

(2019) 12 DEL CK 0308

In the Delhi High Court

Case No : Civil Writ Petition No. 10719, 10944, 11131, 11137 Of 2019, Civil Miscellaneous Application No. 44335, 45225, 45834, 45853 Of 2019

B. L. Naik & Ors

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:

Constitution of India, 1950 — Article 14

Central Reserve Police Force Rules, 1955 — Rule 43, 43(a)

Central Reserve Police Force Group (A) General Duty Officers Recruitment Rules, 2001 — Rule 14

Border Security Force (General Duty Officer) Recruitment Rules, 2001 — Rule 12

Citation : (2019) 12 DEL CK 0308

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Ankur Chhibber, Bhanu Gupta, K. V. Sreenmithun, Saakshi Agrawal

Final Decision : Dismissed

Judgement

1. The present petitions give rise to a common question of law and therefore being disposed of by way of this common order. For the sake of convenience W.P. (C) 10719/2019 is being treated as the lead petition. It requires to be noticed that the facts in the other petitions are more or less similar and the prayers therein are nearly identical.

2. The present petitions arise out of the judgment of this Court dated 31st January, 2019 in W.P.(C) 1951/2012 (Dev Sharma v. Indo Tibetan Border Police) whereby this Court had in the operative portion of the judgment issued the following directions:

"67. Now to the concluding part where directions are to be issued to the Respondents. It must be recalled that even during the pendency of these petitions directions were issued to the Respondents to reconsider the issue raised regarding the differential ages of retirement of members of the concerned CAPFs

and by OM dated 1st April 2013 (which has been struck down hereinabove), the MHA declined to do so.

68. The Court has in this judgment held the decision of the Respondents to prescribe a retirement age of 57 years for members of the three CAPFs i.e. the ITBP, the BSF and the CRPF of the rank of Commandant and below in terms of Rule 43 (a) of the CRPF Rules, and the corresponding Rules applicable to the said three CAPFs, as against 60 years for Officers in those very CAPFs of the rank above that of Commandant to be discriminatory, violative of Articles 14 and 16 of the Constitution. Rule 43 (a) of the CRPF Rules, 1955, and correspondingly 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 the extent they too prescribe a retirement age of 57 years for members of those CAPFs of rank of Commandant and below have also been struck down.

69. The Court has noted that the 7th CPC by a majority of 2:1, and each of the CAPFs concerned themselves, had already opined that the above element of discrimination in the matter of retirement age must be done away with. Therefore, no further directions are required in that regard.

70. The Court recognises that there are bound to be implications- both organisationally and financially - as a result of the implementation of this decision. The Respondents shall, unless this judgment is further challenged and subject to any interim order in such proceedings, implement it across the board to all members of the CAPFs without insisting on each of them approaching the Court for identical relief. For that matter, even though the members of the SSB have not yet approached this Court, if they are identically placed as these Petitioners, it should be implemented for them as well.

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 be 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."

3. Soon after this Court's judgment in *Dev Sharma (supra)*, a petition W.P. (C) 695 of 2019 was filed by Mr. Ram Chander Kasania and others seeking similar relief as was prayed for in *Dev Sharma (supra)*. These were persons who had retired soon after the date of judgment i.e. 31st January, 2019, but the time granted to the Respondents to take a decision on the age of retirement had still not expired. This Court on 4th February 2019 passed the following order in W.P. (C) 695 of 2019 (*Ram Chander Kasania & Anr. v. Union of India & Ors*):

"1. The prayers in the present petition are similar to the prayers in WP(C) No. 1951/2012 and batch matters i.e. *Dev Sharma v. ITBP* which was decided by this Court on 31st January, 2019. By the said judgment this Court declared Rule 43 of the CRPF Rules, 1955 and other incidental Rules to the extent they provided that a member of the Central and Allied Police Forces (CAPFs) including the ITBP, the BSF and the CRPF up to the rank of Commandant would retire at 57 years to be discriminatory and violative of Article 14 of the Constitution of India.

2. Further, this Court has in *Dev Sharma v. ITBP (supra)* granted the Respondents four months' time to take all consequential steps by way of implementation of the judgment. In this period, the Respondents have to take a decision as regards the retirement age which will be uniform for all members of the CAPFs [including the CISF and the Assam Rifles (AR) where at present the uniform retirement age is 60 years] irrespective of their rank. This Court has further clarified that the said judgment would not have the effect of reinstatement of those who have already retired.

3. The two Petitioners in the present petition were enrolled in the BSF. Petitioner No.1 rose to rank of Deputy Commandant (DC) and superannuated on 31st January, 2019 on completion of 57 years of age. Petitioner No.2, who too is a DC, would on the basis of the relevant Rules as they stood prior to the decision in *Dev Sharma v. ITBP (supra)*, superannuate on 28th February 2019 on completion of 57 years of age.

4. It is pointed out by Mr. Chhibber, learned counsel for the Petitioners, that no Pension Payment Orders (PPOs) are being issued to those like the present Petitioners who have either superannuated during the pendency of the decision in *Dev Sharma v. ITBP (supra)* stating that it would have to await the consequential steps to be taken pursuant to the said decision. Mr. Chhibber points out that one administrative difficulty as a result of the said decision is that no PPO can be issued unless a final decision is taken by the Respondents on the uniform age of superannuation. This means that persons such as the Petitioners would receive no pension and other retiral benefits in the meanwhile.

5. In order to ensure that till such time the Respondents take the consequential steps for implementing the above judgment, no inconvenience is caused to such of those members of the CAPFs who superannuate in terms of the Rules as they

existed prior to the judgment in *Dev Sharma v. ITBP* (supra), it is clarified that the Respondents will continue to issue PPOs in respect of such members of the CAPFs as and when they superannuate on the basis of Rules as they stood prior to the judgment. However, in the event that the Respondents decide, by way of implementation of the judgment, that the uniform age of superannuation would be 60 years or any age beyond 57 years, then depending on the date from which the change will take effect, the direction of this Court in para 72 of the judgment that it would not have the effect of reinstatement of those who have already retired would not come in the way of the Respondents deciding to reinstate such of those members of the CAPFs who would not have reached the uniform age of superannuation as determined. The Respondents will issue appropriate consequential orders at that stage.

6. With the above clarification, the petition and application are disposed of in terms of the judgement dated 31st January, 2019 *Dev Sharma v. ITBP* (supra). This clarification would apply to all those covered by the judgment of this Court in *Dev Sharma v. ITBP* (supra)."

4. Sometime thereafter, another member of the CRPF Commandant D. Vincent approached the Madras High Court in W.P.(C) 4969/2019 (*D. Vincent v. Union of India*). The Petitioner therein was retiring after 31st January, 2019. The Madras High Court had the benefit of the judgment of this Court in *Dev Sharma* (supra) and passed an interim order on 28th February, 2019 staying the retirement of the Petitioner and expressly stating that he be allowed to continue from 1st March, 2019 onwards. Subsequently, when the Respondents did not honour the said interim order, contempt proceedings were initiated by the Petitioner therein in which an order was passed by the Madras High Court on 21st March 2019.

5. The above orders dated 28th February and 21st March 2019 of the Madras High Court were challenged by the Respondents in S.L.P. (C) 9081-82 of 2019 in the Supreme Court, in which an interim order was passed by the Supreme Court on 15th April 2019 only to the extent of staying the order dated 21st March 2019 initiating contempt proceedings in the meanwhile, but not staying the order dated 28th February 2019 of the Madras High Court permitting the Petitioner D. Vincent to continue in service beyond 1st March, 2019. The Court is informed that the said SLP (C) 9081-82/2019 has since been dismissed on 8th July 2019, consequent upon SLP (C) 11944/2019 filed by the Respondents against the decision of this Court in *Dev Sharma* (supra) being dismissed on 10th May, 2019, and the Petitioner before the Madras High Court having already joined service before 8th July, 2019.

6. The Court also notes that the Review Petition (Civil) 1555/2019 filed by the Respondents in the Supreme Court seeking review of the above order dated 10th May, 2019 was also dismissed on 16th July, 2019. Meanwhile on 2nd July 2019 the Supreme Court also dismissed SLP (C) 13586 of 2019 (*Union of India v. Ram Chander Kasania & Anr.*). Consequently, the orders of this Court in *Dev Sharma* and *Ram Chander Kasania* attained finality.

7. Thereafter, by way of implementation of the judgments of this Court in Dev Sharma and Ram Chander Kasania, as affirmed by the Supreme Court, the Respondents issued an order dated 19th August, 2019 which reads as under:

"WHEREAS, Hon'ble High Court of Delhi in WP(C) No. 1951/2012 in the matter of Dev Sharma, Dy. Comdt. of ITBP Vs UOI & Anr. on 31.01.2019 directed the respondent to arrive at a decision regarding the retirement age which will be uniform for all members of CAPFs, irrespective of the ranks including CISF and Assam Rifles at par and also to decide the date from which such change will be effected. However, the Court did not allow stay of the retirement of any personnel as per the existing age of retirement who might have retired before passing the order except that in the event of enhancement of retirement age, the differential period will be added to the period of service actually rendered for the purpose of pension.

2. In view of the aforesaid order, the matter has been examined and in compliance thereof, read with order dated 04.02.2019 passed in WP(C) No.695/2019 titled Ram Chander Kasania & Anr of BSF Vs UOI & Ors, it has been decided by the Competent Authority as under:

a) Age of retirement will be as under:

Force

Irrespective of Rank

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.

3. All Forces are directed to comply with the Court orders narrated as above. Forces may amend provisions of Rules as applicable on above line."

8. Specific to the Petitioner in W.P.(C) 10719/2019 (B.L. Naik), it must be noted that he was one of the Petitioners who approached this Court shortly after orders were reserved on 19th November 2018 in the Dev Sharma (supra) and batch. This petition, being W.P.(C) 12692/2018 was listed before this Court on 27th November, 2018 and the following order was passed therein:

"2. This Court has already heard arguments on an identical issue raised in another batch of writ petitions and has reserved orders on 19th November 2018.

3. The Respondents rely on the same pleadings where their stand is clear.

4. Orders reserved."

9. The aforementioned W.P.(C) 12692/2018 was also disposed of with the batch of matters in Dev Sharma (supra).

10. At this stage it must be noted that each of the other three Petitioners herein retired prior to 31st January 2019 i.e. the date of the judgment of this Court in Dev Sharma. The only point of distinction between their cases and that of B.L. Naik is that they did not approach this Court earlier for relief, whereas B.L. Naik did.

11. The grievance of the Petitioners is that while those who approached the Court after the judgment in Dev Sharma (supra), including Ram Chander Kasania and D. Vincent (the Petitioner before the Madras High Court), have in terms of para 2 (d) (ii) of the order dated 19th August 2019 been granted the option of either joining back in service or getting the benefit of increments and re-fitment of pension, persons like the Petitioners who retired prior to the date of judgment of this Court have not been granted that benefit.

12. On the side of the Respondents, it is explained to the Court that when the decision was taken to uniformly enhance the age of retirement in all CAPFs irrespective of rank to 60 years, the date of the judgment of this Court i.e. 31st January, 2019 was taken as a marker for that purpose. All those who retired prior to that date were to be governed by the directions issued by this Court in paragraph 72 of its judgment in Dev Sharma. Those who retired between 31st January 2019 and the date of the order i.e. 19th August, 2019 in terms of the earlier retirement age, were to be governed by para 2 (d) of the order.

13. The stand of the Respondents as regards B.L. Naik is that since he retired prior to 31st January 2019, i.e. the date of the judgment of this Court in Dev Sharma (supra), he will be covered entirely by paragraph 72 of the judgment reproduced hereinbefore and would not have the benefit of para 2 (d) (i) and (ii) of its order dated 19th August, 2019. Therefore, consistent with the directions issued in paragraph 72 of the judgment of this Court in Dev Sharma (supra), the Respondents have granted B.L. Naik the corresponding revised retiral and pensionary benefits by adding three years to his actual date of retirement. The stand of the Respondents in the cases of the other three Petitioners is similar.

14. It is argued by Mr. Ankur Chhibber, learned counsel for the Petitioners, that it is unfair to the persons who had retired prior to the date of its judgment in Dev Sharma, and in particular B.L. Naik who had approached this Court prior to his retirement, to not be extended the benefits which have been extended to those who either did not come to the Court at all or who came to the Courts after the judgment and had an interim order in their favour prior to their retirement. He accordingly submits that those retired prior to the judgment was pronounced in Dev Sharma (supra), and in particular B.L. Naik, who had filed a petition prior thereto, should also be given the option of continuing in service till they attain 60 years of service.

15. Having carefully perused the order dated 19th August, 2019 issued by the Respondents, the Court is able to discern a logic that can be rationally explained without falling foul of Article 14 of the Constitution. While it is true that B.L. Naik approached the Court before it pronounced its judgment in Dev Sharma, the fact remains that his date of retirement was prior thereto. He retired at the earlier age of 57 years on 31st December, 2018. Likewise, each of the other three Petitioners herein retired on or prior to that date.

16. Each of the persons who approached the Courts after the date of the judgment of this Court in Dev Sharma (supra), including Ram Chander Kسانيا and D. Vincent (before the Madras High Court), were persons whose date of retirement was after 31st January, 2019. Some of them had an interim order in their favour; others came to be governed by paragraph 2 (d) (ii) of the order dated 19th August, 2019. Clearly, therefore, the Petitioners here as a class are not being discriminated against vis-à-vis such of those persons whose date of retirement was after the date of the judgment of this Court in Dev Sharma (supra). Further, any grievance that the Petitioners and all those who retired prior to 31st January, 2019 may have is assuaged by the directions issued by this Court in paragraph 72 of its judgment in Dev Sharma which has been extracted hereinbefore.

17. In that view of the matter, the Court is unable to grant the relief sought for in in these four writ petitions. The petitions are accordingly dismissed. The pending applications are disposed of.