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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
***Date of Decision: 6<sup>th</sup> December, 2021***

+ **W.P.(C) 7139/2020 & CM No.29619/2020**

SI/GD SUDESH KUMAR (No.043654570) & ORS

..... Petitioners

Through Mr.Nikhil Palli, Adv.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Ms.Mrinalini Sen, CGSC

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed by the petitioners seeking a direction to the respondents to extend the benefit of Old Pension Scheme (hereinafter referred to as 'OPS') to the petitioners. The petitioners further challenge the order dated 30.04.2019 passed by the Commandant, 27 Bn, Boarder Security Force (hereinafter referred to as 'BSF') rejecting the representations of the petitioners for grant of the OPS benefit.

2. It is the case of the petitioners that pursuant to the advertisement by the Frontier Headquarters BSF, Rajasthan & Gujarat in August, 2003, the petitioners applied for the post of Constable (General Duty) (hereinafter referred to as 'Constable (GD)') in the BSF. The advertisement mentioned that the selection would be State or Union Territory wise and would be based on the physical efficiency test,

followed by a written test and an interview and the same would be subject to a medical examination as per BSF standards.

3. The petitioners further assert that the respondent no.1 vide order dated 04.08.2003 issued the guidelines to carry out the selection process with a direction to the respondent no.2 to conclude the selection process by 31.10.2003, so that the selected candidates can be dispatched to their respective training centers before 15.12.2003 for their Basic Recruitment Training to start from 01.01.2004. They further submit that the medical examination, which was to be concluded in November, 2003, was in fact conducted on various dates between the end of December, 2003 to February, 2004 only on account of non-availability of the concerned medical officer. Due to such delay in medical examination, the petitioners were issued call letters only in February, 2004 and therefore, the delay in completion of recruitment process is not attributable to the petitioners.

4. The learned counsel for the petitioners placed reliance on the various judgment of this Court to contend that in similar circumstances, this Court has extended the OPS benefit to the members of the Armed Forces where the recruitment process had been initiated prior to December, 2003, however, was not concluded before 31.12.2003 for reasons attributable to the respondents.

5. On the other hand, the learned counsel for the respondents submits that the BSF Force HQ allotted total 9617 vacancies for recruitment of Constable (GD) for the recruitment year 2003 to all the recruiting Agencies of the BSF, for independently conducting recruitment and appointment to the rank of Constable (GD) in their

respective States and Union Territories. The STC, BSF, Jodhpur Centre was allotted 160 vacancies. The recruitment process was conducted with effect from 05.12.2003. The Board of Officers submitted the board proceedings to the Competent Authority on 07.01.2004, which was approved by the IG, BSF, Rajasthan and Gujarat Frontier, Jodhpur on 10.01.2004. Vide Signal dated 22.01.2004, the FHQ BSF, New Delhi directed that call letters be issued to the fit and eligible candidates. As a consequence of this process the petitioners were issued the Offer of Appointment on 04.02.2004 and thereafter they joined services in the month of March, 2004. In the meantime, the Ministry of Finance vide notification dated 22.12.2003 had introduced the New Pension Scheme with effect from 01.01.2004 and thus, the petitioners are not entitled to be governed by the OPS.

6. Learned counsel for the respondents places reliance on the Office Memorandum dated 17.02.2020 and submits that the OPS benefit cannot be granted to the employees whose result for recruitment was declared on or after 01.01.2004.

7. We have considered the submissions made by the learned counsels for the parties. The issue raised in the present petition is no longer *res-intergra* and has been considered by this Court in various judgments, including the one pronounced as recently as 02.12.2021 by this Bench in ***Bharat Singh & Ors. vs. Union of India & Ors.***, W.P.(C) 5079/2020.

8. In view of the above, the present writ petition is allowed and the respondents are directed to extend the OPS benefit to each of the

petitioners and pass consequential orders within a period of eight weeks from today.

9. Accordingly, the writ petition along with pending applications stand disposed of.

**NAVIN CHAWLA, J**

**MANMOHAN, J**

**DECEMBER 6, 2021/Arya/AB**



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