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

+ **W.P.(C) 9206/2021**

INDIAN EX BORDERMAN MOVEMENT AND ORS

..... Petitioners

Through **Mr. A.K. Trivedi, Advocate.**

versus

UNION OF INDIA AND ORS

..... Respondents

Through **Mr. Rajesh Gogna, CGSC**

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Date of Decision: 31st August, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The hearing has been done by way of video conferencing.
2. Present writ petition has been filed with the following prayers:-
 - (a) *Issue a writ of mandamus directing the respondents to treat the age of superannuation of the Members of the petitioners Association as 60 years and thereby grant them retiral/financial by way of extending the benefits in terms of paragraph 72 of judgement dated 31.01.2019 passed by this Hon'ble Court in W.P. (C) NO.1951/2012 titled as 'Dev Sharma Vs. Union of India & Ors';, consequently the members of the petitioners association may be entitled for arrears on account of fixation of pension with interest.*

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

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 sixty years and not granting them retiral/financial benefits in terms of paragraph 72 of judgment in **Dev Sharma** (supra) is unjust, arbitrary and violative of Article 14 of Constitution of India. Paragraph 72 of the said judgement is reproduced hereinbelow:-

"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. Learned counsel for the petitioners states that as the Recruitment Rule has been quashed in **Dev Sharma** (supra), the benefit of the said judgment should go to all the CAPFs officers who are similarly placed as Mr. Dev Sharma.

5. 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 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.

6. Since the petitioners had admittedly crossed the age of sixty years prior to 31st January, 2019, they are not entitled to the benefit of the 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.”

7. Further, this Court being a coordinate Bench cannot go behind the judgment in **Bharat Singh & Ors.** (supra). Consequently, the present writ petition is dismissed.

8. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

AUGUST 31, 2021
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