

12

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 2834/2021

RAJENDER SINGH & ORS.

..... Petitioners

Through: Mr. Saurabh Ahuja, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Rajesh Kumar, Advocate with

Mr. Syed Husain Adil Taqvi and

Ms. Satwana, Advocates with

Mr. Sanjay Kuamr Yadav, Dy. Judge

AG.

%

Date of Decision: 18th 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):

CM APPL. 8524/2021

Allowed, subject to just exceptions.

W.P.(C) 2834/2021

1. Present writ petition has been filed primarily seeking a direction to the respondents to extend the benefit of the judgment dated 31st January 2019 passed by this Court in *Dev Sharma vs. ITBP & Anr., W.P. (C) No. 1951/2012* to the petitioners by extending their respective dates of

retirement to the age of sixty years and consequently recalculating their retiral benefits including pension and gratuity. Petitioners also seek direction to the respondents to add the differential period to the period of service actually rendered by the Petitioners and pay the arrears of retiral benefits and other consequential benefits to the petitioners.

2. Learned counsel for the petitioners states that the Petitioners were appointed as Constable (General Duty) in the ITBP and retired from service on attaining the age of superannuation prior to the pronouncement of the judgment in ***Dev Sharma vs. ITBP & Anr.*** (supra).

3. He states that identically placed persons as the petitioners challenged Rule 8 (a) of the ITBP General Duty Rules in Group-'A' post rules before this Court in ***Dev Sharma vs. ITBP & Anr.*** (supra). He states that this Court vide judgment dated 31st January 2019 struck down Rule 8 (a) (supra) being violative of Articles 14 & 16 of the Constitution of India and held that there should be a uniform age of retirement of CAPFs personnel irrespective of rank.

4. He states that the Special Leave Petition preferred by the respondents against the Writ Petition was also dismissed by the Apex Court and the respondents vide circular dated 19th August 2019 implemented the judgment dated 31st January 2019.

5. He emphasises that the petitioners have erroneously been denied the benefit of the said judgement by the respondents on the ground that they had attained the age of sixty years prior to its pronouncement. He further states that the petitioners in the said case, namely, ***Dev Sharma vs. ITBP & Anr.*** (supra) had been given benefit under the said judgement even though he had crossed the age of sixty years as on 31st January, 2019. The relevant portion

of the judgment in *Dev Sharma vs. ITBP & Anr.* (supra) relied upon by learned counsel for the petitioners is reproduced hereinbelow:-

“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.”

6. Learned counsel for the petitioners states that the petitioners are better placed than **Dev Sharma** who had retired on 31st July, 2011, as petitioners had retired between 31st August, 2015 and 31st December, 2015.

7. *Per contra*, learned counsel for respondents contends that the Division Bench which had pronounced the judgment in the case of **Dev Sharma vs. ITBP** (Supra) has itself subsequently clarified in the case of **Bharat Singh & Ors. vs. Union of India & Ors., W.P.(C) 13195/2019** that benefit of paragraph seventy two of the said judgement would be available only to those who had not crossed the age of sixty years as on 31st January, 2019. The relevant portion of the judgement in **Bharat Singh & Ors. vs. Union of India & Ors.** (supra) 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. In rejoinder, learned counsel for petitioners submits that the judgment in the case of ***Dev Sharma vs. ITBP*** (Supra) is a judgment *in rem* and all judgments have to be given retrospective effect unless and until they specifically state that they are to be prospectively applicable. [See: ***M.A. Murthy vs. State of Karnataka & Ors.***, AIR 2003 SC 3821 and ***State of Uttar Pradesh & Ors. vs. Arvind Kumar Srivastava & Ors.*** 2014(6) SLR 456 (S.C.)].

9. He lastly submits that the classification between the officers on the basis of their age and limiting the benefits to those who had not crossed the age of sixty years as on 31st January, 2019 is arbitrary.

10. Having heard learned counsel for the parties, this Court finds that the Division Bench which pronounced the judgment in ***Dev Sharma vs. ITBP*** (Supra) had itself subsequently clarified in ***Bharat Singh & Ors. vs. Union of India & Ors.***(Supra) that the judgment in ***Dev Sharma vs. ITBP*** (Supra) as well as that of the Government order dated 19th August, 2019 would be applicable to those in the CAPFs, who had not crossed the age of sixty years as on 31st December, 2019. Since the petitioners had crossed the age of sixty years prior to 31st January, 2019, they would not be entitled to the benefit in accordance with the Division Bench judgment in ***Bharat Singh & Ors. vs. Union of India & Ors.***(Supra). Consequently, the issue raised in the present

writ petition is not *res integra*. Further, this Court is of the view that the present writ petition cannot be used to challenge coordinate Division Bench's judgments in *Dev Sharma vs. ITBP* (Supra) and *Bharat Singh & Ors. vs. Union of India & Ors.* (Supra) on grounds of being arbitrary and/or violative of Article 14 of the Constitution of India. Consequently, the present writ petition is dismissed.

MANMOHAN, J

ASHA MENON, J

MARCH 18, 2021

js/rn



न्यायमेव जयते