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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 13129/2019**

**NIRAJ KUMAR SINGH AND ORS.** ..... Petitioners

Through Mr. Ankur Chhibber, Advocate

versus

**UNION OF INDIA AND ORS.** ..... Respondents

Through Mr. Akshay Amrit Anshu, Advocate  
with Ms. Bakshi Vinita and Mr.  
Shubham Saurav, Advocates

**CORAM:**  
**JUSTICE S.MURALIDHAR**  
**JUSTICE TALWANT SINGH**

**ORDER**  
% **13.12.2019**

**Dr. S. Muralidhar, J.:**

1. Notice. Mr. Akshay Amrit Anshu, learned counsel accepts notice on behalf of the Respondents.

2. Since the matter at hand is covered by an order dated 9<sup>th</sup> April, 2019 of this Court in W.P.(C) 1358/2017 (*Shyam Kumar Choudhary v. Union of India*), which concerned personnel of the Central Reserve Police Force ('CRPF'), and which orders were affirmed by the Supreme Court by dismissal of SLP.(C) 31539/2019 (*Union of India & Ors v. Shyam Kumar Choudhary*) on 27<sup>th</sup> November, 2019, the Court proceeds to dispose of the writ petition at this stage itself.

3. The 17 Petitioners here applied for the post of Sub-Inspector ('SI') in the Central Police Organisations pursuant to an advertisement dated 21<sup>st</sup> June, 2003. Upon successfully appearing in the written examination, they appeared for the Physical Efficiency Test ('PET') in November 2003, which they passed. They were then called for a medical examination in January-February, 2004 and were declared fit. The final result of the examinations was declared in May, 2004. The Petitioners were issued offer of appointment on 2<sup>nd</sup> June 2005 and on accepting the same the appointment letter was issued on 14<sup>th</sup> July 2005 for joining the Sashastra Seema Bal (SSB).

4. The Petitioners state that they were under an impression that they will be covered under the Old Pension Scheme (OPS) under CCS (Pension) Rules, 1972 as the recruitment process had been initiated prior to the Notification dated 22<sup>nd</sup> December 2003 which was implemented with effect from 1<sup>st</sup> January 2004. However, the Respondents treated them as part of the new contributory pension scheme as their appointment had been issued after 1<sup>st</sup> January 2004. After the Petitioners' representation dated 8<sup>th</sup> September 2017 was rejected by the Respondents by an order dated 25<sup>th</sup> January 2018, the present petition has been filed.

5. The short question that arises in this petition is whether the Petitioners are covered by the OPS which was replaced by the new Contributory Pension Scheme, which came into effect from 1<sup>st</sup> January, 2004?

6. It has been consistently held by this Court in a series of orders that those who had participated in the examination of 2003 would be covered by the

OPS, notwithstanding that they had been offered letters of appointment only after 1<sup>st</sup> January, 2004. Among the several orders of this Court is an order dated 2<sup>nd</sup> November 2012 in W.P. (C) 3827 of 2012 (*Naveen Kumar Jha v. Union of India*) where in the context of a delay in the issuance of the letter of appointment of a Sub-Inspector (SI) of the Central Reserve Police Force (CRPF), beyond 1<sup>st</sup> January 2004, on account of the delay in the authorities having him examined by a Review Medical Board, it was held that the Petitioner would be covered by the OPS.

7. By a subsequent order dated 12<sup>th</sup> February, 2015 in W.P.(C) 3834/2013 (*Parmanand Yadav v. Union of India*) in the context of SIs of the Border Security Force (BSF) whose letters of appointment were delayed beyond 1<sup>st</sup> January 2004, it was held that they too would be covered by the OPS. The BSF accepted this and other judgments that followed and its Director General (DG) issued an order dated 13<sup>th</sup> January 2016 in which *inter alia* it was stated:

“therefore, in respectful compliance of order dated 12.02.2015, passed by Hon'ble High Court of Delhi, approval of Competent Authority i.e. Ministry of Home Affairs is hereby conveyed to convert the petitioners and other similarly situated SI/DE selected through CPOs Exam-2002 (as per list enclosed at Appendix A) as members of the old pension scheme, which was in vogue till 31/12/2003 and the NPS corpus which were earlier subscribed should be transferred to the GPF accounts of each individual, subject to the condition that they will not be entitled for any back wages or seniority etc.”

8. Subsequently, after a judgment dated 27<sup>th</sup> March 2017 of this Court in the case of Inspectors of the BSF in W.P. (C) 2810 of 2016 (*Inspector Rajendra*

*Singh v. Union of India*), the Ministry of Home Affairs (MHA) issued an Office Memorandum (OM) dated 13<sup>th</sup> April 2018, accepting the said judgment for implementation and *inter alia* directing as under:

“5. Now, Competent authority desires that all other CAPFs (except BSF) may also check their record and if any similar case is found they may examine & take appropriate action on the similar lines by taking reliance of BSF case, to avoid similar litigation in future.”

9. Another order dated 16<sup>th</sup> October 2018 was issued by the BSF implementing the decisions of this Court extending the benefit of the OPS in the case of Head Constable (Radio Operators) who had been selected prior to 1<sup>st</sup> January 2004 but issued appointment letters thereafter.

10. This Court, in the context of certain Constables of BSF, by a judgment dated 12<sup>th</sup> February, 2019 in W.P. (C) 6680 of 2017 (*Tanaka Ram v. Union of India*) allowed the prayers of those Petitioners and held that they should be covered by the OPS. The order of this Court in *Tanaka Ram* (*supra*) was affirmed by the Supreme Court by dismissal of SLP (CC) Diary No. 25228/2019 (*Union of India v. Tanaka Ram*) on 2<sup>nd</sup> September 2019.

11. In W.P. (C) 1358/2017 (*Shyam Kumar Choudhary v. Union of India*), relief similar to the one sought in the present case was being claimed by certain Assistant Commandants in the CRPF, who had successfully cleared the examinations of 2003. They were, however, offered letters of appointment after January, 2004. By an order dated 9<sup>th</sup> April, 2019, their petition was allowed by this Court. That order has been affirmed by the Supreme Court inasmuch as SLP (C) 31539/2019 filed by Union of India

has been dismissed by an order dated 27<sup>th</sup> November, 2019.

12. In that view of the matter, the Court finds no reason to treat the present Petitioners who belong to the SSB, another CAPF, different from their counterparts in the CRPF and BSF.

13. The Court accordingly allows the present petition and quashes the order dated 25<sup>th</sup> January, 2018 passed by the Respondents by which the Petitioners' representation dated 8<sup>th</sup> September 2017, requesting that the OPS be extended to them, was rejected. A direction is issued to the Respondents to extend the benefit of the OPS to each of the Petitioners in terms of CCS (Pension) Rules 1972, by issuing appropriate orders within a period of 12 weeks from today.

**CM APPL. 53516/2019 (exemptions)**

14. Allowed, subject to all just exceptions.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**DECEMBER 13, 2019**

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