

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on	21/1/2020
Judgment pronounced on	10/3/2020

C O R A M

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

a n d

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Review Application Nos.156 of 2019

1. Union of India
rep. by the Secretary Government of India
Ministry of Defence
I Floor, South Block
DHQ P.O
New Delhi 110 011.

2. The Director General
Coast Guard Head Quarters
National Stadium Complex
New Delhi 110 001.

3. The Commander
Head Quarters - Coast Guard Region (East)
Near Napier Bridge
Chennai 600 009.

4. The Principal Controller of
Defence Accounts (Navy)
Office of the PCDA (Navy), CG Section
No.1 Cooperage Road
Mumbai 400 039.

5. The Commanding Officer
Coast Guard Station Nizampatnam
Nizampatnam
Guntur Dist
Andhra Pradesh 522 314.

... Petitioner

Vs

Commandant AKS Panwar, TM

...

Respondent

Prayer Review Petition filed under Order 47 Rule 1 of the Code of Civil
Procedure to review the order dated 18/7/2019 made in W.P.No.29647 of
2018.

For petitioners

...

Mr.G.Rajagopalan
Additional Solicitor General of India
for Ms.Sunita Kumari, SPC

For respondents

...

Mr.S.Silambanan
Senior Counsel
assisted by Mr.K.Sathish
for M/s.Kaavya Silambanan Associates

ORDER

(Order of the Court was made by Subramonium Prasad,J)

Union of India has filed the Review Petition to review the order dated 18/7/2019 made in W.P.No.29647 of 2019, primarily on three grounds.

(a). Coast Guard is different from Border Security Force, Central Reserve Police Force and therefore, the judgment of the Division Bench of the Delhi High Court in Dev Sharma Vs.Indo Tibetan Border Police and Another 2019 SCC Online Del 6797 which is the basis of the judgment of the Madras High Court against which the review sought will not apply.

(b). In any event, the judgment of the Delhi High Court does not consider that Article 33 of the Constitution of India gives power to the Parliament to modify the rights conferred by this Court in their Application to forces etc., and therefore, the Armed Forces and more particularly, in this case, the Coast Guard which is governed by the Coast Guard Act, 1978 and the Rules framed thereunder can have their own reasons to fix different cut off dates for retirement for different classes of Officers.

(c). When the judgment was passed by this Court, W.P.No.29647 of 2019 was not listed and was added only by mentioning in the Court after the judgment in other connected writ petitions was completed and therefore, the writ has been allowed without hearing Union of India in the instant writ petition. It is therefore, submitted that the aforementioned two aspects could not be put forward by the Union of India which distinguishes the instant writ petition from the other petitions, the judgments in which were rendered on the basis of the Division Bench judgment of the Delhi High Court in *Dey Sharma Vs. Indo Tibetan Border Police and Another* 2019 SCC Online Del 6797.

2. This Court, on 18/7/2019, heard a batch of writ petitions, wherein a challenge was made to Rule 43 (a) of the Central Reserve Police Force Rules, 1955, together with the corresponding Rule 12 of the Central Reserve Police Force Group "A" (General Duty) Officers Recruitment Rules, 2001 and Rule 15 (1) of the Border Security Force, General Duty Cadre (Non-Gazetted) Recruitment Rules, 2002 in which different dates of retirement are prescribed for different grades of Officers in the Central

Reserve Police Force and the Border Security Force as being violative of Article 14 of the Constitution of India.

3. This Court, placed reliance on the judgment of Dev Sharma (supra), which had struck down Rule 43 of the CRPF Rules, and other similar Rules governing BSF and ITBP and observed that the decision of the Delhi High Court in Dev Sharma (supra) had been challenged by way of a Special Leave Petition No.11944 of 2019 before the Hon'ble Supreme Court and the Hon'ble Supreme Court had dismissed the Special Leave Petition.

4. This Court further relied on an earlier order, dated 15/7/2019, in W.P.No.17143 and 18294 of 2019 wherein it was observed as under:-

"26. From the Office Memorandum No.143020/30/2019-Pers II (3459497), Ministry of Home Affairs (Police -II Division), Government of India, New Delhi dated 02.07.2019, it is evident that only in cases where interim stay has been granted by the Hon'ble High Court, officers / personnel, were retained in service beyond the age of 57 years of age and CAPFs are directed to implement the

orders provisionally, subject to the final decision of the Review Petition.

27. Rule 43 of the CRPF Rules, has been struck down by the Delhi High Court and the decision has been confirmed by the Hon'ble Supreme Court. Orders have been implemented, wherever stay has been granted.

28. Under Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court is binding on all Courts within the territory of India. Decision to implement the orders of the Hon'ble Supreme Court, only to those officers / personnel, where interim stay has been granted by the Hon'ble Court to retain them in service beyond the age of 57 years of age, CAPFs provisionally, subject to the final decision of the Review Petition, is not the correct approach and that in the light of the binding precedent of the Hon'ble Supreme Court, the Union of India, represented by its Secretary to the Government, Department of Home Affairs, New Delhi, who is a party respondent in all the instant writ petition before us, is bound to implement the orders of the Hon'ble Supreme Court to all those similarly situated persons when the provision has been struck down. Restriction of implementation of the decision of the Hon'ble Supreme Court, only to those, who have obtained stay, cannot be appreciated.

29. The issue as to whether equally placed persons should be treated alike without any discrimination is no longer res integra. Useful reference can be made to the following decisions,

(i) In Prem Chand Somchand Shah v. Union of India reported in (1991) 2 SCC 48, the Hon'ble Supreme Court in paragraph 8 held thus,

"8. As regards the right to equality guaranteed under Article 14 the position is well settled that the said right ensures equality amongst equals and its aim is to protect persons similarly placed against discriminatory treatment. It means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Conversely discrimination may result if persons dissimilarly situate are treated equally. Even amongst persons similarly situate differential treatment would be permissible between one class and the other. In that event it is necessary that the differential treatment should be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and that differentia must have a rational relation to the object sought to be achieved by the statute in question."

(ii) In Govind Ram Purohit v. Jagjiwan Chandra reported in 1999 SCC (L & S) 788, at paragraph 3, the Hon'ble Supreme Court held thus:

"3. It was lastly contended by the learned counsel for the appellants that whereas the petition had been filed by only Respondent 1, the High Court while finally concluding the matter has given a direction to promote all those who were senior to the appellants even though they were not parties to the petition. Once the High Court had placed a particular interpretation on the Rules, the benefit of that interpretation had to go to all those who qualified under the senioritycum-merit rule. There was no point in waiting for each and every person to file a petition. Therefore, we do not see any reason why we should entertain such a technical plea when the High Court has done substantial justice to all concerned."

(iii) In State of Karnataka v. N.Parameshwarappa reported in 2003 (12) SCC 192, the Hon'ble Supreme Court, at paragraph 8, held thus:

"8..... we do not find any reasonable justification to confine the relief to only such of the teachers who approached the court and having regard to the fact that relief related to the revision of scales of pay, every one of that class of teachers who approached would be entitled to the benefit, notwithstanding that they have not approached the court. We are in equal agreement with the Division

Bench in denying the payment of interest at compounded rates which, in our view, cannot be justified at all on the facts and circumstances of the case wherein a serious and genuine doubt existed about the applicability of the government order dated 30-3-1990, as raised in the proceedings."

(iv) In State of U.P. v. Dayanand Chakrawarty reported in 2013 (8) Scale 74 : (2013) 7 SCC 595, the Hon'ble Supreme Court held that there cannot be any discrimination in treating equally placed persons on same footing, for all purposes.

(v) In State of Uttar Pradesh and others v. Arvind Kumar Srivastava and others reported in 2015 (1) SCC 347, wherein, the Apex Court dealt with the issue as to the entitlement of benefit of judgment in rem with an intention to benefit all similarly situated persons irrespective of whether they had approached the Court or not. It is held therein that when a particular set of employees is given relief by Court, all other identically situated persons should be treated alike by extending the same benefit, since not doing so would amount to discrimination and be violative of Article 14 of the Constitution of India.

30. To fortify our view, we also rely on a passage from the judgment of the Hon'ble Supreme Court in Amrit Lal Berry Vs. Collector of Central Excise, New Delhi and Others, reported in (1975) 4 SCC 714, wherein Hon'ble Supreme Court observed as hereunder.

"24... We may, however, observe that when a citizen aggrieved by the action of a government department has approached the Court and obtained a declaration of law in his favour, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievances to Court."

31. We have gone through the judgment of the Delhi High Court in Dev Sharma Vs. Union of India & Others, confirmed by Hon'ble Supreme Court in SLP (C) No.11944 of 2019.

32. Facts and law pleaded are one and the same. Decision of the Hon'ble Supreme Court squarely applicable to the writ petitions.

33. Following the decision made in SLP No.11944 of 2019 dated 10.05.2019, impugned provisions are struck down.

34. Petitioner in WP No.17143 of 2019, was working as an Assistant Commandant (M), in Group Centre, CRPF, Avadi. Petitioner in WP No.18294 of 2019, was working as Inspector / GD in the Recruits Training Centre (RTC), CRPF, Avadi, Chennai. Consequent to striking down of the Rule 43(a) of CRPF Rules, 1955, respondents are directed to reinstate the petitioners in service

as Assistant Commandant (M), in Group Centre, CRPF, Avadi and Inspector / GD in the Recruits Training Centre (RTC), CRPF, Avadi, Chennai, respectively, with continuity of service, within a period of one week from today.

35. With the above directions, writ petitions are allowed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed."

5. It was also pointed out to us that a Review Petition had been filed against the dismissal of SLP (C) 11944 of 2019 which was numbered as R.P.(C) No.1555 of 2019 which was also dismissed by an order dated 16/7/2019.

6. In view of the above mentioned facts, we directed the writ petitioners to continue in service till they attain the age of 60 years. The petitioners who had already retired were to be reinstated till the Government of India took an appropriate decision as held by the Delhi High Court in Dev Sharma (supra).

7. Mr.G.Rajagopalan, the learned Additional Solicitor General states that the Officers of the Coast Guard are governed by the Coast Guard Act. Section 123 of the Coast Guard Act, 1978 gives the power to Central Government to make Rules which includes to frame Rules for removal retirement, release or discharge from the service of the Officers. In exercise of the powers conferred under Section 123 of the Coast Guard Act, the Coast Guard (General) Rules, 1986 have been framed. Chapter IV in the said Rules deals with Retirement, Dismissal, Removal, Discharge or Release. Rule 20 which deals with retirement, reads as under:-

(1). Retirement age for officers holding a rank higher than that of a Commandant shall be sixty years and for officers of other ranks it shall be fifty - seven years.

(2). Retirement age of enrolled person shall be fifty seven years."

8. Rules also prescribe the hierarchy of Officers under Chapter III. Rules 7 (a) which gives the classification of Officers in accordance of rank reads as under:-

- (i). Director General
- (ia). Additional Director General
- (ii). Inspector General
- (iii). Deputy Inspector General
- (iv) Commandant
- (v). Commandant (Junior Grade)
- (vi). Deputy Commandant
- (vii). Assistant Commandant

9. Under Rule 20 the retirement age of an officer holding a rank higher than that of a Commandant is sixty years and for officers of other ranks is fifty - seven years. It is this distinction which has been challenged by the writ petitioners.

10. The Additional Solicitor General of India would state that Officers till the level of Commandant (Junior Grade) spend most of their time in sea and therefore, if they do not reach the level of Commandant before they attain the age of 57 years, are retired at the age of 57. He would state that Officers above the rank of Commandant (Junior Grade) primarily perform desk job and therefore, their retirement age is kept at 60 years. The learned Additional Solicitor General would submit that this is a valid classification and therefore, is not violative under Article 14 of the

Constitution of India. He would submit that this was not considered by the Delhi High Court. He would also submit that the Delhi High Court has also not considered the import of Article 33 of the Constitution of India. Article 33 of the Constitution of India reads as under:-

33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.- Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to,-

- (a) the members of the Armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c), be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.]

11. The learned Additional Solicitor General would rely on a

Constitution Bench judgment of the Hon'ble Supreme Court in RAM SARUP Vs. UNION OF INDIA AND ANOTHER (1964) 5 SCR 931, wherein the Hon'ble Supreme Court, observed as under:-

"15. We therefore do not consider this contention to have any force. Lastly Mr Rana, learned counsel for the petitioner, urged in support of the first point that in the exercise of the power conferred on parliament under Article 33 of the Constitution to modify the fundamental rights guaranteed by Part III, in their application to the armed forces, it enacted Section 21 of the Act which empowers the Central Government, by notification, to make rules restricting to such extent and in such manner as may be necessary, the right of any person with respect to certain matters, that these matters do not cover the fundamental rights under Articles 14, 20 and 22 of the Constitution, and that this indicated the intention of Parliament not to modify any other fundamental right. The learned Attorney-General has urged that the entire Act has been enacted by parliament and if any of the provisions of the Act is not consistent with the provision of any of the articles in Part III of the Constitution, it must be taken that to the extent of the inconsistency Parliament had modified the fundamental rights under those articles in their application to the person subject to that Act. Any such provision in the Act is as much law as the entire Act. We agree that each and every provision of the Act is a law made by Parliament and that if any such provision tends to affect the fundamental right under Part III of the Constitution, that provision does not, on that

account become void, as it must be taken that Parliament has thereby, in the exercise of its power under Article 33 of the Constitution, made the requisite modification to affect the respective fundamental right. We are however of opinion that the provisions or Section 125 of the Act are not discriminatory and do not infringe the provisions of Article 14 of the Constitution. It is not disputed that the persons to whom the provisions of Section 125 apply do form a distinct class. They apply to all those persons who are subject to Act and such persons are specified in Section 2 of the Act. The contention for the petitioner is that such persons are subject to be tried for civil Offences i.e. offences which are triable by a criminal Court to Section 3 (ii) of the Act, both by the Court Martial and the ordinary criminal courts, that Section 125 of the Act gives a discretion to certain officers specified in the section to decide whether any particular accused be tried by a Court Martial or by a criminal court, that there is nothing in the Act to guide such officers in the exercise of their discretion and that therefore discrimination between different persons guilty of the same offence is likely to take place inasmuch as a particular officer may decide to have one accused tried by a Court Martial and another person, accused of the same offence, tried by a criminal court, the procedures in such trials being different.

(emphasis supplied)

12. The same view has been reiterated in Union of India and Others

VsEx.Flt.Lt.G.S.Bajwa {(2003) 9 SCC 630}, wherein the Hon'ble Supreme Court, has observed as under:-

"19. It is indeed surprising that while considering the submissions urged on behalf of the respondent alleging the breach of his fundamental right under Article 21 of the Constitution of India, the High Court neither noticed the provisions of Article 33 of the Constitution of India nor does it appear to have been brought to its notice. Article 33 of the Constitution of India expressly empowers Parliament to determine by law the extent to which any of the rights conferred by Part III of the Constitution, in their application, inter alia, to the members of the armed forces, shall be restricted or abrogated to ensure the proper discharge of their duties and the maintenance of discipline among them. Parliament can, therefore, in exercise of powers conferred by Article 33 of the Constitution of India restrict or abrogate the fundamental rights guaranteed under Part III of the Constitution in their application to the members of the armed forces. It, therefore, follows that if any provision of the Act or the Rules restricts or abrogates any right guaranteed under Part III of the Constitution of India, it cannot be challenged on the ground that it is violative of the fundamental rights as guaranteed under Part III. It is no doubt true that the restriction or abrogation is dependent on parliamentary legislation and only a law passed by virtue of Article 33 can override Articles 21 and 22 of the Constitution of India. The law on the subject is

fairly well settled and we may only refer to some of the authorities on the subject.

13. The said judgment followed the Constitution Bench judgment in Ram Sarup (supra). The same view has also been taken in Lt.Col.Prithi Pal Singh Bedi Vs. Union of India {(1982) 3 SCC 140.

14. Mr.Rajagopalan, Additional Solicitor General of India is therefore, correct in contending that the Delhi High Court has not considered this aspect of the case. The learned ASG is also correct when he submits that W.P.No.29647 of 2018 was not in the list on the day when the case was heard and only because this Court was informed that the issues are identical, did this Court passed the order in W.P.No.29647 of 2018. The effect of Article 33 was not argued by the counsel appearing for the Union of India when the matter was heard concerning other services like the BSF and CRPF.

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15. The law relating to Review has been very succinctly explained in the well celebrated judgment passed by the Federal Court in Mussammat

Jamna Kuer Vs. Lal Bahadur and Others (AIR 1950 FC 131), wherein the Federal Court, observed as under:-

"8. Whether the error occurred by reason of the counsel's mistake or it crept in by reason of an oversight on the part of the court was not a circumstance which could affect the exercise of jurisdiction of the court to review its decision. We have no doubt that the error was apparent on the face of the record and in our opinion the question as to how the error occurred is not relevant to this enquiry. A mere look at the trial court's decision indicates the error apart from anything else."

16. The said ratio applies to the present case also. For the reasons aforementioned, the Review needs to be allowed. However, it is to be mentioned that Union of India is considering the cases of other para-military forces like the BSF, CRPF, ITBP as directed by the Delhi High Court, in Dev Sharma (supra) which has become final by the dismissal of the Special Leave Petition (C) No.11944 of 2019 which had been filed challenging the judgment in Dev Sharma and the Review Petition being R.P.No.1555 of 2019 filed against the dismissal of the Special Leave Petition.

17. In the light of the above, we direct Union of India to consider the case of the Officers below the rank of Commandant in Coast Guard as to whether their retirement age can also be increased to 60 years or not. We therefore allow the Review Petition and recall the judgment dated 18.07.2019 and dispose of the writ petition directing the Union of India to consider the case of the Coast Guard also which is also a para-military force, performing functions akin to CRPF, ITBP and BSF as to whether the age of retirement of the Officers below the rank of Commandant in Coast Guard be increased to 60 as is being considered for other para-military forces as directed by the High Court. Union of India is directed to take a decision in this regard within a period of three months from the date of the receipt of the copy of this order.

No costs. Consequently, the connected Miscellaneous Petitions are closed.

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(A.P.S., CJ.)
/3/2020

(S.P., J.)

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
mvs.

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The Hon'ble Chief Justice

a n d

SUBRAMONIUM PRASAD, J

mvs.



Pre-delivery judgment
in
Review Application Nos.156 of 2019

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