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

+ **W.P.(C) 3923/2021 & C.M.No.11793/2021**

SH SAGAR SINGH PATHANIA & ORS. Petitioners

Through: Mr. Pawan Reley, Mr. Vinod Sharma,
Advocates

versus

UNION OF INDIA & ORS. Respondents

Through: Ms. Aakanksha Kaul, Mr. Manek
Singh, Advocates

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Date of Decision: 24th 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 with the following prayers:-

“a. Issue a writ of mandamus or any other appropriate writ to set aside/quash the letters dated 15.01.2020, 17.10.2020, 5.11.2020, 11.11.2020, 05.02.2021, 09.02.2021 marked as Annexure P-7, Annexure P-8 Annexure P-9, Annexure P-10, Annexure P-11, Annexure P-12 Respectively.

b. Issue a writ of mandamus or any other appropriate writ or directions directing the respondents to treat the age of superannuation of petitioners as 60 years and thereby grant them retrial/financial benefits in terms of paragraph 72 of judgment dated 31.01.2019 passed by this Hon'ble Court in W.P. (C) NO.1951/2012 titled as “Dev Shanna Vs. Union of India & Ors.”.

c. Issue a Writ of Mandamus or any other appropriate writ or directions directing the concerned respondents for re-fixing the pension of the petitioners after granting the retirement benefit as mentioned under the office order dated 19th august 2019, bearing no. F.N.45020/1/2019/legal-I, issued by the government of India through ministry of home affairs;

d. Pass any such other orders as it may deem fit to this Hon'ble Court in the facts and circumstances of the case."

2. The relevant portions of the two impugned orders dated 5th February 2021 and 9th February 2021 are reproduced herein below:

A. Memorandum dated 05th February, 2021

"In this regard, it is informed that Ministry of Home Affairs vide Order No.F.N. 45020/12019/Legal-I dated 17.12.2020 (order is also available in the MHA's website) received through FHQ SSB New Delhi vide OM No.I/81/2012/SSB/Pers-V (Org)(136) 5805-40 dated 28.12.2020 has clarified that —

- a) The benefits of enhancement in the age of retirement as granted vide para-72 of the judgment of Hon'ble Delhi High Court dated 31.01.2019 in Writ Petition (C) No. 1951/2012 in the matter of I Dev Sharma and Ors V. UOI, would be available to all those in CAPFs who had retired prior to 31.01.2019 provided that they had not crossed the age of 60 years as on 31.01.2019.*
- b) The benefits already extended vide para 2(c) of this Ministry's order ibid dated 19.08.2019 to the petitioners in the Dev Sharma's matter (supra) shall not be disturbed.*

Hence, as all above retirees have already crossed the age of 60 years before 31.01.2019 and they are not eligible for benefits of enhancement in the age of retirement of 60 years. For information please."

B. Letter dated 09th February, 2021 (Annexure 12)

“With reference to your letter, dated 18.12.2020 regarding Grant of pensionary / retired benefits on completion of 60 years as per Hon’ble High Court judgment dated 31.01.2019.

As per concluding para of judgment of Hon’ble High Court, pensioner/retirement benefits is admissible only those CAPFs who retired prior to 31.01.2019 provided they not crossed the age of 60 years as on 31.01.2019.

Keeping view of above direction, the benefits is not admissible to you.”

3. Learned counsel for the petitioners states that the petitioners are similarly situated as the petitioners in the case of ***Dev Sharma vs. ITBP & Anr., W.P. (C) No. 1951/2012***. He submits that the action of respondents of not treating the age of superannuation of petitioners as 60 years and not granting them retiral/financial benefits in terms of paragraph 72 of judgment in ***Dev Sharma*** (supra) is unjust and arbitrary and thus violative of Article 14 of Constitution of India. Paragraph 72 of the said judgement is reproduced herebelow:

“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.”

4. Having heard learned counsel for the petitioners, this Court finds that the Division Bench which pronounced the judgment in **Dev Sharma** (supra) had itself subsequently clarified in **Bharat Singh & Ors. vs. Union of India & Ors.**, WP(C) 13195/2019, dated **19th December, 2019** that the judgment in **Dev Sharma** (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 January, 2019.

5. Since the petitioners had crossed the age of sixty years prior to 31st January, 2019, therefore they are not entitled to the benefit of increased retirement age in accordance with the Division Bench judgment in **Bharat Singh & Ors.** (supra). The relevant portion of the judgment in **Bharat Singh & 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.”

6. Consequently, the issue raised in the present writ petition is no longer *res integra*.

7. In view of the aforesaid, the present writ petition along with pending application is dismissed.

MANMOHAN, J

ASHA MENON, J

MARCH 24, 2021
Pkb/KA