

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/8/2019

C O R A M

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

W.P.No.24502 of 2019

A. Arokkiasamy ... Petitioner

Vs

- 1.Union of India,
Represented by its Secretary to Government,
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 of Police
Group Centre
Central Reserve Police Force (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 together with the corresponding Rule 12 of the Central Reserve Police Force Group "A" (General Duty) Officers Recruitment Rules, 2010, reading as "others 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

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.Sunitha Kumari
Central Government Standing Counsel

O R D E R

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

Instant writ petition has been filed, for a writ of declaration, declaring that Rule 43(a) of CRPF Rule 1955, together with the corresponding Rule 12 of the Central Reserve Police Force Group "A" (General Duty) Officers Recruitment Rules, 2010, reading as "others 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 consequentially, to direct the respondents herein, to amend the aforesaid rules, 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 petitioner has worked as ASI/GD in the Group Centre, Central Reserve Police Force (CRPF), Avadi, Chennai and retired from service on 31/5/2019. Deputy Inspector General of Police, Group Centre, Central Reserve Police Force (CRPF), Avadi, issued an office order, in No.P-III-01/2017-GC.PEN-AVD (SUPN), dated 4th December 2017, notifying the age of superannuation as 31/5/2019, in accordance with Rule 43 of CRPF Rules, 1955.

3. Rule 43 (a) of the CRPF Rules, 1955 and corresponding Rule 14 of 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 prescribing retirement age as 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. 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, Mr.J.Lakshmi Narayanan, learned counsel for the petitioner made submissions. Ms.Sunithakumari, learned Central Government Standing Counsel, was put on notice.

6. When a similar issue came up on 15/7/2019 in WP Nos.17143 and 18294 of 2019, this Court 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. 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 16/7/2019, 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.

9. On this day, when the matter came up for hearing, by inviting the attention of this Court to an order made in F.No.45020/1/2019/Legal - 1, Government of India, Ministry of Home Affairs [Pers-II Desk, Police II Division], dated 19th August 2019, Mrs.Sunitha Kumari, learned Central Government Standing Counsel for the respondents submitted that instructions have been issued that all forces viz., CRPF, BSF, ITBP, SSB, CISF, AR (regular cadre of Paramilitary component) are directed to comply with the Court orders stated in the Government of India's instructions, dated 19th August 2019, and accordingly, forces may amend the provisions of Rules as applicable on the above lines.

10. For brevity, letter, dated 19th August 2019, of Government of India, Ministry of Home Affairs, New Delhi, stated supra, is extracted hereunder:-

O R D E R

WHEREAS, Hon'ble High Court of Delhi in W.P. (C) No.1951/2012 in the matter of Dev Sharma, Dy. Comdt. Of ITBP Vs. UOI & Anr on 31/1/2019 directed the respondent to arrive at a decision regarding the retirement age which will be uniform for all members of CAPPs, irrespective of the ranks including CISF and Assam Rifles at par and also to decide the date from which such change will be effected. However, the Court did not allow stay of the retirement of any personnel as per the existing age of retirement who might have retired before passing the order except that in the event of enhancement of retirement age,

the differential period will be added to the period of service actually rendered for the purpose of pension.

02. In view of the aforesaid order, the matter has been examined and in compliance thereof, read with order dated 4/2/2019 passed in W.P.(C) No.695/2019 titled Ram Chander Kasania & Anr of BSF Vs. UOI & Ors, it has been decided by the competent authority as under:-

a. Age of retirement will be as under:-

Force	Irrespective of rank
CRPF, BSF, ITBP, SSB, CISF, AR (regular cadre of paramilitary component)	60 years

b. Date of effect will be the date of issue of order.

c. In respect of all the 29 petitioners as stated in para - 02 and 03 in common Court order dated 31/1/2019 barring petitioner No.WP (C) No.4859/2013, relief as granted at para - 72 of the order be extended.

d. As regard those whose date of superannuation fell in between date of judgment and date of issue of order :-

i. Those who have got interim stay will be deemed to have not superannuated and will be governed by age of retirement as at (a) above.

ii. Those who have retired but did not approach any Court will be governed by the Court order dated 4/2/2019 clarifying para 72 of original order, dated 31/1/2019 in Dev Sharma case (supra) and hence will be entitled to exercise options either for joining after returning all pensionary benefits, if received or will have an option to have benefit of fitment of pension on completion of age of 60 years.

3. All forces are directed to comply with the Court orders narrated as above. Forces may amend provisions of Rules as applicable on above line."

11. Following the above orders and instructions dated 19/8/2019, extracted supra, writ petition is allowed. Respondents are directed to reinstate the petitioner, within one week from the date of receipt of a copy of the

order. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mvs.
To

- 1.The Secretary to Government,
Union of India,
Department of Internal Security
Ministry of Home Affairs, North Block,
New Delhi 110 001.
- 2.The Director General
Central Reserve Police Ofrc
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 of Police
Group Centre
Central Reserve Police Force (CRPF), Avadi
Chennai 600 065.

+1cc to M/s.J.Lakshmi , Advocate SR.No. 73202

+1cc to M/s.Sunitha kumari , Advocate SR.No. 72955

Writ Petition No.24502 of 2019

A.SK(26/09/2019)

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