

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM

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

Writ Petition No.23272 of 2019
and WMP.No.22990 of 2019

R.Gope JayaramanPetitioner

Vs

- 1.Union of India,
Represented by its Secretary to Government,
Department of Home Affairs,
New Delhi.
- 2.The Director General of Police,
O/o. Directorate 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.Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Declaration, declaring therein that 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 statutes mentioned herein above together with a consequential directions 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.Meenakshi
For Respondents: M/s.Sunitha Kumari,
Senior Panel Counsel.

O R D E R

[Order was delivered by S.MANIKUMAR,J]

Instant writ petition has been filed for a Writ of Declaration, declaring that 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 statutes mentioned herein above 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. The petitioner joined CRPF as Constable (GD) on 28.1.1982. During his service, he was promoted to the rank of Lance Naik, Naik, Head Constable, Sub-Inspector and finally as Inspector on 14.3.2014. He retired from the said post on 30.4.2019 on completion of 57 years by the Group Centre, CRPF Ranga Reddy while he was posted in 85 Battalion vide Order No.P.III.7/2014-Pen-GC RRY dated 4.8.2014.

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. Supporting the prayer sought for, on the averments, Ms.R.Meenakshi, learned counsel for the petitioner made submissions. Ms.Sunithakumari, learned Senior Panel Counsel, was put on notice.

6. 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 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."

7. 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."

8. 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'.

9. 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.

10. Following the above said orders, the instant writ petition is allowed and the respondents are directed to reinstate the petitioner in service as Inspector (General Duty) in Group Centre, Central Reserve Police, Avadi, Chennai, with continuity of service, within a period of one week from today.

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

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

asr
To

- 1.The Secretary to Government,
Union of India,
Department of Home Affairs,
New Delhi.
- 2.The Director General of Police,
O/o. Directorate 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.

+1cc to M/s.Sunitha Kumari , Advocate SR.No. 67488
+1cc to M/s.R.Meenakshi , Advocate SR.No. 67887

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and WMP.No.22990 of 2019

A.SK(09/08/2019)