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

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Date of decision: 02.09.2022

+ W.P.(C) 11971/2019

MOHAN LAL BESARWADIYA

..... Petitioner

Through: Mr. Ankur Chhibber and Mr. Nikunj
Arora, Advocates.

versus

UNION OF INDIA & ORS.

.... Respondents

Through: Mr. Hemendra Singh, Dy.
Commandant (Law), BSF

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T (oral)

1. Vide the present petition, petitioner is seeking quashing of order dated 29.06.2011 whereby the past services of officer appointed on or after 01.01.2004 will not be counted; quashing of order dated 14.07.2016 whereby services rendered in Army, Navy and Air Force on or after 01.01.2004 cannot be counted for pensionary benefits; quashing of order dated 18.07.2016 whereby the benefit granted to the petitioner of counting of past service was recalled without issuance of show cause notice; quashing of letter dated 29.08.2018 whereby the representation dated 23.07.2018 was rejected; quashing of letter dated 15.01.2019 whereby the representation dated 15.11.2018 was rejected; and directions to the respondents to extend



the benefit of old pension scheme to petitioner in terms of Ministry of Finance, Government of India, Notification dated 22.12.2003 as well as 17.08.2016 issued by the DoPT and in accordance with CCS (Pension) Rules, 1972 as applicable to other similarly situated individuals as well as in terms of laws laid down by this Court in various judgments on subject and to grant all consequential benefits and to count the past service of the petitioner for the purpose of old pension scheme.

2. Learned counsel for petitioner submits that the case of the petitioner is fully covered by para 5 of Office Memorandum No.28/30/2004-P&PW (B), dated 11.06.2020, issued by Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioner's Welfare, which is as under:

“5. The matter has been examined in consultation with Department of Personnel and Training and Department of Expenditure. It has been decided that those employees who joined Central Government / Central Autonomous body under NPS during 1.1.2004 to 28.10.2009 after submitting technical resignation from Central Govt. / Central Autonomous Body or a State Government / State Autonomous Body and who fulfil the conditions for counting of past service in terms of this Department's O.M. dated 28.10.2009, may be given an option for induction in old pension scheme and to get their past service rendered in the Central / State Government or Central / State Autonomous Body counted for the purpose of pensionary benefits on their final retirement from the Central Government / Central Autonomous Body, subject to fulfilment of all other conditions of counting of such past service in terms of DPAR's O.M. dated 29.8.1984 read with this Department's O.M. dated 7.2.1986 as amended from time to time.”

3. Accordingly, we hereby direct the respondents to decide the issues



raised by the petitioner in the present petition in view of the aforesaid Office Memorandum dated 11.06.2020 within six weeks from receipt of this order by a detailed/reasoned order and communicate the same to the petitioner in writing within one week thereafter.

4. Needless to say, if the petitioner still feels aggrieved by the decision thereof, he may approach the appropriate forum.
5. With the aforesaid directions, the present petition is disposed of.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

SEPTEMBER 2, 2022/rk

