

(2021) 01 DEL CK 0116

In the Delhi High Court

Case No : Civil Writ Petition No. 11097, 12083 Of 2019, 5075, 5080, 5443, 5444, 5445, 5447, 7745, 8208, 9252, 9311, 10317, 11061, 11063, 11065 Of 2020, Civil Miscellaneous Application No. 32656 Of 2020

SI/Min M.R. Gurjar And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 15-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 246
Central Reserve Police Force Act, 1949 — Section 3(i)
Indo-Tibetan Border Police Force Act, 1992 — Section 4(i)

Citation : (2021) 01 DEL CK 0116

Hon'ble Judges : Manmohan, J;Asha Menon, J

Bench : Division Bench

Advocate : Nikhil Palli, Rakesh Kumar, Ankur Chhibber, Arun Bhardwaj

Final Decision : Disposed Of

Judgement

Manmohan, J

1. These Petitions have been filed by Petitioners who are Personnel Below Officer Rank (PBOR) in the Central Reserve Police Force (CRPF),

Border Security Force (BSF), Sashastra Seema Bal (SSB) and Indo-Tibetan Border Police (ITBP). All the petitioners applied pursuant to the

notification dated September 2003 and June 2003 for the post of Constable/GD in Central Armed Police Forces and Sub-Inspectors through Staff

Selection Commission and qualified in the said examination of 2003. On the basis of the advertisement, the Old Pension Scheme under the CCS

(Pension) Rules, 1972 was applicable. The New Contributory Pension Scheme was introduced by a notification dated 22nd December, 2003 and

implemented with effect from 1st January, 2004.

2. Learned counsel for the petitioners state that by a notification dated 22nd December 2003, it was stipulated that the new scheme would not be

applicable to Armed Forces and that they would be governed by the Old Pension Scheme. They point out that the Ministry of Home Affairs

(MHA) by a communication dated 6th August, 2004, has clarified that the CRPF and ITBP is an Armed Force of the Union of India under

the administrative control of the MHA and that even the Section 3(i) of the CRPF Act and Section 4 (i) of the ITBP Act clearly provides that there

shall continue to be an Armed Force maintained by the Central Government and called the CRPF, BSF, SSB and

ITBP.

3. They submit that even Article 246 read with List I Entry II of the Seventh Schedule of the Constitution of India clearly envisages Armed Forces of

Union of India and includes Naval, Military and Air Force, any other Armed Force of the Union. They further submit that the Apex Court in the case

of Akhilesh Prasad v Union Territory of Mizoram; 1981 (2) SCC 150, has categorically held that the sub-section itself declares in no uncertain terms

that CRPF is an Armed Force of the Central Government which is the same thing as saying that it is a part of the Armed Force of the Union and that

being the position, even as per the notification dated 22nd December, 2003, the scheme of New Pension Scheme has been excluded from the Armed

Forces of the Union.

4. They also contend that batchmates of most of the petitioners have been given benefit of Old Pension Scheme under various judgements passed by

this Court in Patil Gopal Babulal & Ors. vs. Union of India & Ors., W.P.(C) 11646/2018; Tanaka Ram & Ors. vs. Union of India & Ors., 2019 (174)

DRJ 146 (DB); Shyam Kumar Choudhary and Ors. vs. Union of India being W.P. (C) No.1358 of 2017 and Niraj Kumar Singh & Ors. vs. Union of

India & Ors., W.P.(C) No.13129/2019.

5. Pursuant to the notice issued in the present petitions, the Respondents despite having been given adequate time, have not filed reply in most of the

matters till date. On behalf of the Respondents, further time has been sought for the purpose of filing Counter Affidavit. It is urged that because of the

large number of petitioners, their factual details could not be verified and a last opportunity be given to them. Learned counsel for the respondents

submit that without their counter-affidavits being on record, they will be handicapped in approaching the Supreme Court because they will not be able to give the mandatory undertaking that the facts stated therein were part of records before this Court.

6. However, in the counter affidavit filed in W.P.(C) 12083/2019 it is stated that admittedly since the entire recruitment process was initiated in the year 2004 and the appointment letters were issued between the months of June & July 2004, the New Pension Scheme would be applicable and the petitioners would therefore not be entitled to the Old Pension Scheme. It is further urged on behalf of Respondents that in W.P.(C) No. 5075/2020, the chart mentioned in the petition shows that the Written Examinations were itself held on different dates of January 2004 and therefore, the Petitioners cannot legally exercise lien over a post from the date of advertisement i.e. from a date even prior to the Written Examination.

7. Learned counsel for respondents submit that none of the earlier judgements including Patil Gopal Babulal & Ors. vs. Union of India & Ors., W.P.

(C) 11646/2018 and Tanaka Ram & Ors. vs. Union of India & Ors., 2019 (174) DRJ 146 (DB) are applicable to the present case inasmuch as in

those cases the recruitment process had started in the year 2003 and some of the incumbents had been issued appointment letters in the year 2003

itself before the New Pension Scheme was made effective from 01st January, 2004. Therefore, according to them, on facts, the present batch of

matters is different and the petitioners in the present case are not entitled to any relief as prayed for.

8. The issue in the present batch of matters is no longer res integra. Consequently, the request for additional time to file counter-affidavit is declined.

9. In the case of certain constables of the BSF, this Court by its judgment dated 12th February, 2019 in Tanaka Ram (supra) allowed the prayer of

those Petitioners and permitted them to avail of the benefit of the Old Pension Scheme. It was held that the option to continue the Old Pension

Scheme should be extended to all those who had been selected in the examination conducted in 2003, but were issued call letters only in January or

February, 2004. It is also pertinent to mention that the Respondents aggrieved by the said judgment filed an SLP bearing No. 25228/2019 before the

Apex Court. The said SLP has been dismissed by the Supreme Court vide order dated 02nd September, 2019.

10. This Court in Shyam Kumar Choudhary and Ors. vs. Union of India being W.P. (C) No.1358 of 2017 allowed similar petitions vide judgment dated

09th April, 2019 against which the Respondents had again filed SLP bearing no. 31539/2019 which was again dismissed on 27th September, 2019. The

Respondents thereafter chose to file a review petition bearing no.2188/2020 before the Apex Court in the said matter and the said Review petition

was also dismissed on merits vide order dated 24th November, 2020.

11. Following the judgment of Shyam Kumar Choudhary (supra), the learned predecessor Division Bench in Niraj Kumar Singh & Ors. vs. Union of

India & Ors.,W.P.(C) No.13129/2019 granted similar benefit to 17 petitioners who had applied to the post of Sub-Inspector in Central Police

Organisations pursuant to an advertisement dated 21st June, 2003 even when the written examination and physical efficiency test were held in

November, 2003, medical examination was held in January-February, 2004 and final result was declared in May, 2004. The said 17 petitioners were

issued offer of appointment on 02nd June, 2005 and on accepting the same, the appointment letter was issued on 14th July, 2005 for joining the

Sashastra Seema Bal.

12. Another Coordinate Bench vide judgment dated 06th November, 2020 in W.P. (C) No. 6548 of 2020 as well 6989/2020 was pleased to allow the

said petitions for grant of Old Pension Scheme by following the judgment in Shyam Kumar Choudhary (supra).

13. Having regard to the fact that in the present batch of cases also the advertisement/notification was issued in September, 2003 and June, 2003 i.e.

prior to coming into force of the present contributory pension scheme on 22nd December, 2003, this Court is of the view that petitioners cannot be

deprived of the benefit of the Old Pension Scheme.

14. This is more so when the batchmates of the petitioners are getting this benefit under various judgements passed by this Court.

15. For the above reasons, the petitions are allowed. Respondents are directed to extend the benefit of Old Pension Scheme to each of these

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

16. Accordingly, the writ petitions along with pending applications stand disposed of.

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