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

+ **W.P.(C) 337/2020**

**VIKASH KUMAR & 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. 976/2020 (exemption)**

1. Allowed, subject to all just exceptions.

**W.P.(C) 337/2020**

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

3. The Petitioners, 62 in number, have filed the present petition seeking the quashing of the order dated 7<sup>th</sup> January, 2019 by which their representation dated 4<sup>th</sup> December, 2018 requesting the Respondents to extend to them the

benefits of the Old Pension Scheme ('OPS'), instead of the New Pension Scheme ('NPS').

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

5. Since the advertisement for conducting the CPO (SI) Examination, 2003 was issued on 21<sup>st</sup> 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 22<sup>nd</sup> December, 2003 bringing in the NPS which was implemented with effect from 1<sup>st</sup> January, 2004. However, the Respondents treated the NPS as being applicable to the Petitioners as their appointment letters had been issued after 1<sup>st</sup> January, 2004. As noted hereinabove, the Petitioners' representation seeking the benefit of the OPS was rejected by the Respondents on 7<sup>th</sup> January, 2019.

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 1<sup>st</sup> January, 2004. Among the several orders of this Court is an order dated 2<sup>nd</sup> November, 2012 in W.P. (C) 3827/2012 (*Naveen Kumar Jha v. Union of India*) where in the context of a delay in the issuance of the letter of appointment of an SI of the Central Reserve Police Force ('CRPF'), beyond 1<sup>st</sup> 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. By a subsequent order dated 12<sup>th</sup> 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 1<sup>st</sup> 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 13<sup>th</sup> January, 2016 in which *inter alia* it was stated:

“Now, 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 27<sup>th</sup> March, 2017 of this Court in the case of Inspectors of the BSF in W.P.(C) 2810/2016 (***Inspector Rajendra Singh v. Union of India***), the Ministry of Home Affairs (‘MHA’) issued an Office Memorandum (‘OM’) dated 13<sup>th</sup> 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 16<sup>th</sup> 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 1<sup>st</sup> January, 2004 but issued appointment letters thereafter.

10. This Court, in the context of certain Constables of BSF, by a judgment dated 12<sup>th</sup> February, 2019 in W.P.(C) 6680/2017 (***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 S.L.P. (CC) Diary No. 25228/2019 (***Union of India v. Tanaka Ram***) on 2<sup>nd</sup> 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 9<sup>th</sup> April, 2019, their petition was allowed by this Court. That order has been affirmed by the Supreme Court inasmuch as S.L.P. (C) 31539/2019 filed by Union of India has been dismissed by an order dated 27<sup>th</sup> November, 2019.

12. The Court sees no reason to treat the present Petitioners who belong to the CISF differently from their counterparts, in the other CAPFs including the CRPF and BSF.

13. Accordingly, the petition is allowed. The order dated 7<sup>th</sup> January, 2019 passed by the Respondents rejecting the representation of the Petitioners is hereby set aside. 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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