 57 years of age and CAPFs may implement the orders provisionally, subject to the final decision of the Review Petition.

25. Learned counsel for the respondent further submitted that as the Court order made in WP No.18294 of 2019 and the representation of the writ petitioner therein have been received only on 09.07.2013, requested for extension of time for considering the representation of the petitioner.

26. From the Office Memorandum No.143020/30/2019- Pers II (3459497), Ministry of Home Affairs (Police -II Division), Government of India, New Delhi dated 02.07.2019, it is evident that only in cases where interim stay has been granted by the Hon'ble High Court, officers / personnel, were retained in service beyond the age of 57 years of age and CAPFs are directed to implement the orders provisionally, subject to the final decision of the Review Petition.

27. Rule 43 of the CRPF Rules, has been struck down by the Delhi High Court and the decision has been confirmed by the Hon'ble Supreme Court. Orders have been implemented, wherever stay has been granted.

28. Under Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all Courts within the territory of India. Decision to implement the orders of the Hon'ble Supreme Court, only to those officers / personnel, where interim stay has been granted by the Hon'ble Court to retain them in service beyond the age of 57 years of age, CAPFs provisionally, subject to the final decision of the Review Petition, is not the correct approach and that in the light of the binding precedent of the Hon'ble Supreme Court, the Union of India, represented by its Secretary to the Government, Department of Home Affairs, New Delhi,

who is a party respondent in all the instant writ petition before us, is bound to implement the orders of the Hon'ble Supreme Court to all those similarly situated persons when the provision has been struck down. Restriction of implementation of the decision of the Hon'ble Supreme Court, only to those, who have obtained stay, cannot be appreciated.

29. The issue as to whether equally placed persons should be treated alike without any discrimination is no longer res integra. Useful reference can be made to the following decisions,

(i) In Prem Chand Somchand Shah v. Union of India reported in (1991) 2 SCC 48, the Hon'ble Supreme Court in paragraph 8 held thus,

"8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

(ii) In Govind Ram Purohit v. Jagjiwan Chandra reported in 1999 SCC (L & S) 788, at paragraph 3, the Hon'ble Supreme Court held thus:

"3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the seniority-cum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we

do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned."

(iii) In State of Karnataka v. N. Parameshwarappa reported in 2003 (12) SCC 192, the Hon'ble Supreme Court, at paragraph 8, held thus:

"8..... we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court. We are in equal agreement with the Division Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30-3-1990, as raised in the proceedings."

(iv) In State of U.P. v. Dayanand Chakrawarty reported in 2013 (8) Scale 74 : (2013) 7 SCC 595, the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes.

(v) In State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others reported in 2015 (1) SCC 347, wherein, the Apex Court dealt with the issue as to the entitlement of benefit of judgment in rem with an intention to benefit all similarly situated persons irrespective of whether they had approached the Court or not. It is held therein that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India.

30. To fortify our view, we also rely on a passage from the judgment of the Hon'ble Supreme Court in Amrit Lal Berry Vs. Collector of Central Excise, New Delhi and Others, reported in (1975) 4 SCC 714, wherein Hon'ble Supreme Court observed as hereunder.

"24... We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department

concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

31. We have gone through the judgment of the Delhi High Court in Dev Sharma Vs. Union of India & Others, confirmed by Hon'ble Supreme Court in SLP (C) No.11944 of 2019.

32. Facts and law pleaded are one and the same. Decision of the Hon'ble Supreme Court squarely applicable to the writ petitions.

33. Following the decision made in SLP No.11944 of 2019 dated 10.05.2019, impugned provisions are struck down.

34. Petitioner in WP No.17143 of 2019, was working as an Assistant Commandant (M), in Group Centre, CRPF, Avadi. Petitioner in WP No.18294 of 2019, was working as Inspector / GD in the Recruits Training Centre (RTC), CRPF, Avadi, Chennai. Consequent to striking down of the Rule 43(a) of CRPF Rules, 1955, respondents are directed to reinstate the petitioners in service as Assistant Commandant (M), in Group Centre, CRPF, Avadi and Inspector / GD in the Recruits Training Centre (RTC), CRPF, Avadi, Chennai, respectively, with continuity of service, within a period of one week from today.

35. With the above directions, writ petitions are allowed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

ars/dm

To

1. The Union of India
rep. by its Secretary to the Government,
Department of Home Affairs,
New Delhi.

2. The Director General of Police,
O/o.Director General,
CRPF, Block No.1, CGO Complex,
Lodhi Road, New Delhi - 110 003.

3. The Special Director General of Police,
South Zone, CRPF,
Chandrankutta,
Hyderabad - 500 005.

4. The Inspector General of Police,
Southern Sector, CRPF,
Road No.10 C, Jubilee Hills,
Near MLA/MPs Colony, Gayathri Hills,
Hyderabad - 500 033.

5. The Deputy Inspector General of Police,
Group Centre, CRPF,
Avadi, Chennai - 600 065.

6. The Inspector General of Police (Personnel),
Office of Directorate General,
Central Reserve Police Force,
Block No.1, CGO Complex,
Lodhi Road, New Delhi - 110 003.

7. The Deputy Inspector General / Principal,
Recruits Training Centre (RTC), Group Centre,
Central Reserve Police Force,
Avadi, Chennai - 600 065.

+1cc to Mrs.R.Meenakshi , Advocate SR.No. 59989

+1cc to Mr.T.Lakshmi Narayanan , Advocate SR.No. 59839

+2ccs to Mr. , Advocate SR.No. 59841,59840

W.P.Nos.17143 & 18294 of 2019

and

WMP Nos.16691 & 17646 of 2019

A.SK(17/07/2019)

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