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

+ **W.P.(C) 14335/2021**

KAILASH CHAND PANDEY & ORS. Petitioners
Through: Mr. Mahesh Srivastava and
Mr. Vaibhav Manu Srivastava,
Advocates.

versus

UNION OF INDIA & ORS. Respondents
Through: Ms.Nidhi Banga, Advocate..
Mr.Hirender Singh (SSB)

% Date of Decision: 15th December, 2021.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

MANMOHAN, J. (Oral)

1. Present writ petition has been filed challenging the notification dated 19th August, 2019, Memorandum dated 05th February, 2021 and order dated 26th December, 2019 issued by the Ministry of Home Affairs. Petitioner also seeks directions to the respondents to calculate the pension of the petitioners by adding three years of service from the date of their retirement and thereby revise the pension, gratuity and other pensionary benefits to the petitioners.
2. Learned counsel for the Petitioners states that the petitioners superannuated after attaining the age of 57 years as per Rule 43 of CRPF Rules. He states that this Court struck down Rule 43 of CRPF Rules as unconstitutional and illegal vide judgment dated 31st January, 2019 in the case of *Dev Sharma Vs. Indo Tibetan Border Police & Anr., WP(C)*

1951/2012 and directed the Union of India to fix the age of superannuation in respect of employees recruited under CAPF.

3. He further states that the Ministry of Home Affairs vide notification dated 19th August, 2019 extended the age of superannuation from 57 years to 60 years and granted benefits to those employees who approached the Court as mentioned in Para 2(d) of the aforesaid notification.

4. He further states that one of the petitioners herein requested for extending the age of superannuation from 57 years to 60 years in compliance with the notification dated 19th August 2019. However, the respondents rejected the representation vide memorandum dated 26th December, 2019 on the ground of benefits of enhancement of age are to be extended to only those retirees who had retired between 31st January, 2019 to 19th September, 2019.

5. He submits that the aforesaid notification and memorandum discriminates the employees who retired three years prior from the date of judgment dated 31st January, 2019 in (***Dev Sharma &Ors. vs. Union of India &Ors.***) and had crossed the age of 60 years.

6. He further submits that the aforesaid notification and memorandum discriminates the employees who have approached the Court and those who have not approached the Court of law regarding their age of their superannuation.

7. Having heard learned counsel for the petitioner, this Court finds that the issue raised in the present writ petition is no longer *res integra* as the Division Bench which had pronounced the judgment in ***Dev Sharma Vs. ITBP*** (supra) had itself subsequently clarified in the case of ***Bharat Singh & Ors. Vs. Union of India & Ors., WP(C) 13195/2019*** that benefit of

paragraph seventy two of the judgment in **Dev Sharma Vs. ITBP** (supra) as well as the Government of India's order dated 19th August, 2019 would be applicable to those in CAPFs, who had not crossed the age of 60 years as on 31st January, 2019. The relevant portion of the judgment in **Bharat Singh & Ors. Vs. Union of India & Ors.** is reproduced hereinbelow:

*“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.”

8. Since the petitioners had crossed the age of 60 years prior to 31st January, 2019, they would not be entitled to the benefit in accordance with

the judgment passed by the Division Bench in *Bharat Singh & Ors. Vs. Union of India & Ors.* (supra).

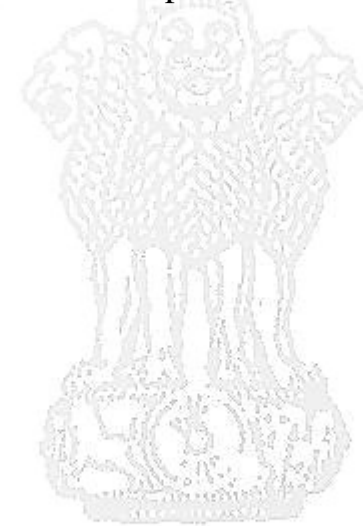
9. Further, this Court is of the view that the present writ petition cannot be used to challenge coordinate Division Bench's judgment in *Dev Sharma* (supra) and *Bharat Singh* (supra) on grounds of being arbitrary and/or discriminatory or violative of Article 14 of the Constitution of India, especially when the principle that benefit of the judgments shall be confined to those who had approached the Court is well recognised.

10. Consequently, the present writ petition is dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

DECEMBER 15, 2021
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