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

+ **W.P.(C) 323/2020**

ASHOK KUMAR SHEORAN & ORS

..... Petitioners

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

versus

UNION OF INDIA & ORS

.... Respondents

Through: Mr. Subhra Parasar, Senior Counsel with
Ms. Annu Singh, GP and Mr. Sanjay
Kumar, Inspector, CISF.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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13.01.2020

CM APPL. 950/2020 (exemption)

1. Allowed, subject to all just exceptions.

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2. Notice. Notice is accepted by learned counsel for the Respondents.

3. The Petitioners, 10 in number, have filed the present petition seeking a direction to the Respondents to extend to them the benefits of the Old Pension Scheme ('OPS') instead of the New Pension Scheme ('NPS').

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4. The background facts are that the Petitioners who are currently serving as Sub-Inspectors ('SI') in the Central Industrial Security Force ('CISF'), applied for the said posts pursuant to an advertisement issued on 31st June, 2003 by the Staff Selection Commission ('SSC') for filling up the posts of SIs in the Central Police Organisation ('CPO') through the CPO (Sub Inspector) Examination, 2003. The Petitioners cleared the written exam as well as the physical endurance test for which they appeared on 21st November, 2003. They found their names in the final result declared on 22nd May, 2004. Each of them was issued letters of appointment on 5th August, 2004 for joining the CISF by 4th September, 2004.

5. Since the advertisement for conducting the CPO (SI) Examination, 2003 was issued on 21st June, 2003, the Petitioners were under the impression that they would be covered under the OPS under the CCS (Pension) Rules, 1972, as the recruitment process had been initiated prior to the notification dated 22nd December, 2003 bringing in the new contributory pension scheme which was implemented with effect from 1st January, 2004. However, the Respondents treated the new contributory pension scheme as being applicable to the Petitioners as their appointment letters had been issued after 1st January, 2004. The Petitioners state that similarly situated employees preferred a representation seeking the benefit of the OPS which was rejected by the Respondents on 7th January, 2019.

6. 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?

7. 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.

8. By a subsequent 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 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."

8. 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."

9. 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.

10. 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.

11. 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.

12. Accordingly, the petition is allowed. A direction is issued to the Respondents to extend the benefit of the OPS to each of the Petitioners in terms of the CCS (Pension) Rules, 1972 by issuing appropriate orders within a period of 12 weeks from today. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 13, 2020
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