

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 26th June, 2020

+ W.P.(C) 3765/2020

COMDT. S.K. SINGH PETITIONER

Through: Mr. Padma Kumar S. and Mr.
Himanshu Gautam, Advs.

Versus

UNION OF INDIA & ORS. ...RESPONDENTS

Through: Mr. Anil Dabas and Ms. Priyanka
Arora, Advs. for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

CM No.13462/2020 (for exemption from filing duly affirmed affidavits
and requisite court fees)

1. Allowed, subject to just exceptions and as per the extant rules.
2. The application is disposed of.

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3. The petitioner, having superannuated on reaching the age of 57 years, on 30th June, 2017, from the post of Commandant in the Indian Coast Guards, has filed this petition (i) impugning the rejection by the respondents vide communication dated 24th October, 2019 of the representation dated 26th July, 2019 of the petitioner; and, (ii) impugning Rule 20(1) of the Coast Guard (General) Rules, 1986, to the extent it prescribes retirement age of 57

years for officers of the rank of Commandant and below and seeks mandamus directing the respondents to enhance the age of retirement for Group 'A' officers up to the rank of Commandant, in the Coast Guards, from 57 years to 60 years and to release all consequential benefits and arrears to the petitioner.

4. It is the case of the petitioner, (i) that vide judgment dated 31st January, 2019 of this Court in W.P.(C) No.1951/2012 titled ***Dev Sharma Vs. Indo Tibetan Border Police & Anr.*** and in other connected petitions, filed by personnel of four Central Armed Police Forces (CAPF) i.e. Indo-Tibetan Border Police (ITBP), Central Reserve Police Force (CRPF), Sashastra Seema Bal (SSB) and Border Security Force (BSF), the relevant Rule applicable to each of the said forces and prescribing the age of retirement till the post of Commandant and below, of 57 years, was struck down as discriminatory and a direction was issued to the Ministry of Home Affairs to, in consultation with the CAPF concerned, take consequential steps by way of implementation of the judgment, including to arrive at a decision as regard the retirement age which will be uniform for all members of CAPF, irrespective of the rank, thus bringing all of them including the Central Industrial Security Force (CISF) and Assam Rifles, at par and fixing the date from which such changed retirement age will take effect; (ii) that the SLP filed against the aforesaid judgment being SLP (C) 11944/2019 was dismissed and review sought before the Supreme Court being Review Petition (Civil) 1555/2019 was also dismissed; (iii) that pursuant to the aforesaid, the Ministry of Home Affairs has vide OM dated 19th August, 2019 enhanced the retirement age in all CAPF comprising of CRPF, BSF, SSB and ITBP, and also in CISF and Assam Rifles, to 60 years, irrespective

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of rank and giving the said change effect qua the petitioners in W.P.(C) No.1951/2012 and other connected petitions aforesaid, depending upon whether they had been granted interim stay or not and with respect to those who had retired but not approached any Court, to have the benefit of fitment of pension on completion of age of 60 years; (iv) that certain personnel of the Indian Coast Guard filed a petition before the Madras High Court seeking similar relief as granted to the personnel of CAPF, Assam Rifles and CISF; (v) that though the said petition was allowed but on review being preferred by the respondents, the order allowing the petition was recalled and the petition disposed of vide order dated 10th March, 2020, with a direction to the respondents therein, to consider the case of the Indian Coast Guard also for enhancement of retirement age for the ranks below that of Commandant; (vi) that the petitioner made a representation dated 28th July, 2019 to the respondents to grant relief on the same lines as granted to personnel of CAPF, Assam Rifles and CISF; and, (vii) that the said representation was rejected vide impugned order dated 24th October, 2019 on the ground that as on that date, the Review Petition before the Madras High Court was still pending.

5. The counsel for the petitioner has argued on the same lines as pleaded in the petition.

6. We have enquired from the counsel for the petitioner, the cause of action for the petitioner to file the petition. The petitioner admittedly superannuated as far back as on 30th June, 2017 i.e. long prior to the judgment dated 31st January, 2019 of this Court in W.P.(C) No.1951/2012 aforesaid and for the first time made a representation on 26th July, 2019. The

cause of action if any with respect to the Rule prescribing the retirement age accrued to the petitioner on joining the service of Indian Coast Guard and / or in any case prior to attaining the age of superannuation. The petitioner at that time did not make any grievance with respect to the Rule prescribing the retirement age. In fact the petitioner did not make any grievance in this regard, for over two years after his superannuation also and made the representation for the first time, not after the judgment of this Court in W.P.(C) No.1951/2012 aforesaid but after the judgment dated 18th July, 2019 of the Madras High Court expressly pertaining to Coast Guard.

7. Insofar as the challenge to the order dated 24th October, 2019 rejecting the representation of the petitioner is concerned, the rejection therein was on the ground that the judgment of the Madras High Court on the basis whereof representation was made, was pending review and till the review was disposed of the representation of the petitioner could not be acceded to. The said communication rejecting the representation, now, after the Madras High Court has recalled its order, has lost its significance. The relief which has now been granted by the Madras High Court, is only for consideration and the time for which consideration itself was till 9th / 10th June, 2020. As of now, it is not known whether any decision has been taken or what is that decision and the counsel for the petitioner has not pleaded anything in that respect.

8. The counsel for the respondents appearing on advance notice states that no decision has been taken.

9. If no decision has been taken pursuant to the directions of the Madras High Court, the remedy if any of any person aggrieved therefrom is to

approach the Madras High Court and not to start a fresh round of litigation before this Court, in an attempt at forum hopping.

10. Faced therewith, the counsel for the petitioner contends that the Madras High Court has not even granted the reliefs as granted by this Court in W.P.(C) No.1951/2012 *supra* i.e. *inter alia* of quashing the Rule applicable to CRPF personnel. It is contended that the petitioner in the present petition has challenged the said Rule.

11. The petitioner cannot make a grievance with respect to the judgment of the Madras High Court before us and the remedy, if aggrieved therefrom and if available, is before the Supreme Court. As far as the challenge to the Rule, made by the petitioner now for the first time, we are of the view that it is highly belated and the petitioner does not have a cause of action therefor. The petitioner was fully satisfied with the Rule and superannuated in terms thereof and has filed this petition pursuant to his representation, only seeking the benefit of the judgment of the Madras High Court and which judgment has since been recalled / reviewed. Thus the petitioner cannot have a cause of action on the basis thereof. Of course, if it is decided in the petition filed by any person having cause of action, that personnel, even though have retired, are entitled to fixation of retirement benefits in accordance with the relief, if any granted, the petitioner would definitely be entitled thereto. Else, we reiterate, if the petitioner was aggrieved from the Rule, the entitlement of the petitioner was to challenge the same at the appropriate stage i.e. before his superannuation. The petition to that extent is belated and barred by laches.

12. The counsel for the petitioner next draws our attention to the order dated 19th December, 2019 of this Court in W.P.(C) No.13195/2019 and other connected petitions and vide which order, the respondents therein were directed to extend to the petitioners therein and anyone else similarly situated as them but had not come to the Court or not made representation, the same benefit as had been granted vide judgment dated 31st January, 2019 in W.P.(C) No.1951/2012 aforesaid.

13. Admittedly the petitioners in the said batch of writ petitions also did not include personnel of Indian Coast Guard, who are governed by their own Act and Rules. In a properly constituted petition, it will have to be considered, whether the personnel of the Indian Coast Guards are similarly situated as the personnel of CAPF and qua which as aforesaid, the petitioner has no cause of action.

14. The counsel for the petitioner then states that the order dated 10th March, 2020 of the Madras High Court directs the respondents to consider the date of retirement of those below Commandant and would not include the petitioner who has retired from the post of Commandant. However on enquiry, it is stated that the relevant Rule is for Commandant and below.

15. We have no doubt that in the consideration pursuant to the judgment of the Madras High Court, the case of the Commandants in Indian Coast Guard would also be considered and do not feel the need to entertain this petition on the said ground. Again, the flaw if any in the judgment/order of the Madras High Court, cannot be made subject matter of challenge before this Court.

16. We therefore refrain from entertaining this petition.

17. Dismissed.

18. It is however made clear that if any relief with respect to Indian Coast Guard is granted, the dismissal of this petition would not disentitle the petitioner, if otherwise eligible to the said relief, to the said relief.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JUNE 26, 2020
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