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

+ **W.P.(C) 9535/2019**

CHAMPAK KUMAR NAYAK

..... Petitioner

Through: Mr. Anil Kumar Sahu, Mr. Rakesh Kumar, Mr. Mohit Sharma and Mr. Harsh Upadhyay, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Ripu Daman Bhardwaj, CGSC with Mr. T.P. Singh, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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27.01.2020

1. The Petitioners, 150 in number, have filed the present petition seeking a direction to the Respondents/Shashastra Seema Bal ('SSB') to extend to them the benefits of the Old Pension Scheme ('OPS'), instead of the New Pension Scheme ('NPS').

2. The background facts are that the SSB issued an advertisement dated 1st June, 2003 inviting applications for 596 vacancies in the post of SSB Constable (GD). The Petitioners applied pursuant to the said advertisement to the said post and were recommended for appointment in December, 2003 itself.

However, each of the Petitioners was issued appointment letters much later i.e. at various dates between August and October, 2004.

3. The case of the Petitioners is that they are entitled to receive benefits under the OPS and not the NPS, as their recruitment process had completed by December, 2003 itself, and that the issuance of appointment letters to them well after 1st January, 2004 i.e. the date of coming into effect of the NPS, was a delay entirely owing to the Respondents. The Petitioners state they are similarly situated as personnel of other Central Armed Police Forces ('CAPFs'), who have been held entitled to the benefits under the OPS scheme by orders of this Court.

4. 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.

5. 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.”

6. 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.”

7. 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.

8. 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.

9. 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.

10. 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.

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

12. Accordingly, 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 27, 2020
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