



2024:DHC:9808-DB



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

Reserved on: 20.11.2024

Pronounced on: 19.12.2024

+ **W.P.(C) 6714/2023**

JAI SINGH SAHARAN & ORS.

.....Petitioners

Through: Mr.Ankur Chhibber,
Mr.Anshuman Mehraotra,
Mr.Arjun Panwar, Ms.Amrit
Kaul, Mr.Nikunj Arora,
Ms.Muskaan Dutta and
Mr.Prahil Sharma, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Ranvir Singh, CGSC

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. The present petition has been filed by retired personnel of the Border Security Force (BSF), challenging the Order dated 25.04.2022 and all subsequent letters arising thereof, whereby the representations of the petitioners for grant of the third financial upgradation under the Modified Assured Career Progression (MACP) Scheme for fixing the pension of the petitioners had been rejected by the respondents. The petitioners pray for directions to the respondents to grant the benefit of the 3rd MACP to the petitioners upon the completion of 30 years of



2024:DHC:9808-DB



service in their cadre before them attaining the age of 60 years, and to thereafter, revise the basic pay and the pension of the petitioners. The petitioners seek payment of arrears of pension as would be determined, along with all consequential benefits and interests.

CASE OF THE PETITIONERS

2. It is the case of the petitioners, that the petitioners had joined the BSF on various dates at their respective ranks in the General Duty and Radio Cadre. Upon remusteration, the petitioner nos.1 to 7 entered the Ministerial cadre, and the petitioner nos. 8, 10, 13, 14, 17 and 18 entered the Communication cadre, while the rest of the petitioners were designated with appropriate entry level pay in the Communications cadre by way of the Limited Departmental Competitive Examination (LDCE).

3. Though the petitioners were initially serving as Personnel Below Officers Rank (PBROs), with the progression of time, they were promoted to the Non-Gazetted Officers Rank, that is, Assistant Sub-Inspectors, Sub-Inspectors, and Inspectors, respectively.

4. As per the provisions of the BSF Act and Rules, the age of superannuation of officers from the rank of Constable to Commandant was 57 years, and from Deputy Inspector General of Police (DIG) to Director General (DG), was 60 years. Since there were two different ages of superannuation for different ranks within the Force, the same was challenged by the Officers of various Central Armed Police Forces (CAPFs) before this Court by way of W.P.(C)1951/2012 titled ***Dev Sharma v. Indo Tibetan Border Police and Ors.***, on the ground



of the same being violative of Article 14 of the Constitution of India and being contrary to the 6th Central Pay Commission recommendations.

5. The said Writ Petition was allowed by this Court *vide* Judgement dated 31.01.2019, whereby this Court held that having two different ages of superannuation for different ranks is discriminatory and unconstitutional, and directed for a uniform retirement age for all CAPFs personnel regardless of rank. The same was to be implemented within a period of 4 months across all CAPFs. Further, this Court clarified that:

“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.”

(Emphasis supplied)

6. The said judgement was challenged before the Supreme Court by way of SLP No.11944/2019 titled ***Union of India and Ors. v. Dev Sharma***, which was dismissed on 10.05.2019. Thereafter, the Review



Petition, being, RP No. 1555/2019, was also dismissed by the Supreme Court, on 16.07.2019.

7. Thereafter, the Ministry of Home Affairs (MHA) issued an Order dated 19.08.2019, whereby it was decided as under:

“a) Age of retirement will be as under:

<i>Force</i>	<i>Irrespective of rank</i>
CRPF, BSF, ITBP, SSB, CISF, AR* *(regular cadre of Paramilitary Component)	60 years.

b) Date of effect will be the date of issue of order.

c) In respect of all the 29 Petitioners as stated in Para-02 and 03 in common Court order dated 31.01.2019 barring Petitioner No.09 in WP (C) No.4859/2013, relief as granted at para-72 of the order be extended.

d) As regard those whose date of superannuation fell in between date of judgment and 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 of retirement 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 an option to have benefit of fitment of pension on completion of age of 60 years.”

8. This Court had also passed a similar Order on 04.02.2019 in W.P.(C) 695/2019 titled **Ram Chander Kasania & Anr. v. Union of**



India & Ors. in respect of those personnel who had retired after the Judgment dated 31.01.2019 in **Dev Sharma** (supra) but before issuance of the Order dated 19.08.2019 by the MHA. The respondents, being aggrieved by the said order, had filed an SLP No.13586/2019, which was dismissed by the Supreme Court on 02.07.2019.

9. Furthermore, this Court by its Judgment dated 19.12.2019 in W.P.(C) 11899/2019 titled **Mahesh Chand & Ors. v. Union of India & Ors.**, held that all those personnel, who had retired prior to the Judgment dated 31.01.2019 in **Dev Sharma** (supra) but had not attained the age of superannuation, that is, 60 years, would be extended the benefit of paragraph 72 of the Judgment dated 31.01.2019 in **Dev Sharma** (supra), and such benefit would also be applicable to personnel across the board to all the eligible personnel of the CAPFs. Being aggrieved of this judgement, the respondents challenged the same by way of SLP No.11171-11173/2020, which were dismissed by the Supreme Court by its Order dated 16.10.2020.

10. The petitioners claim that in compliance with the above judgments and in continuation of the Order dated 19.08.2019 of the MHA, the respondents issued letters to the eligible personnel *inter alia* offering the said personnel to join back the service and thereafter, giving them an option to resume their services till they achieve the revised age of superannuation, that is, 60 years.

11. The petitioners claim that they had proceeded with retirement upon attaining the age of 57 years. Upon the implementation of the Judgement dated 31.01.2019 in **Dev Sharma** (supra), the respondents accorded three annual increments of Basic Pay to the eligible



personnel of the CAPFs, being those who had not attained the age of 60 years as on the date of the Judgement dated 31.01.2019 and could not join back since they had proceeded for retirement though their date of superannuation was to be the date of their completing 60 years of service. Accordingly, the petitioners were also granted these annual increments to determine their pension. The BSF had issued an Order dated 27.01.2021 *inter alia* granting the said benefits to the eligible personnel.

12. Pursuant to adopting the recommendation of the 6th CPC in the year 2008, the MACP Scheme came into force and was implemented in supersession of the earlier Assured Career Progression (ACP) Scheme. Under the MACP Scheme, three financial upgradations were allowed on completion of 10, 20 and 30 years of regular service, counted from the direct entry grade.

13. The petitioners claim that they completed 30 years of service from the date of their entering into the entry grade, between the period of them attaining the age of 57 and 60 years. They claim that if the respondents had implemented the recommendations of the 7th Central Pay Commission in a timely manner, the petitioners would not have been made to retire at the age of 57 years, and they would have served till the enhanced age of 60 years, within which period they would have completed 30 years of service.

14. The petitioners further claim that in terms of the Judgement of this Court dated 31.01.2019 in ***Dev Sharma*** (supra), the differential period of 3 years, gained on account of enhancement of age of superannuation to 60 years, shall be deemed to be 'regular service' for



the purpose of computation of benefits like the MACP to personnel like the petitioners, who had not crossed the age of 60 years on the date of said Judgement. The petitioners claim that it is for this reason that this Court had directed the respondents to provide three equivalent annual increments of basic pay to the petitioners, as these annual increments are given only upon regular service. The petitioners claim that applying the same yard-stick to the MACP Scheme, they are entitled to the benefit of financial upgradation under the MACP Scheme upon completion of 30 years of regular service and that the same would have fixed the pay of the petitioners to the next available grade pay.

15. The petitioners claim that the said upgradation would also have enhanced the quantum of the basic pay for calculation of pension of the petitioners to the next available grade pay. However, the said benefit of refixation was never granted to the petitioners. They claim that since the date of completion of 30 years of service for each of the petitioners falls prior to the enhanced age of superannuation, they are entitled for all such benefits which would have been granted to them had they been serving at the relevant time.

16. The petitioners also claim that as per the Explanation to Rule 33 of the CCS (Pension) Rules, 1972, stagnation increments, like the MACP, shall be treated as emoluments for calculation of retiral benefits. They claim that as the third financial upgradation under the MACP Scheme directly affects the amount of pension and arrears payable by enhancing the quantum of basic pay, therefore, in terms of the Judgement of this Court dated 31.01.2019 in *Dev Sharma* (supra),



the enhanced age of superannuation should be considered for determining the applicability of the third financial upgradation under the MACP Scheme.

17. The details of entitlement of the financial upgradation under the MACP Scheme by the petitioners upon completion of 30 years of service is as follows:

Sr. No.	Regtl No., Rank & Name	Date of Superannuation		Date of Appointment Into entry Grade.	3 rd MACP Due Date
		Actual on 57 years	Notional on 60 years		
1	Jai Singh Saharan	31.03.2016	31.03.2019	10.02.1989	16.10.2018
2	Lal Singh Adhikari	31.12.2016	31.12.2019	10.02.1989	10.02.2019
3	C. Manoharan	31.05.2018	31.05.2021	10.02.1989	10.02.2019
4	Anil Kumar	31.01.2019	31.01.2022	10.02.1989	10.02.2019
5	Ganga Singh Sodha	31.08.2018	31.01.2021	15.01.1990	15.01.2020
6	Sunil Kr Rawat	31.03.2016	31.03.2019	10.02.1989	16.10.2018
7	Madan Lal Bougal	30.09.2017	30.09.2020	12.10.1989	12.10.2019
8	Shiv Kumar Gaur	31.08.2017	31.08.2020	06.02.1989	06.02.2019
9	Kanta Prasad	31.01.2017	31.01.2020	15.05.1987	15.05.2017
10	Ramesh Chandra Tiwari	30.04.2017	30.04.2020	10.08.1989	10.08.2019
11	Ram khilari Singh	30.09.2016	30.09.2019	15.05.1987	15.05.2017
12	Prakashvir Yadav	29.02.2016	28.02.2019	15.05.1987	15.05.2017
13	K. Murugan	30.06.2019	30.06.2022	21.02.1992	08.07.2021
14	Viswanath Kurup	31.05.2017	31.05.2020	25.10.1989	25.10.2019
15	Satish Kumar	31.12.2017	31.12.2020	01.12.1990	01.12.2020
16	Vaidya Raj Singh	31.08.2018	31.08.2021	01.12.1990	01.12.2020
17	Chandran Pillai	29.02.2016	28.02.2019	01.03.1986	01.03.2016
18	Ashok Kumar Rao	28.02.2017	29.02.2020	30.12.1987	30.12.2017



18. The petitioners claim that they made various representations to the Competent Authority to revise the Basic Pay for fixation of the pension of the petitioners who had completed the 30 years of service from the date of joining the service in the entry grade prior to attaining the enhanced age of retirement, that is, 60 years. The respondents, however, by a common Order dated 25.04.2022, rejected the said representations *inter alia* stating that the benefit of financial upgradation under the MACP Scheme can be given to personnel who have rendered 'regular services'; and since the petitioners had already proceeded for retirement upon attaining the age of 57, they cannot be given the said benefit. The petitioners claim that this reasoning is contrary to the Judgement dated 31.01.2019 in ***Dev Sharma*** (supra). They claim that as per the said Judgment, the petitioners are deemed to have served till the enhanced age of 60 years for the purpose of fixation of pension. They claim that even annual increments are given only upon rendering regular service, nonetheless, the same were granted to the petitioners as a corollary to the directions and law established by this Court, wherein it had been directed that the personnel shall be given notional benefits of serving till the age of 60 years for the fixation of their pension. The petitioners claim that, therefore, the reasoning of the respondents in rejecting the benefit of the third financial upgradation under the MACP Scheme is wrong and arbitrary.

CASE OF THE RESPONDENTS

19. The respondents, on the other hand, claim that the present Writ Petition is not maintainable as the same is not covered by paragraph



72 of the Judgement dated 31.01.2019 of this Court in ***Dev Sharma*** (supra) and, therefore, the petitioners are not entitled to any relief.

20. The respondents claim that in compliance with the Judgement dated 31.01.2019 of this Court in ***Dev Sharma*** (supra), the MHA by its order dated 19.08.2019, issued instructions regarding enhancement of the age of retirement from 57 years to 60 years, which was conveyed to all BSF establishments, *vide* FHQ BSF Letter dated 11.09.2019. It was also directed by the MHA, *vide* its Order dated 17.12.2020 and FHQ BSF Letter dated 27.01.2021, that the pension of the personnel who retired on superannuation on or after 31.01.2016 but had not crossed the age of 60 years as on 31.01.2019, be revised in accordance with the Judgement dated 31.01.2019 of this Court in ***Dev Sharma*** (supra).

21. The respondents claim that accordingly, the pension of the petitioner no.1 was revised by granting three subsequent increments till attaining the age of 60 years, that is, upto 31.03.2019 in Pay Matrix Level-7 *vide* PAD BSF New Delhi diary No. W024055211000005 dated 20.10.2021.

22. The respondents claim that later, the petitioners *vide* application dated 07.02.2022 addressed to the Home Secretary, MHA, DG, BSF, IG (Pers), FHQ BSF and IG, STC BSF Udhampur, approached the respondents for grant of the 3rd financial upgradation under the MACP Scheme-2009 on completion of 30 years of service with effect from 16.10.2018 in Pay Matrix level-7, falling within the differential period (from 01.04.2016 to 31.03.2019).



23. The respondents claim that with regard to the aforesaid application, necessary clarification was sought from the FHQ BSF, which *vide* Letter dated 25.04.2024, denied the financial upgradation under the MACP Scheme, clarifying as under:

“2. The matter has been examined in detail in consultation with Confidential Section and Finance Wing of this HQ, in the light of guidelines issued by DoP&T vide OM No.35034/3/2015-Estt.(D) dated 22 Oct 2019 and it is clear that financial upgradation under MACP scheme is admissible to the personnel who have rendered ‘regular service’. Since the personnel who have retired on attaining age of 57 years in between 31.01.2016 and 31.01.2019, but given benefits of fitment of pension on completion of 60 years, have not rendered ‘regular service’, therefore, financial up gradation under MACP scheme will not be admissible to them”.

24. Referring to paragraph 72 of the Judgement dated 31.01.2019 of this Court in ***Dev Sharma*** (supra), the respondents claim that the deferential period (in the event of enhancement of retirement age) will be added to period of service actually rendered by each of the petitioners for the purpose of calculation of retiral benefits, being pension and gratuity. The respondents claim that the financial upgradation under the MACP scheme is not a kind of retiral benefit, rather it is granted to those employees who are in service. The respondents claim that the petitioners are not covered under paragraph 72 of the Judgement dated 31.01.2019 of this Court in ***Dev Sharma*** (supra) and therefore, the writ petition is liable to be dismissed.



ANALYSIS AND FINDINGS

25. The learned counsels for the parties have reiterated the claims and counter-claims of the parties, as recorded herein above.

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

27. From the above narration of facts and submissions, it is evident that the primary issue to be determined by this Court is the scope and effect of the Judgment of this Court in *Dev Sharma* (supra).

28. In *Dev Sharma* (supra), this Court has considered the prayer of enhancement of the age of retirement of all ranks of the Armed Forces to 60 years. This Court held that Rule 43(a) of the CRPF Rules, 1955, which states that the retirement of members of the Force shall take effect from the afternoon of the last day of the month in which the said member attained the age of 57 years, is discriminatory and violative of Article 14 of the Constitution of India *vis-a-vis* members of the CRPF who are of the rank of Commandant and below. The Court held that likewise, Rule 14 of the CRPF Group (A) General Duty Officers Recruitment Rules, 2001, Rule 8(a) of the ITBP General Duty in Group 'A' Posts Rules, and Rule 12 of the BSF (General Duty Officers) Recruitment Rules, 2001, to that extent, are also unconstitutional and liable to be struck down.

29. This Court then considered the consequential direction that needed to be passed. The Court issued the following directions:

“71. Accordingly a direction is hereby issued that within a period of four months from today the Respondents i.e. the MHA in consultation



with the CAPFs concerned will take all consequential steps by way of implementation of this judgment. This will include arriving at a decision as regards the retirement age which will uniform for all members of the CAPFs irrespective of their rank thus bringing all of them, including the CISF and the AR, on par and fixing the date from which such changed retirement age will take effect.

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."

30. By a subsequent Order dated 19.12.2019 passed in W.P.(C) 11899/2019, titled ***Mahesh Chand v. Union of India***, this Court extended the benefit of its Judgment in ***Dev Sharma*** (supra) to all persons who had retired even prior to 31.01.2019, that is, the date when the Judgment in ***Dev Sharma*** (supra) was passed. The Court held as under:

"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.”

31. In implementation of the order passed in ***Mahesh Chand*** (supra), the MHA issued an Office Order dated 27.01.2021, extending the benefit of the Judgment in ***Dev Sharma*** (supra) to all the officials who had retired or superannuated on attaining the age of 57 years on or after 31.01.2016. The petitioners were accordingly granted the benefit by giving them the three annual increments which they would have otherwise earned if they had remained in service and not superannuated upon attaining the age of 57 years. Once the respondents have themselves, in terms of the Judgment of this Court in ***Dev Sharma*** (supra) read with the Judgment of of this Court in ***Mahesh Chand*** (supra), extended to the petitioners the increments that would have been earned by the petitioners had they served till the age of 60 years, by treating the petitioners to have been in service till the age of 60 years, the respondents now cannot plead that the other consequential benefits emanating from the extension of service, including the MACP, will not be granted to the petitioners.

32. The benefit under the MACP, in terms of the Scheme notified *vide* Office Memorandum dated 19.05.2009, is extended on the completion of 10, 20, and 30 years of service, respectively. Where officials had completed the above stated period between the ages of 57 years and 60 years, however, they superannuated at the age of 57



years in accordance with the then prevailing provisions, which have since been declared discriminatory by this Court in its Judgment in *Dev Sharma* (supra), and were consequently not allowed to complete 10/20/30 years of service, then in terms of the above referred judgments and as a consequential relief, such officials would be deemed to have continued in service, thereby entitling them to the grant of the benefit under the MACP Scheme by presuming that the officials completed such service of 10/20/30 years due to the extension of the age of their superannuation to the age of 60 years. Denying such benefit to the petitioners and similarly situated officials would be to give only a partial relief in the implementation of the above referred judgments, by creating an artificial distinction, that is, while the benefit of grant of increments is extended to such officials, however, at the same time, the benefit of the MACP Scheme is denied. The same cannot be sustained.

33. Accordingly, we allow the present petition and direct the respondents to place the case of the petitioners before a Screening Committee appointed for evaluating the claim of the officials for the MACP, which would consider the case of the petitioners by treating them to have remained in 'regular service' till they attained the age of 60 years, and accordingly process their claims for the grant of the benefit of the 3rd financial upgradation in accordance with the MACP Scheme.

34. The said exercise must be completed within a period of three months from today, and in case the petitioners are found entitled to grant of the benefit of the 3rd MACP, the relief in that regard be



2024:DHC:9808-DB



released to the petitioners and their pension be accordingly modified with retrospective effect. We clarify that the grant of the 3rd MACP will only be notional and for the purposes of calculating the pension of the petitioners, and that the petitioners will not be entitled to extra pay because of the grant of MACP.

35. The petition is allowed in the above terms.

36. There shall be no order as to costs.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 19, 2024/Arya/SJ

Click here to check corrigendum, if any