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

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+ **W.P.(C) 5636/2018**

DR. SACHIN KUMAR Petitioner

Through: Mr Rajendra Prasad, Advocate

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr Ripu Daman Bhardwaj, CGSC for
UOI with Mr K. Kumar and Mr
Sonjeev Kumar, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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08.01.2020

1.The short question that arises for determination in the present petition, filed by Dr. Sachin Kumar who is presently working as Chief Medical Officer ('CMO') (SG) at the Base Hospital of the Indo-Tibetan Border Police ('ITBP') in Tigri Camp, Sangam Vihar, New Delhi, is whether the Petitioner is entitled to the benefit of the Old Pension Scheme ('OPS')?

2. The facts, which are not in dispute, are that against the post advertised in the year 2000-01, and on the basis of the examinations conducted by the Medical Officers Selection Board ('CPOs') 2000-01, the Petitioner was declared successful for appointment to the post of Medical Officer (Assistant Commandant) [MO (AC)] in the CPOs. By the time the Petitioner was issued the appointment letter, it was 31st October, 2003. By the said appointment letter, he was offered the post of MO (AC) and was required to send an acceptance of offer immediately and to report for duty on 24th

November, 2003.

3. The New Pension Scheme ('NPS') came into force on 1st January, 2004. The Petitioner, on account of illness, was unable to report for duty on 24th November, 2003 and requested for extension of time to join the post. This was accepted by the Respondents and he accordingly, joined the post of MO (AC) on 10th February, 2004. The Petitioner was subsequently promoted as CMO (Ordinary Grade) on 10th December, 2013.

4. On 1st January, 2016, the seniority list of CMOs (OG), ITBP was published in which the Petitioner's name figured at serial number 18. In another seniority list published on 10th January, 2017, the Petitioner's name figured at serial number 7. The Petitioner made a representation dated 28th January, 2017, stating that in terms of the judgment dated 12th February, 2015 passed by this Court in W.P.(C) No. 3834/2013 (*Parmanand Yadav v. Union of India*), he too should be the granted benefits of the OPS, although he had joined after 1st January, 2004. His representation was rejected by a memorandum dated 13th July, 2017 issued by the Director General, ITBP. The subsequent legal notice was also refuted and thereafter, the present petition came to be filed.

5. Accepting the decision of this Court in *Parmanand Yadav v. Union of India* (*supra*) and the subsequent decision dated 27th March, 2017 in W.P.(C) No. 2810/2016 (*Inspector Rajinder Singh v. Union of India*), an office order dated 22nd November, 2018 was issued by the Headquarters, Chandigarh Range of the CRPF, where reference was made to Signals dated 16th July and 23rd October, 2018, whereby "all candidates selected through

the advertisement issued prior to 2/12/2003 (i.e. before the Notification issued for New Pension Scheme by the Govt. of India) need to be treated as members of the Old Pension Scheme under the Central Civil Services (Pension) Rules, 1972”.

6. Learned counsel for the Petitioner states that the same relief ought to be given to those of the personnel of the ITBP, another para-military force, who got selected pursuant to the advertisements issued prior to 2nd December, 2003, but were, for reasons beyond their control, unable to join or were not allowed to join prior to 1st January, 2004. He also draws attention to another order dated 12th November, 2008 issued by the CRPF granting relief on par with those in whose favour the judgments in *Parmanand Yadav v. Union of India* (*supra*) and *Inspector Rajinder Singh v. Union of India* (*supra*) were delivered.

7. Learned counsel for the Respondents points out that the above orders were issued by the CRPF and not the ITBP. Secondly, it is submitted that it is on the Petitioner’s own request that he was permitted to join the post after 1st January, 2004 and that this was not on account of any omission on the part of the Respondents. It is submitted that therefore, the Petitioner ought not to be granted the benefit of the OPS.

8. As far as the first submission is concerned, this Court has in a number of its decisions emphasized the requirement of uniformity of treatment for all members of the Central Armed Police Forces (‘CAPFs’), whether it be the CRPF, Border Security Force or the ITBP, or even the Sashastra Seema Bal

(‘SSB’) or the Assam Rifles. The Court sees no reason why the members of the ITBP should be treated differently from the members of the CRPF as regards the grant of the benefit of the OPS. In fact, this Court has in several petitions, filed by the ITBP personnel themselves, granted the benefit of OPS in circumstances similar to the one in the cases of *Parmanand Yadav v. Union of India* (*supra*) and *Inspector Rajinder Singh v. Union of India* (*supra*).

9. As far as the second submission is concerned, the Court finds that the inability of the Petitioner to join the post prior to 1st January 2004, was for *bonafide* medical reasons which were accepted by the Respondents themselves. The failure of the Petitioner to join the post before 1st January, 2004 cannot therefore be said to be a deliberate omission on his part so as to deny him the benefit of the OPS.

10. For all of the aforementioned reasons, the writ petition is allowed. The memorandum dated 13th July, 2017 rejecting the Petitioner’s representation for grant of OPS is hereby set aside. The Respondents are directed to issue the appropriate orders, granting the benefit of the OPS to the Petitioner, within a period of eight weeks from today. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 08, 2020/rd