

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2019

CORAM:

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

W.P.No.22913 of 2019
and
W.M.P.No.22547 of 2019

Sivadas K.

Force No.802040071, Insp/RO
Quarter No.335, Type-III
Block-A, Group Centre
CRPF Campus, CRPF
Avadi, Chennai - 600 065

.. Petitioner

Vs.

1.The Union of India,
Represented by Secretary to Government
Department of Internal Security
Ministry of Home Affairs
North Block, New Delhi - 110001.

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

3.The Commandant
2 Signal Battalion
Central Reserve Police Force
Keshovgiri Post
Chandrayangutta
Hyderabad - 500 005

4.The Officer Commanding
D/2 Signal Battalion
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) Officers 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 and consequently direct the respondents herein to amend the aforesaid both the rules referred to above, by way of enhancing the superannuation age

ORDER

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

Instant writ petition has been filed 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) Officers 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 together with a consequential direction to the respondents to amend the 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. The case of the petitioner is that he worked as Inspector/Radio Operator (RO) in D/2 Signal Battalion, Central Reserve Police, Avadi, Chennai and retired from service on 31.5.2019. He had an unblemished service career in CRPF, without any cause of complaint or punishments till his retirement. It is the further contention of the petitioner that Commandant, 1 Signal Battalion, CRPF, New Delhi, has issued an office order notifying his age of superannuation as 31.5.2019 in accordance with Rule 43 of CRPF Rules, 1955 on 1.4.2017.

3. Petitioner has further contended that Rule 43(a) of CRPF Rules, 1955 prescribing the retirement age of 57 years for members of CAPFs of rank of Commandant and below has been struck down by the Hon'ble Division Bench of Delhi High Court in Dev Sharma vs. Indo Tibetan Border Police & Anr. on 31.1.2019. He further contended that aggrieved by the said order, Union of India has filed an appeal before the Hon'ble Supreme Court in SLP (Civil) No.11944/2019. The said appeal was dismissed by the Hon'ble Supreme Court on 10.5.2019. Being aggrieved by the dismissal of the appeal, Union of India has filed a Review Petition before the Hon'ble Supreme Court in Review Petition (C) No.1555 of 2019, which was also dismissed by the Hon'ble Supreme Court on 16.7.2019.

4. It is the further contention of the petitioner that similarly placed personnel in CRPF, approached the Delhi High Court and obtained interim orders in their favour and the same were implemented by the Ministry of Home Affairs in Office Memorandum dated 31.5.2019. Based on the judgment of the Delhi High Court, similarly placed personnel approached several High Courts and obtained orders in their favour and the same were implemented in respect of those personnel by Law Directorate of CRPF on 5.7.2019.

5. It is the further contention of the petitioner that one Mr.P.Gunasekaran (Force No.811160565), retired as Inspector/GD in the Recruit Training Centre (RTC), Avadi, Chennai filed a similar case in W.P. No.18294/2019 and the same was allowed by this court on 15.7.2019. The said order was implemented by CRPF on 26.7.2019. Petitioner has further contended that he is also a similarly placed person and thus entitled to continue in service

7. When a similar issue came up on 15.07.2019 in WP Nos.17143 and 18294 of 2019, this Court has dealt with the above issue and allowed the writ petitions, as 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

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

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."

8. Review Petition filed in Review Petition (C) No.1555/2019 in S.L.P.(C) No.11944/2019, in the matter of Union of India vs. Dev Sharma, has been dismissed on 16.07.2019, by the Hon'ble Supreme Court, as hereunder:-

"Application for hearing in open Court is rejected.

Having carefully gone through the Review Petition, the order under challenge and the papers annexed therewith, we are satisfied that there is no error apparent on the face of the record, warranting reconsideration of the order impugned.

The Review Petition is, accordingly, dismissed."

9. Now, when it is brought to our notice, that the review petition has been dismissed, by the Hon'ble Supreme Court, can the respondents, still oppose implementation of the orders of the Hon'ble Supreme Court, prima facie, in terms of Article 141 of the Constitution of India. Our answer is clear 'No'.

10. Implementation of Dev Sharma's case, according to the respondents, was subject to the review petition. When the same has been dismissed by the Hon'ble Supreme Court on 16.07.2019, we are of the view that under Article 141 of the Constitution of India, respondents are bound to implement the order of the Hon'ble Supreme Court, and cannot and should not be permitted to canvass on merits.

11. Following the abovesaid orders, the instant writ petition is allowed and the respondents are directed to reinstate the petitioner in service as Inspector/Radio Operator (RO) in D/2 Signal Battalion, Central Reserve Police, Avadi, Chennai, with continuity of service, within a period of one week from today.

12. With the above directions, writ petition is allowed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

To

1. The Secretary to Government
The Union of India,
Department of Internal Security
Ministry of Home Affairs
North Block, New Delhi - 110001.

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Block No.1, CGO Complex
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4. The Officer Commanding
D/2 Signal Battalion
Central Reserve Police Force
Avadi, Chennai - 600 065.

+1cc to Mr.J.Lakshmi Narayanan, Advocate, S.R.No. 67035
+1cc to Mr.Sunitha Kumar, Advocate, S.R.No. 66619

W.P.No.22913 of 2019
and
W.M.P.No.22547 of 2019

KJ(CO)
GN(08/08/2019)

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