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

+ W.P.(C) 3734/2021 & CM APPL. 11274/2021

NARESH KUMAR AND ORS. Petitioners
Through Mr.K.K.Sharma, Advocate.

versus

UNION OF INDIA AND ORS.Respondents
Through Mr.Vikrant N.Goyal with
Mr.Anshuman, Advocates for R-1.

% Date of Decision: 22nd March, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed challenging orders dated 18th December, 2019 & order dated 05th February, 2020 whereby the respondents have denied the benefits of enhanced age of superannuation to the petitioners.
2. Petitioners also seek a direction to the respondent nos. 2 to 4 to give similar relief to the petitioners which this Court has given in W.P.(C) No.13195/2019 titled "*Bharat Singh & Ors. Vs. Union of India and Ors.*" vide order dated 19th December, 2019.
3. Learned counsel for the petitioners states that the issue raised in present writ and the relief sought by the petitioners herein is squarely covered by the judgment dated 19th December, 2019 as passed by this Court

in ***Bharat Singh & Ors.*** (supra).

4. He emphasizes that the petitioners herein had not crossed the age of 60 years as on 31st January, 2019 i.e. the date of judgment in W.P. (C) No.1951/2012 titled “***Dev Sharma vs. Union of India and Ors.***”.

5. Issue notice.

6. Mr.Vikrant N.Goyal, Advocate accepts notice on behalf of the respondents.

7. Having heard learned counsel for the parties, this Court finds that the learned predecessor Division Bench of this Court in ***Dev Sharma*** (supra) has held as under:-

“70. The Court recognises that there are bound to be implications- both organisationally and financially - as a result of the implementation of this decision. The Respondents shall, unless this judgment is further challenged and subject to any interim order in such proceedings, implement it across the board to all members of the CAPFs without insisting on each of them approaching the Court for identical relief. For that matter, even though the members of the SSB have not yet approached this Court, if they are identically placed as these Petitioners, it should be implemented for them as well.

71. Accordingly a direction is hereby issued that within a period of four months from today the Respondents i.e. the MHA in consultation with the CAPFs concerned will take all consequential steps by way of implementation of this judgment. This will include arriving at a decision as regards the retirement age which will uniform for all members of the CAPFs irrespective of their rank thus bringing all of them, including the CISF and the AR, on par and fixing the date from which such changed retirement age will take effect.

72. The Court clarifies that this judgment will not have the effect of reinstatement of the Petitioners who have already retired. In view of the principle of „no work, no pay“, it will also not have the effect of their being entitled to any arrears of pay for any further period

beyond their retirement. However, for the purposes of calculation of retiral benefits, including pension and gratuity, the differential period (in the event of enhancement of the retirement age) will be added to period of service actually rendered by each of them. In other words, their notional date of retirement would be arrived at by adding the differential years to their actual date of retirement. On such calculation they would be entitled to the arrears of retirement benefits after adjusting the amount already paid.”

8. Subsequently, the Ministry of Home Affairs had issued an office order dated 19th August, 2019 increasing the retirement age to 60 years.

9. In another batch of writ petition being W.P. (C) No. 13195/2019 in **Bharat Singh & Ors.** (supra), the same Division Bench on 19th December, 2019 had clarified as under:-

9. It requires to be acknowledged that the Respondents have accepted part of the above directions by making the order dated 19th August, 2019 applicable across the board to all CAPFs, including SSB, the personnel of which were not before the Court. Having done so, it does not stand to reason that the Respondents should confine the benefit of paragraph 72 of the judgment in Dev Sharma (supra) and batch only to the “Petitioners” in those cases, and not to all persons across the board in all CAPFs who had retired prior to 31st January, 2019 and who had not crossed 60 years as of that date

10. It requires to be clarified that the benefit of paragraph 72 of the judgment of this Court in Dev Sharma (supra) will be available only to those who had not crossed 60 years of age as on 31st January, 2009. It is further clarified that the present order will not disturb the benefit already extended in terms of para 72 of that judgment and in terms of Para 2 (c) of the order dated 19th August 2019 to any of the Petitioners in the Dev Sharma batch, who may have crossed the age of 60 years as on 31st January 2019.

11. A direction is accordingly issued to the Respondents to extend to the present Petitioners, and anyone else who is similarly placed but has not come to the Court or not yet made a representation to

the Respondents, the benefit of paragraph 72 of the order of this Court. In other words, the benefit of para 2 (c) of the order dated 19th August, 2019 would be available to all those in the CAPFs who retired prior to 31st January 2019 provided that they had not crossed the age of 60 years as on 31st January, 2019.

12. The necessary orders be issued within 12 weeks from today.”

10. Keeping in view the aforesaid judgments and the office order dated 19th August, 2019 as well as the fact that the petitioners had not crossed the age of 60 years as on 31st January, 2019, this Court quashes the impugned orders dated 18th December, 2019 & 05th February, 2020 and directs the respondents to decide the petitioners’ legal notice dated 17th January, 2020 afresh in accordance with the aforesaid mandate of law and the office order dated 19th August, 2019 within eight weeks.

13. With the aforesaid directions, present writ petition along with pending application stands disposed of.



MANMOHAN, J

ASHA MENON, J

**MARCH 22, 2021
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