

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

% **Date of decision: 20th July, 2021**

+ **W.P.(C) 6737/2021**

OM PRAKASH SINGH & ORS. Petitioners

Through: Mr. K. K. Sharma, Adv.

Versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Farman Ali & Mr. Athar Raza
Farooquei, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

AMIT BANSAL, J.

CM No.21251/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. The present petition has been filed by 19 petitioners working as Inspectors / Sub Inspectors with the respondents Central Reserve Police Force (CRPF). It has been pleaded by the petitioners that (i) they are working with the respondents as Inspectors/ Sub Inspectors and earlier the date of superannuation for the petitioners was 57 years; (ii) it was held in the judgment dated 31st January, 2019 by Division Bench of this Court in W.P.(C) No.1951/2012 titled *Dev Sharma Vs. Indo Tibetan Border Police*,

that there will be a uniform age of superannuation in all Central and Allied Police Forces (CAPFs) of 60 years irrespective of rank; (iii) the SLP against the said judgment was dismissed by the Supreme Court on 10th May, 2019 and the review petition was also dismissed on 16th July, 2019 by the Supreme Court; (iv) with effect from 31st January, 2019, the superannuation age in respect of all personnel including the petitioners stood enhanced from 57 years to 60 years; (iv) all the petitioners superannuated between 31st January, 2019 and 30th June, 2019, as the respondents failed to implement the aforesaid judgment. ; (v) on 19th August, 2019, Ministry of Home Affairs (MHA) finally issued an order implementing the judgment of this Court in ***Dev Sharma*** supra; (vi) in terms of the aforesaid order, all the petitioners re-joined the respondents CRPF between 1st October, 2019 and 20th November, 2019 after returning the pensionary benefits received by them after superannuation at the age of 57 years; (vi) after re-joining, they were denied pay and allowances for the intervening period, from the date of superannuation at the age of 57 years to the date of re-joining by the respondents on the principle of “***no work, no pay***”.

4. The present petition has been filed by the petitioners praying that the intervention period i.e. from the date of superannuation upon attaining the age of 57 years to the date of re-joining be regularised as “duty” and pay and allowances for the intervening period along with all other consequential benefits be given to all the petitioners.

5. It was contended by the counsel for the petitioners that (i) the petitioners are not covered by para 72 of the judgment in ***Dev Sharma*** supra as they had not superannuated before the said judgment was

delivered. (ii) that delay was on part of the respondent to implement the judgement in **Dev Sharma** supra (iii) the petitioners are being penalised for the delay caused by the respondents in implementing the judgment in **Dev Sharma** supra (iv) that other similarly placed personnel filed petitions before this court and were granted interim stay against being superannuated at the age of 57.

6. Since the counsel for the petitioner has placed emphasis on para 72 of judgment in **Dev Sharma** supra, the same is being reproduced below:

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.

7. Strictly speaking, the aforementioned paragraph would not apply to the petitioners for the reason that the petitioners had not superannuated before the said judgment was passed. However, the principle adopted therein of ‘**no work, no pay**’ will be squarely applicable to the case of the petitioners as well. Admittedly, the petitioners did not work for the period when they were superannuated upon reaching the age of 57 years till the time they were reinstated in October – November, 2019. Therefore, keeping in mind the principle of ‘**no work, no pay**’, as spelt out in para 72 above,

the petitioners would not be entitled to emoluments for the said intervening period.

8. If the respondents CRPF had wrongly superannuated the petitioners even after the judgment in the case of ***Dev Sharma*** supra was pronounced, it was for the petitioners to challenge the same. The counsel for the petitioners in the course of arguments has submitted that some of the similarly placed personnel of CRPF had in fact challenged the said retirement and this Court had granted stay of retirement. Admittedly, the petitioners did not challenge the said superannuation and kept quiet about it. By not challenging the said decision, the petitioners would be deemed to have accepted their superannuation at age of 57. Equity comes to the aid of those who are vigilant, not those who sleep over their rights. Reference in this regard maybe made to ***Pundlik Jalam Patil vs. Executive Engineer Jalgaon Medium Project and another*** 2008 SCC Online SC 1623, ***S.S Balu and Another vs. State of Kerala and Others*** (2009) 2 Supreme Court Cases 479; ***Ghulam Rasool Lone vs. State of Jammu and Kashmir and Another*** (2009) 15 Supreme Court Cases 321.

9. It was next contended on behalf of the petitioners that they should at least be refunded the pensionary benefits that were granted to them post superannuation at the age of 57 years and which they returned to the respondents before re-joining, being one of the pre-conditions of re-joining. The said claim of the petitioner cannot be accepted in terms of the categorical language of the Order dated 19th August, 2019 passed by MHA, pursuant to which the petitioners re-joined. The relevant portion of the said order is reproduced herein below:

“d) As regards those whose date of superannuation fell between the date of judgment and the date of issue of order:

i. Those who have got interim stay will be deemed to have not superannuated and will be governed by age as at (a) above.

ii. Those who have retired but did not approach any Court will be governed by the Court order dated 04.02.2019 clarifying para-72 of original order dated 31.01.2019 in Dev Sharma case (supra) and hence will be entitled to exercise options either for joining after returning all pensionary benefits, if received or will have option to have benefit of fitment of pension on completion of age of 60 years.

10. In terms of para *ii.* above, the petitioners had two options, re-joining after returning all pensionary benefits it received or to have the benefit of fitment of pension on completion 60 years. The petitioners took the former option, and they re-joined after returning the pensionary benefits. Having chosen the said option, the petitioner cannot now, be heard to say otherwise. The petitioners have not challenged the said Order in these proceedings. Therefore, the petitioners would not be entitled for refund of the pensionary benefits returned by them.

11. There is no merit in the present petition.

12. Dismissed.

AMIT BANSAL, J

RAJIV SAHAI ENDLAW, J

JULY 20, 2021

‘gsr’