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

+ **W.P.(C) 11573/2019**

DINESH SAHU & ORS Petitioners

Through: Ms.Ankita Patnaik, Advocate.

versus

UNION OF INDIA & ORS Respondents

Through: Mr.Harish Vaidyanathan Shankar,
CGSC.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **16.12.2019**

1. The 4 Petitioners applied for the post of Sub-Inspector ('SI') pursuant to the advertisement issued in 2000 for all the Central Police Organisations ('CPOs'). After the Petitioners were successful in the written examination and the physical efficiency test, they appeared for the medical examination in April, 2002.

2. The Petitioners were initially declared medically unfit. They subsequently applied for a Review Medical Examination ('RME'). They were called for such RME only in January, 2003. Petitioner No.1 was finally declared medically fit on 18th January, 2003 and, the other 3 Petitioners were declared so, on various other dates thereafter. They were all called for interview after a further delay of 6 months, in July, 2003. Although, they successfully cleared the interview, the result was published only in December, 2003. The

offers of appointment were issued only after 1st January, 2004, with Petitioner No. 4 being offered an appointment letter only on 24th March, 2004 i.e. after coming into effect of the new pension scheme. The Petitioners were directed to report to the CISF NISA for training.

3. The Petitioners were expecting to be covered by the Old Pension Scheme ('OPS'), since the new contributory pension scheme was introduced by a notification dated 22nd December, 2003, according to which, the said scheme was to be implemented with effect from 1st January, 2004. This was because the selection process *qua* the Petitioners had been completed in July, 2003 itself.

4. The representations of the Petitioners were all rejected by the Respondents, the last of such rejection being by a letter dated 25th March, 2019.

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 1st 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 1st January, 2004. Among the several orders of this Court is an order dated 2nd 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 1st 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. It must be noted here that the Petitioners were offered appointment letters pursuant to the same advertisement, pursuant to which Navin Kumar Jha, the Petitioner in W.P.(C) 3827 of 2012 applied. In his case also there was a delay in his examination by an Army Review Medical Board and this Court held that he would be covered by the OPS although his offer of appointment is issued after 1st January, 2004.

8. By order dated 12th 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 1st January 2004, it was held by this Court 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 13th 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.”

9. Subsequently, after a judgment dated 27th 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 13th 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.”

10. Another order dated 16th 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 1st January 2004 but issued appointment letters thereafter.

11. This Court, in the context of certain Constables of BSF, by a judgment dated 12th 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 2nd September 2019.

12. 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 9th 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 27th November, 2019.

13. For the aforementioned reasons, the Court allows the present petition and sets aside all the orders/letters issued by the Respondents rejecting the representations of the Petitioners for extension to them of the benefit of the OPS. The Respondents are directed to issue appropriate orders extending the benefit of the OPS to each of the Petitioners within a period of 12 weeks from today. The Respondents are also directed to transfer within the same period the amount (NPS) held in NPS Tier 1 account to the GPF account of the Petitioners as done in the case of other CPO personnel, pursuant to the orders passed by this Court.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 16, 2019

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