

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2019

CORAM:

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

W.P.Nos.22675 & 22679 of 2019
and
WMP Nos.22157 & 22161 of 2019

WP No.22675 of 2019

P.Bharathidasan EX.SI (GD) ... 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

WP No.22679 of 2019

K.Venkateswara Rao

.. 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,
Central Zone, CRPF,
Salt Lake, Kolkata,
West Bengal - 700 106.
4. The Inspector General of Police,
Central Sector CRPF,
TC-32/V, Vibhuti Khand,
(Near Ram Manohar Lohia Hospital)
Gomati Nagar,
Lucknow (UP)-226 010
5. The Deputy Inspector General of Police,
Group Centre, CPPF,
Chanduali, GT Road,
Dulhipur (UP),
Pin Code - 232 101.
6. The Deputy Inspector General of Police,
Group Centre, CRPF,
Avadi, Chennai - 600 065.

... Respondents

Common 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", 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 and allow the petitioner to rejoin duty and continue in service till attaining the age of 60 years.

For Petitioner : Mrs.R.Rita Chandrasekar
in both WPs

For Respondents: Mrs.Sunitha Kumari
in both WPs Sr. Panel Counsel

C O M M O N O R D E R
(Order of this Court was made by S.Manikumar, J.)

In both the writ petitions, the petitioners have sought for 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", 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 and allow the petitioner to rejoin duty and continue in service till attaining the age of 60 years.

2. On identical issue, this Court had already considered the rival submissions of the parties in WP Nos.17143 and 18294 of 2019 and vide common order dated 15.07.2019, we allowed the writ petitions and further directed the respondents therein, to reinstate the petitioners therein, in service, in Group Centre, CRPF, Avadi with continuity of service, within a period of one week, from the date of passing of the common order.

3. On this day, when the instant writ petitions viz., WP Nos.22675 & 22679 of 2019, filed for similar prayer, came up for admission, attention of this Court was also invited to the proceedings of the Digcent(Law) Dte., Avadi, pursuant to the order made in WP Nos.17143 & 18294 of 2019 dated 15.07.2019, reinstating Mr.S.Durairaj, AC (Min) of GC, CRPF, Avadi and Mr.P.Gunasekaran of RTC AVD, in service and allowed them provisionally to continue in service, subject to the final decision / directions to MHA after dismissal of Review Petition No.1555/2019 filed by UOI in the Apex Court in SLP 11944/2019 filed by UOI & Ors Vs. Dev Sharma w.r.t. Delhi High Court order dated 31/1/2019 pronounced in WP (C) No.1951/2012 filed by Dev

Sharma Vs. UOI & Others.

4. Proceedings of the Digcent (Law) Dte, dated 26.07.2019, reads as follows:

Signal / Selo

To - Digcent - GC Avadi & RTC Avadi
Info - Polcent (Trg) Dte, SS, Digcent (Pers/Org/Estt)
Dte., PAO & Comdt (Law) Sz. Hqr
Fm - Digcent (Law) Dte

No.J.11.452 & 492/2019-LWP-II
26/7/2019

Dated:

U/C(.) WP No.17143/2019 filed by Shri.S.Durairaj, AC (Min) of GC, CRPF, Avadi and WP No.18294/2019 filed by Insp/GD P.Gunasekaran of RTC AVD, v/s UOI & others in the Hon'ble High Court of Madras, with prayer to stay the operation of superannuation order (.) Ref. Hon'ble Court order dated 15/7/2019(.) Court order dated 15/7/2019, has been examined and the DG, CRPF, has accorded approval to comply with the said Court order based on the direction of MHA OM dated 2/7/2019(.) In view of the above, comply with the said Court order, re-instate the above petitioners into service and allow them provisionally to continue in service, subject to the final decision / directions to MHA after dismissal of Review Petition No.1555/2019 filed by UOI in the Apex Court in SLP 11944/2019 filed by UOI & Ors Vs. Dev Sharma w.r.t. Delhi High Court order dated 31/1/2019 pronounced in WP (C) No.1951/2012 filed by Dev Sharma Vs. UOI & Others (,) Forward ATR to Law Dte under intimation to all concerned.

Sd 26/7/2019
Digcent(Law) Dte.

5. As respondents have decided to implement the common order made in WP Nos.17143 & 18294 of 2019 dated 15.07.2019, there is no need to delve into the merits once again.

6. Petitioner in W.P. No.22675 of 2015 was working as Sub Inspector (General Duty) in CRPF. He joined Central Reserve Police Force as Constable (GD) on 30.4.1985. During his service, he was promoted to the rank of Head Constable, Assistant Sub-Inspector and then Sub-Inspector from 3.10.2017. The petitioner was ordered to retire on superannuation from 30.4.2019 on completion of 57 years by the Group Centre, CRPF Pallipuram vide order No.P.III-2/2014-143-GC pension dated 20.9.2014. Due to the latest development on the age criteria for retirement on attainment of 60 years, he submitted representation dated

25.7.2019 to the Deputy Inspector General of Police, Group Centre, CRPF, Avadi, namely the 5th respondent herein, requesting to allow him to continue in CRPF till completion of 60 years.

7. Petitioner in W.P. No.22679 of 2019 was working as Assistant Commandant (Ministerial) in CRPF. He joined Central Reserve Police Force as Assistant Sub-Inspector (Ministerial) on 7.1.1987. During his service, he was promoted to the rank of Sub-Inspector and Inspector. He was promoted to the rank of Assistant Commandant (Ministerial) from 20.1.2017. The petitioner was ordered to retire on superannuation from 30.6.2019 on completion of 57 years by the Inspector General of Police KK Sector vide Order No.R.VII-5/2018-KKS-EC-I dated 3.5.2018. Due to the latest development on the age criteria for retirement on attainment of 60 years, he submitted a representation dated 22.7.2019 to the Director General of Police, CRPF, Block No.1, CGO Complex, Lodhi Road, New Delhi/2nd respondent herein requesting to allow him to continue in CRPF till completion of 60 years. However, he was relieved from service from 30.6.2019, but order regarding strength out him from the force has not been issued till date.

8. Supporting the prayer sought for, Mrs.Rita Chandrasekar, learned counsel for the petitioners submitted that the petitioners herein have sent representations dated 25.07.2019 and 22.07.2019, respectively, to the respondents, for continuation of service in CRPF beyond the age of 57 years.

9. In both the writ petitions, as the prayer and submission made are similar and in the light of the previous common orders in WP Nos.17143 & 18294 of 2019 dated 15.07.2019 and implementation thereof, Ms.Sunitha Kumari, learned Senior Panel Counsel for the respondents, is put on notice.

10. Order made in WP Nos.17143 & 18294 of 2019 dated 15.07.2019, is extracted hereunder.

"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."

11. Following the abovesaid orders, the instant writ petitions are also allowed. As the petitioners herein have retired, respondents are directed to reinstate the petitioners, namely Mr.P.Bharathidasan and Mr.K.Venkatesara Rao, in service as Sub Inspector (GD) and Assistant Commandant (Min.)

respectively, in Group Centre, CRPF, Avadi, with continuity of service, within a period of one week from today. No Costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

ars/asr

To

1. The Secretary to the Government,
Union of India,
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,
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5. The Deputy Inspector General of Police,
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Central Zone, CRPF,
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West Bengal - 700 106.

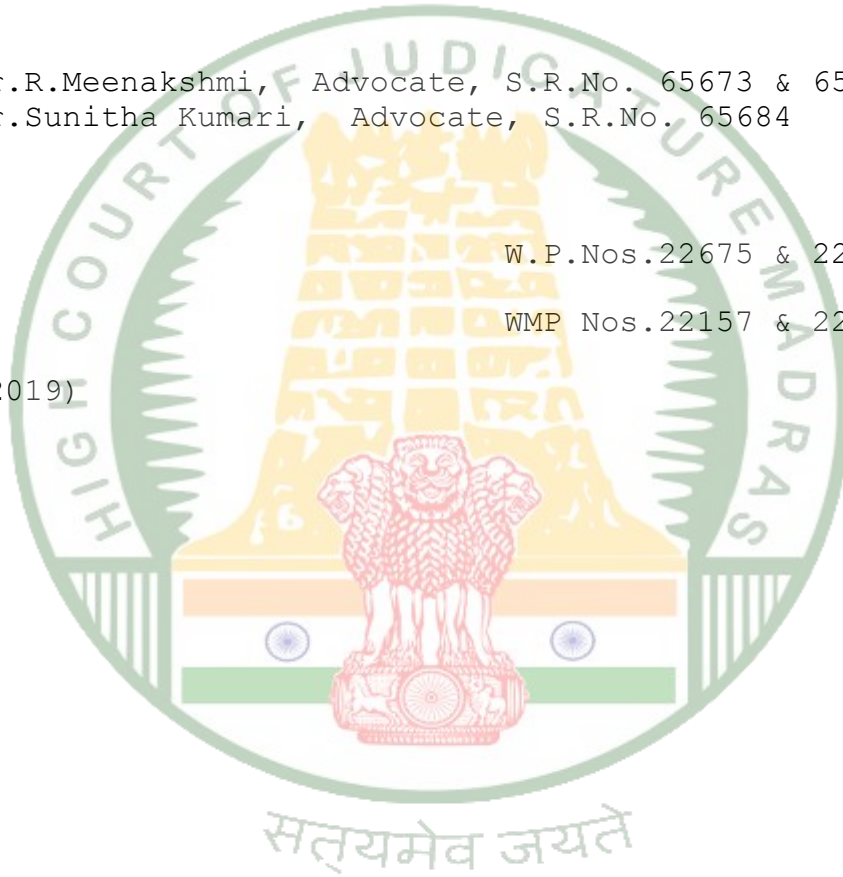
7. The Inspector General of Police,
Central Sector CRPF,
TC-32/V, Vibhuti Khand,
(Near Ram Manohar Lohia Hospital)
Gomati Nagar,
Lucknow (UP)-226 010

8. The Deputy Inspector General of Police,
Group Centre, CPPF,
Chanduali, GT Road,
Dulhipur (UP),
Pin Code - 232 101.

+2cc to Mr.R.Meenakshmi, Advocate, S.R.No. 65673 & 65674
+1cc to Mr.Sunitha Kumari, Advocate, S.R.No. 65684

W.P.Nos.22675 & 22679 of 2019
and
WMP Nos.22157 & 22161 of 2019

RV(CO)
GN(01/08/2019)



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