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

+ **W.P.(C) 3671/2019**

JAWAHAR T AND ORS.Petitioners

Through: Ms. Ankita Patnaik, Advocate.

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. Rakesh Kumar, CGSC with Ms.
Sheetal Raghuvanshi, Advocate
respondent-UOI.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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30.09.2019

Dr. S. Muralidhar, J.:

1. The present Petitioners are aggrieved by the denial to them of the benefit of the Old Pension Scheme (OPS) which has admittedly been allowed to 463 employees, who were recruited against advertisement No. 01/2002, while being denied to the remaining 839 employees (including the Petitioners), for whom the Respondents have chosen to apply the New Pension Scheme (NPS).

2. The above fact has been confirmed in a response dated 15th November, 2010 from the General Reserve Engineer Force ('GREF') Centre at Pune to one of the Petitioners, pursuant to an application under the RTI Act, 2005.

3. At the outset, it requires to be noticed that this very issue of differentiating between two sets of employees, recruited through the same advertisement, in the matter of grant of OPS has been disapproved by this Court in a series of judgments, only two of which are required to be referred to.

4. One is a judgment dated 12th February, 2019 of this Court in W.P.(C) No. 6680/2017 (***Tanaka Ram v. Union of India***), which was in the context of the employees of the Border Security Force, which was upheld by the Supreme Court by dismissal of the SLP (C) No. 25228/19 (***Union of India v. Tanaka Ram***) on 2nd September, 2019.

5. The second is the judgment dated on 2nd May, 2019 passed by this Court in the W.P. (C) No. 1164/18 (***Patil Gopal Babulal v. Union of India***), which was in the context of persons working with the Indo Tibetan Border Police (ITBP).

6. It requires to be noticed at the outset that at the time when advertisement No.1/2002 was issued, it was the OPS which was applicable. Clause 5 of the advertisement titled “Service Conditions” mentions in sub-clause (b) that in the matter of pension, gratuity, Leave Travel Allowance etc., whatever was applicable to Central Government Employees would be made applicable to members of the force, which includes the GREF.

7. It has been explained by this Court in its judgment dated 27th March, 2017 in W.P.(C) 2810/2016 (***Inspector Rajendra Singh v. Union of India And Ors.***) that there can be no discrimination between batchmates in the matter

of grant of the benefit of the OPS. The above judgment was also affirmed by the Supreme Court by dismissal of SLP (C) No. 39335/2017 on 8th January, 2018. In addition, in *Shyam Kumar Choudhary v. Union of India* [decision dated 9th April 2019 in W.P. (C) 1358/2017] the same principle has been re-affirmed by this Court. The Court is informed that the SLP against the said order has also been dismissed.

8. In view of the above, categorical exposition of the law in several judgements of this Court, the stand taken in the counter affidavit that as far as the present Petitioners are concerned, since they were sent for training subsequent to the set of 463 candidates, the denial to them of the OPS is justified is untenable. Although the recruitments are done in a phased manner, a candidate has no say as to when he will be sent for training. This is determined solely by the Respondents. In the circumstances, it would be unfair to deprive one set of batchmates the benefit which is available to the rest of the same batch who fortuitously were sent for training prior to 1st January, 2004.

9. In that view of the matter, the writ petition is allowed and directions are issued to the Respondents to grant each of the Petitioners the benefit of the OPS in accordance with the CCS (Pension) Rules, 1972. The consequential orders will be issued within a period of four weeks from today. The monthly contribution deducted for NPS be repaid to the Petitioners within a period of twelve weeks, failing which each of the Petitioners would be entitled to simple interest @ 6% per annum on the amount for the period of delay.

10. In the event that the seniority list has to be recast as a result of the above directions, the Respondent will issue a draft seniority list so that those who may be adversely affected will get a chance to object. The seniority list will be finalised only after consideration of such objections.

S. MURALIDHAR, J.

TALWANT SINGH, J.

SEPTEMBER 30, 2019

v