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

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+ **W.P. (C) 1358/2017**

SHYAM KUMAR CHOUDHARY & ORS. Appellants

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

versus

UNION OF INDIA & ORS. Respondents

Through: Mr Anurag Ahluwalia, Advocate for
UOI.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER

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09.04.2019

1. This petition has been filed by 14 Petitioners all of whom are Assistant Commandants in the Central Reserve Police Force ('CRPF'). All of them applied pursuant to the notification dated 10th-16th May, 2003 which was advertised by the UPSC and qualified in the Central Police Forces (Assistant Commandant) Examination, 2003. On the date of the advertisement, the Old Pension Scheme under the CCS (Pension) Rules, 1972 was applicable.

2. The new Contributory Pension Scheme was introduced by a notification dated 22nd December, 2003 and implemented with effect from 1st January, 2004. By a notification dated 22nd December 2003, it was stated that the new scheme would not be applicable to Armed Forces and that they would be governed by the Old Pension Scheme. It is further pointed out that the Ministry of Home Affairs ('MHA') by a communication dated 6th August,

2004, clarified that the CRPF was an Armed Force of the Union of India under the administrative control of the MHA. It is accordingly contended that the Petitioners were entitled to the Old Pension Scheme.

3. The Petitioners relied on the decision dated 12th February, 2015 of this Court in W.P. (C) No. 3834 / 2013 (***Parmanand Yadav v. Union of India***) wherein, in relation to the BSF, it was held that those who had participated in the examination of 2003, would be covered by the Old Pension Scheme, even if they had been offered letters of appointment only after 1st January, 2004. When the representations made by the Petitioners, that the old pension scheme should be extended to them was rejected, the present petition was filed.

4. Pursuant to the notice issued in the present petition, the Respondents have filed their counter affidavit and an additional affidavit.

5. The issue is no longer *res integra*. In the case of certain constables of the BSF, this Court by its judgment dated 12th February, 2019 in ***Tanka Ram v. Union of India 2019 (174) DRJ 146 (DB)*** allowed the prayer of those Petitioners and permitted them to avail of the benefit of the Old Pension Scheme. It was held that the option to continue the Old Pension Scheme should be extended to all those who had been selected in the examination conducted in 2003, but were issued call letters in only in January or February, 2004.

6. In the present case also, the reason the Petitioners not joining prior to 1st January, 2004 is entirely due to the Respondents. The Petitioners cannot be

deprived of the benefit of the Old Pension Scheme, as they qualified even prior to the notification of the New Pension Scheme.

7. For the above reasons, the petition is allowed and direction is issued to the Respondents to extend the benefit of the Old Pension Scheme to each of these Petitioners and pass consequential orders within a period of eight weeks from today.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 09, 2019
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