

\$~1, 6, 7, 20, 21, 23, 24, 25

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

+ **W.P.(C) 13195/2019**

BHARAT SINGH & ORS. Petitioners

Through: Mr. Ankur Chhibber with Mr. Bhanu
Gupta, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Jayant Bhatt with Mr. Amit
Sinha, Advocates.

+ **W.P.(C) 11895/2019**

RAMESH KUMAR AND ORS. Petitioners

Through: Mr. Ankur Chhibber with Mr. Bhanu
Gupta, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Vijay Joshi, Advocate with
Mr. Vivek Kumar, DC Law.

+ **W.P.(C) 11899/2019**

MAHESH CHAND AND ORS. Petitioners

Through: Mr. Ankur Chhibber with Mr. Bhanu
Gupta, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Akshay Makhija, CGSC with
Mr. Kavindra Gill, Advocates.

+ **W.P.(C) 11332/2019**

MADAN MOHAN DHYANI AND ORS. Petitioners

Through: Mr. Ankur Chhibber with Mr. Bhanu Gupta, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Jitesh Vikram Srivastava, Advocate.

+

W.P.(C) 11336/2019

AJIT SINGH & ORS. Petitioners

Through: Mr. Ankur Chhibber with Mr. Bhanu Gupta, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Ms. Shiva Lakshmi, CGSC with Mr. Siddharth Singh, Advocate.

+

W.P.(C) 12304/2019

JITENDER PAL SINGH Petitioner

Through: Mr. Ankur Chhibber with Mr. Bhanu Gupta, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. H. V. Shankar, CGSC with Ms. Aakanksha Kaul, Advocate.
Mr. Harish Vaidyanathan Shankar, CGSC with Ms. Gulabsa, Advocate.

+

W.P.(C) 12323/2019

PRAMOD KUMAR & ORS. Petitioners

Through: Mr. Ankur Chhibber with Mr. Bhanu Gupta, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. R. V. Sinha with Mr. Amit Sinha

and Mr. A. S. Singh, Advocates.

+

W.P.(C) 12372/2019

M P MURALIDHARAN & ORS.

..... Petitioners

Through: Mr. Ankur Chhibber with Mr. Bhanu
Gupta, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Naginder Benipal with Mr.
Naveen Chaudhary, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

%

19.12.2019

Dr. S. Muralidhar, J.:

1. In all these petitions, the Petitioners are former Central Armed Police Force (CAPF) personnel who did not approach this Court earlier when it passed the judgment dated 31st January, 2019 in W.P.(C) 1951/2012 (*Dev Sharma v. Indo Tibetan Border Police*). This Court, while deciding that there should be a uniform age of retirement of CAPF personnel irrespective of rank, anticipated that its judgment would have both organisational and financial consequences. Accordingly, in the operative portion of its judgment, it directed as under:

“67. Now to the concluding part where directions are to be issued to the Respondents. It must be recalled that even during the pendency of these petitions directions were issued to the Respondents to reconsider the issue raised regarding the differential ages of retirement of members of the concerned CAPFs and by OM dated 1st April 2013 (which has been struck down hereinabove), the MHA declined to do so.

68. The Court has in this judgment held the decision of the

Respondents to prescribe a retirement age of 57 years for members of the three CAPFs i.e. the ITBP, the BSF and the CRPF of the rank of Commandant and below in terms of Rule 43 (a) of the CRPF Rules, and the corresponding Rules applicable to the said three CAPFs, as against 60 years for Officers in those very CAPFs of the rank above that of Commandant to be discriminatory, violative of Articles 14 and 16 of the Constitution. Rule 43 (a) of the CRPF Rules, 1955, and correspondingly Rule 14 of the 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 they too prescribe a retirement age of 57 years for members of those CAPFs of rank of Commandant and below have also been struck down.

69. The Court has noted that the 7th CPC by a majority of 2:1, and each of the CAPFs concerned themselves, had already opined that the above element of discrimination in the matter of retirement age must be done away with. Therefore, no further directions are required in that regard.

70. The Court recognises that there are bound to be implications- both organisationally and financially - as a result of the implementation of this decision. The Respondents shall, unless this judgment is further challenged and subject to any interim order in such proceedings, implement it across the board to all members of the CAPFs without insisting on each of them approaching the Court for identical relief. For that matter, even though the members of the SSB have not yet approached this Court, if they are identically placed as these Petitioners, it should be implemented for them as well.

71. Accordingly a direction is hereby issued that within a period of four months from today the Respondents i.e. the MHA in consultation with the CAPFs concerned will take all consequential steps by way of implementation of this judgment. This will include arriving at a decision as regards the retirement

age which will uniform for all members of the CAPFs irrespective of their rank thus bringing all of them, including the CISF and the AR, on par and fixing the date from which such changed retirement age will take effect.

72. The Court clarifies that this judgment will not have the effect of reinstatement of the Petitioners who have already retired. In view of the principle of 'no work, no pay', it will also not have the effect of their being entitled to any arrears of pay for any further period beyond their retirement. However, for the purposes of calculation of retiral benefits, including pension and gratuity, the differential period (in the event of enhancement of the retirement age) will be added to period of service actually rendered by each of them. In other words, their notional date of retirement would be arrived at by adding the differential years to their actual date of retirement. On such calculation they would be entitled to the arrears of retirement benefits after adjusting the amount already paid."

2. It must be noted here that this Court's judgment in ***Dev Sharma*** (*supra*) was affirmed by the Supreme Court when it dismissed on 10th May, 2019 Union of India's SLP (C) 11944/2019. Review Petition (Civil) 1555/2019 filed by Union of India seeking review of the above order dated 10th May, 2019 was also dismissed by the Supreme Court on 16th July, 2019.

3. As regards those who retired after the judgment of this Court in ***Dev Sharma***, but before the Respondents passed orders deciding the fresh retirement age in terms thereof, this Court on 4th February 2019 passed a clarificatory order in W.P. (C) 695 of 2019 (***Ram Chander Kasania & Anr. v. Union of India & Ors.***) This order too was affirmed by the Supreme Court when it dismissed SLP (C) 13586 of 2019 (***Union of India v. Ram Chander Kasania & Anr.***). Consequently, the orders of this Court in ***Dev***

Sharma and **Ram Chander Kasania** attained finality.

4. The Respondents thereafter, by way of implementation of this Court's orders in **Dev Sharma** (*supra*) and **Ram Chander Kasania** (*supra*) issued an order dated 19th August, 2019, the operative portion of which reads as under:

“02. In view of the aforesaid order, the matter has been examined and in compliance thereof, read with order dated 04.02.2019 passed in WP(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 31.01.2019 barring Petitioner No.09 in 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 04.02.2019 clarifying para-72 of original order dated 31.01.2019 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.”

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

5. This Court has today in a separate order in W.P.(C) 10719/2019 (***B. L. Naik v. Union of India and batch***), held that for those who retired prior to 31st January 2019, the date of the judgment of this Court in ***Dev Sharma*** (*supra*), the Respondents would be justified in applying the directions issued in paragraph 72 of the judgment of this Court and not extending to such persons the benefit of para 2 (d) (i) and (ii) of the order dated 19th August, 2019.

6. The present Petitioners are identically placed as B. L. Naik, the Petitioner in W.P.(C) 10719/2019, inasmuch as they retired prior to the date of the judgment of this Court i.e. 31st January, 2019 and had not crossed 60 years of age as on that date.

7. The Respondents are resisting extending to these Petitioners the benefits of paragraph 72 of the judgment in ***Dev Sharma*** (*supra*) on the ground that they were not ‘Petitioners’ before this Court. The representation of the Petitioners was rejected by the Respondents by a letter dated 1st October, 2019 on this ground. This objection was reiterated by Mr. Akshay Makhija, learned Senior standing counsel appearing for the Respondents.

8. The Respondents are overlooking what was stated by this Court in paragraph 70 of its judgment in ***Dev Sharma*** (*supra*) which is extracted hereinbefore. This Court anticipated that there would be many persons who

may not have been able to approach the Court seeking relief similar to the one sought by the Petitioners in *Dev Sharma (supra)*. This Court made it clear that the benefit of the judgment in *Dev Sharma (supra)* should be made available “across the board to all members of the CAPFs.” The Court went to the extent of stating that even personnel of the SSB should be granted the benefit without their having come to the Court for relief.

9. It requires to be acknowledged that the Respondents have accepted part of the above directions by making the order dated 19th August, 2019 applicable across the board to all CAPFs, including SSB, the personnel of which were not before the Court. Having done so, it does not stand to reason that the Respondents should confine the benefit of paragraph 72 of the judgment in *Dev Sharma (supra)* and batch only to the ‘Petitioners’ in those cases, and not to all persons across the board in all CAPFs who had retired prior to 31st January, 2019 and who had not crossed 60 years as of that date.

10. It requires to be clarified that the benefit of paragraph 72 of the judgment of this Court in *Dev Sharma (supra)* will be available only to those who had not crossed 60 years of age as on 31st January, 2009. It is further clarified that the present order will not disturb the benefit already extended in terms of para 72 of that judgment and in terms of Para 2 (c) of the order dated 19th August 2019 to any of the Petitioners in the *Dev Sharma* batch, who may have crossed the age of 60 years as on 31st January 2019.

11. A direction is accordingly issued to the Respondents to extend to the present Petitioners, and anyone else who is similarly placed but has not come to the Court or not yet made a representation to the Respondents, the

benefit of paragraph 72 of the order of this Court. In other words, the benefit of para 2 (c) of the order dated 19th August, 2019 would be available to all those in the CAPFs who retired prior to 31st January 2019 provided that they had not crossed the age of 60 years as on 31st January, 2019.

12. The necessary orders be issued within 12 weeks from today.

13. The petitions are disposed of in the above terms. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 19, 2019

tr