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

+ **W.P.(C) 756/2020**

DR. DAVINDER SINGH BRAR

..... Petitioner

Through: Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC, Mr. Abhigyan Siddhanj and Mr. Shaurya Jain, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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28.01.2020

1. The Petitioner seeks by way of the present petition the quashing of an order dated 17th August, 2019 by which his representation dated 14th May, 2019 requesting the Respondents for extending to him the benefits of the Old Pension Scheme ('OPS') instead of the New Pension Scheme ('NPS') came to be rejected. He also seeks a direction to the Respondents to grant him the benefits of the OPS in terms of the Central Civil Service (Pension) Rules.

2. The brief facts are that the Respondents issued an advertisement dated 24th May, 2003 inviting applications for appointment to Group 'A' post of Dental

Surgeon in the rank of Assistant Commandant in the Respondent/Border Security Force ('BSF'). In response to the said advertisement, the Petitioner applied and, on being found eligible, was called to appear on 29th March, 2004 for an interview/medical examination, which he cleared. The Respondents issued an appointment letter to him on 16th October, 2004.

3. The Petitioner submitted a representation dated 14th May, 2019 to the Respondents, requesting them to consider him as being covered by the OPS instead of the NPS. He attempted to make out the case that he was appointed after the 1st January, 2004 i.e. the date on which the NPS became operational, due to a delay on the part of the Respondents. He also mentioned that he became aware that he would be covered by the NPS only a month after he joined duty.

4. The said representation came to be rejected by the Respondents by the impugned order dated 17th August, 2019 on the ground that the selection process for the post that the Petitioner was appointed only concluded after the implementation of the NPS.

5. 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) 3827/2012 (*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 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.

6. 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:

“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.”

7. Subsequently, after a judgment dated 27th 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 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.”

8. 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.

9. This Court, in the context of certain Constables of BSF, by a judgment dated 12th 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 2nd September, 2019.

10. 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 S.L.P. (C) 31539/2019 filed by Union of India has been dismissed by an order dated 27th November, 2019.

11. More recently, this Court by its decision dated 13th January, 2020 in W.P.(C) 337/2020 (*Vikash Kumar v. Union of India*) has held similarly situated personnel of the Central Industrial Security Force ('CISF'), which is also a CAPF, to be entitled to be extended the benefits under the OPS, instead of the NPS.

12. Mr. Anurag Ahluwalia, CGSC sought to draw a distinction between the aforesaid cases and the one at hand by pointing out that the Petitioner here had been selected pursuant to a selection process that concluded only in February, 2004, whereas, in other instances where this Court had granted relief, the selection process had concluded before 1st January, 2004.

13. The Court is not persuaded that the above distinction can constitute a ground for denying to the Petitioner coverage under the OPS. The fact remains that for an advertisement that came to be issued on 24th May, 2003, the Respondents only concluded the selection process in February, 2004. It is not the case of the Respondents that this delay was attributable to the Petitioners. Further, the OM dated 13th April, 2018, referred to hereinabove, does not recognize any such distinction for the purpose of deciding eligibility of

personnel to the OPS.

14. In that view of the matter, the impugned order dated 17th August, 2019 is hereby set aside. A direction is issued to the Respondents to extend the benefit of the OPS to the Petitioner 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 28, 2020/abc