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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 2nd December, 2021

+ W.P.(C) 5079/2020

BHARAT SINGH & ORS. Petitioners
Through Ms.Ankita Patnaik, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through Ms.Suparna Srivastava, CGSC,
Mr.Tushar Mathur, Adv.

+ W.P.(C) 9098/2020

RAMESH CHAND MEENA & ORS Petitioners
Through Mr.Mananjay Kumar Mishra,
Adv.

versus

UNION OF INDIA & ORS Respondents
Through Mr.R.V.Sinha, SCGC with
Mr.Amit Sinha, CGC, Mr.A.S.
Singh and Ms.Sharanya Sinha,
Advs.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. These petition(s) have been filed by the petitioner(s) primarily seeking the benefit of the Old Pension Scheme in accordance with the Central Civil Services (Pensions) Rules, 1972.

2. In a nutshell, the case of the petitioners is that as their recruitment process was initiated prior to 31.12.2003 and only for

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administrative reasons assignable to the respondents, their final appointment came about after 01.01.2004, by which time the New Pension Scheme introduced vide Notification dated 22.12.2003 had come into operation, the petitioners cannot be denied the benefit of the Old Pension Scheme.

3. As both the petitions raise a similar grievance, they are being decided by this common judgment.

4. In WP(C) 5079 of 2020, the respondent no. 3 therein had published an advertisement for recruitment to the post of Assistant Commandant vide Special Selection Board (CPOs-2002) dated 01/07.06.2002. The petitioners applied for the said post. The selection process involved various stages like written examination, the Physical Efficiency Test ('PET'), medical examination and interview. It is the case of the petitioners that for some of the candidates, including some of the petitioners, the selection process was completed by October-November, 2003 itself while for some, it was concluded in 2004, however, the reason for the delay was not attributable to the petitioners. The respondents published the result in the month of May 2004 and offered appointment to the petitioners.

5. In WP(C) 9098 of 2020, it is the case of the petitioners that the respondent no. 1 ('Border Security Force') had issued an advertisement inviting applications from eligible candidates for recruitment as BSF Constable (General Duty) in the month of August 2003. The petitioners had applied for the said post. The selection process consisted of a Physical Efficiency Test followed by a written examination and interview. The selection was subject to a medical test

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of the candidates. It is the case of the petitioners that the selection process was completed in the month of November 2003 itself, however, for the reasons attributable to the respondents and being administrative in nature, the call letters were issued only in the month of February 2004, that is, after the coming into force of the New Pension Scheme.

6. The learned counsels for the petitioners place reliance on the judgments of this Court in support of their submissions that the issues involved in these petitions is no longer *res-integra* and has been settled by the following judgments of this Court, with the Special Leave Petitions (hereinafter referred to as ‘SLP’) there-against also being dismissed by the Supreme Court:

- i. Judgment dated 27.03.2017, passed in WP(C) 2810 of 2016, titled ***Inspector Rajendra Singh & Ors. v. Union of India & Ors.***

[SLP dismissed vide Order dated 08.01.2018, passed in SLP(C) Diary No(s). 39335 of 2017, titled ***Union of India & Ors. v. Inspector Rajendra Singh & Ors.***]

- ii. Judgment dated 12.02.2019, passed in WP(C) 6680 of 2017, titled ***Tanaka Ram & Ors. v. Union of India & Ors.***

[SLP dismissed vide Order dated 02.09.2019, passed in SLP(C) Diary No(s). 25228 of 2019, titled ***Union of India & Ors. v. Tanaka Ram & Ors.***]

- iii. Judgment/Order dated 09.04.2019, passed in WP(C) 1358 of 2017, titled ***Shyam Kumar Choudhary & Ors. v. Union of India & Ors.***

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[SLP dismissed vide Order dated 27.09.2019, passed in SLP(C) Diary No(s). 31539 of 2019, titled ***Union of India & Ors. v. Shyam Kumar Choudhary & Ors.***]

[Review Petition bearing no. 21889 of 2020 in SLP(C) 23568 of 2019, was also dismissed vide Order dated 24.11.2020.]

- iv. Judgment dated 15.01.2021, passed in WP(C) 8208 of 2020, titled ***SI/MIN M.R. Gurjar & Ors. v. Union of India & Ors.***
- v. Judgment dated 15.02.2021, passed in WP(C) 1569 of 2021, titled ***Jaswinder Singh & Ors. v. Union of India & Ors.***
- vi. Judgment/Order dated 28.01.2020, passed in WP(C) 756 of 2020, titled ***Dr. Davinder Singh Brar v. Union of India & Ors.***

7. The learned counsels for the petitioners further submit that, in fact, the batchmates of the petitioners had also filed a writ petition before this Court, being WP(C) 6989 of 2020, titled ***Vipul Pandey & Ors. v. Union of India & Ors.***, which has also been allowed by this Court vide Order dated 06.11.2020. They submit that the petitions filed by the candidates of subsequent advertisements have also been allowed by this Court and they have been granted the benefit of the Old Pension Scheme.

8. On the other hand, the learned counsels for the respondents submit that as the appointment of the petitioners was post 01.01.2004, by which time the New Pension Scheme had come into force, they shall be governed by the New Pension Scheme. They submit that it is

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the date of the appointment that determines the Rules applicable to the employees. In this regard, they place reliance on the judgments of the Supreme Court in ***Jagdish Ch. Patnaik & Ors. v. State of Orissa & Ors.***, (1998) 4 SCC 456; and ***Roshan Lal Tandon v. Union of India***, AIR 1967 SC 1889. They further submit that this Court, by its judgment dated 03.05.2012, passed in WP(C) 2520 of 2012, titled ***Shailendra Kumar & Ors. v. Delhi High Court (Through Registrar General) & Anr.***; and judgment dated 02.11.2012, passed in WP(C) 3827 of 2012, titled ***Navin Kumar Jha v. Union of India & Ors.***, have also held that it is the date of the appointment that is relevant for determining whether the Old Pension Scheme or the New Pension Scheme will be applicable to the employees.

9. The learned counsels for the respondents further rely upon the judgment of the Supreme Court in ***Col. B.J. Akkara (Retd.) v. Government of India & Ors.***, (2006) 11 SCC 709, to submit that merely because the judgments of this Court have been implemented in case of other employees, the petitioners cannot seek an advantage thereof, especially where the respondents have issued an Office Memorandum dated 17.02.2020 clearly mentioning that the Old Pension Scheme will not apply to the employees who were given offers of employment after 01.01.2004.

10. They have further placed reliance on the judgment of the Supreme Court in ***Union of India & Ors. v. Rakesh Kumar***, (2001) 4 SCC 309, to submit that merely because some employees have received benefit due to an erroneous interpretation of a Scheme, others cannot seek similar benefit.

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11. We have considered the submissions made by the learned counsels for the parties.

12. At the outset, it is to be noted that the learned counsels for the respondents do not deny that the delay in appointment was in no manner attributable to the petitioners.

13. The issue involved in the present batch of petitions is no longer *res integra*. In the case of certain constables of the Border Security Force, this Court, in its judgment in ***Tanaka Ram*** (supra), allowed the prayer of the petitioners and permitted them to avail of the benefit of the Old Pension Scheme. It was held that the option to continue the Old Pension Scheme should be extended to all those who had been selected in the examination conducted in 2003 but were issued call letters only in January or February 2004. As already mentioned hereinabove, an SLP against the said judgment has been dismissed by the Supreme Court vide Order dated 02.09.2019.

14. This Court in ***Shyam Kumar Choudhary*** (supra) allowed similar petitions vide judgment dated 09.04.2019 against which the respondents had again filed an SLP bearing no. 31539 of 2019, which was also dismissed on 02.09.2019. The respondents thereafter chose to file a Review Petition bearing no. 21889 of 2020, before the Supreme Court and the same was also dismissed on merits vide Order dated 24.11.2020.

15. Following the judgment of ***Shyam Kumar Choudhary*** (supra), the learned Predecessor Division Bench of this Court, in ***Niraj Kumar Singh & Ors. v. Union of India & Ors.***, WP(C) 13129 of 2019,

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granted similar benefit to seventeen petitioners who had applied to the post of Sub-Inspector in Central Police Organisations pursuant to an advertisement dated 21.06.2003 even when the written examination and the physical efficiency test was held in November 2003, the medical examination was held in January-February, 2004 and the final result was declared in May 2004. These seventeen petitioners were issued an offer of appointment on 02.06.2005 and on accepting the same, the appointment letter was issued on 14.07.2005 for joining the Sashastra Seema Bal.

16. Another Coordinate Bench of this Court, in **Vipul Pandey** (supra) and **Ithape Pandit Kisanrao & Ors. v. Union of India & Ors.**, WP(C) 6548 of 2020, vide judgment dated 06.11.2020, was pleased to allow the said writ petitions for grant of the Old Pension Scheme by following the judgment in **Shyam Kumar Choudhary** (supra).

17. The above judgments were followed by this Court in **SI/MIN M.R. Gurjar** (supra) and in **Jaswinder Singh** (supra), authored by one of us (Manmohan, J.).

18. We see no reason to differ from the above binding precedents of this Court.

19. The judgment of **Shailendra Kumar** (supra) relied upon by the learned counsels for the respondents was distinguished by this Court in **Tanaka Ram** (supra). The same distinction applies to the facts of the present petitions as well.

20. In **Jagdish Ch. Patnaik** (supra), the Supreme Court was considering the *inter-se* the seniority issues between the direct recruits and those recruited through promotion. The same would, therefore,

have no application to the facts of the present case. The judgment ***Roshan Lal Tandon*** (supra) was also a case of *inter-se* seniority.

21. Similarly, the judgments of the Supreme Court in ***Col. B.J. Akkara (Retd.)*** (supra) and ***Rakesh Kumar*** (supra) can have no application to the facts of the present case as in view of the binding precedents, it cannot be said that the batchmates of the petitioners and others similarly situated persons have been wrongly denied the benefit of the Old Pension Scheme, especially keeping in view that the SLPs against such judgments have also been dismissed by the Supreme Court. The Office Memorandum dated 17.02.2020 cannot detract from the judgments of this Court holding that the benefit of the Old Pension Scheme would be available to the employees whose recruitment process had been initiated prior to 31.12.2003 and the delay in issuing the final appointment letters was for the reasons attributable only to the respondents.

22. In view of the above, the writ petitions are allowed. The respondents are directed to extend the benefit of the Old Pension Scheme to each of these petitioners and pass consequential orders within a period of eight weeks from today.

23. Accordingly, the writ petitions along with pending applications stand disposed of.

NAVIN CHAWLA, J

MANMOHAN, J

DECEMBER 2, 2021/Arya/P

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