

(2019) 02 DEL CK 0089

In the Delhi High Court

Case No : Criminal Appeal No. 6680 Of 2017

Tanaka Ram And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 12-02-2019

Acts Referred:

Citation : (2019) 174 DRJ 146 : (2019) 3 SLR 463

Hon'ble Judges : S.Muralidhar, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Garima Sachdeva, Ruchi Jain

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. 151 Constables of the Border Security Force (BSF) [(53 in W.P. (C) 6680 of 2017 and 98 in W.P. (C) 10189 of 2017] have come together to file the present petitions seeking a writ of mandamus to the Respondents to extend to them the benefit of the Old Pension Scheme in accordance with the CCS (Pension) Rules, 1972.

2. The background facts are that the Petitioners applied for recruitment in the BSF pursuant to an advertisement issued by the Office of the DIG and Commandant, Training Centre and School, BSF, Hazaribagh in August, 2003 as well as Frontier Headquarters BSF, Rajasthan and Gujarat in November, 2003. The advertisement stated that the selection would be made state-wise. It was to be based on Physical Efficiency Test ("PET") followed by a written test and personal interview and further subject to medical examination as per the BSF standards.

3. A notification was issued on 4th August, 2003 by the Ministry of Home Affairs ("MHA") with the direction to the Director General, BSF (Respondent No.2) to complete the entire process by 31st October, 2003 so that the selected

candidates could be dispatched to their respective training centres before 15th December, 2003 for their basic recruitment training to start from 1st January, 2004.

4. As far as the present Petitioners were concerned, although they cleared the written test and the medical examination in November, 2003 itself they were issued call letters for joining only in February, 2004. The joining date issued to them was 20th February 2004.

5. A similar recruitment process was carried out in Hoshiarpur, Punjab for candidates in Punjab and Haryana where again the medical examination of candidates was completed on 7th November, 2003. However in their cases the appointment orders were issued on 17th December, 2003 itself directing them to report at the STC, BSF, Hoshiarpur on 30th December, 2003.

6. A new Contributory Pension Scheme was introduced on 22nd December, 2003 and was to be implemented with effect from January, 2004. This was monetarily less beneficial than the Old Pension Scheme. Those who had been offered letters of appointment on 17th December, 2003 were covered by the Old Pension Scheme whereas those candidates like the Petitioners whose letters of offers of appointment were issued only in February, 2004 were deprived of the benefit of the Old Pension Scheme.

7. A batch of the Petitioners who were selected pursuant to a Sub-Inspector (DE), Central Police Organisation ("CPO") Examination 2002 and were also deprived of the benefit of the Old Pension Scheme on account of the delay on the part of the Respondents in issuing the appointment orders. They filed WP (C) No. 3834/2013 (Parmanand Yadav v. Union of India) in this Court. By a judgement dated 12th February, 2015 this Court allowed the said writ petition. The Court in doing so followed its earlier order dated 26th May, 2011 in WP (C) No.5400/2010 (Avinash Singh v. Union of India) which was followed in the decision dated 2nd November, 2012 in WP (C) No.3827/2012 (Naveen Kumar Jha v. Union of India).

8. The Directorate General (BSF) issued an order dated 13th January, 2016 accepted the decision of this Court in Parmanand Yadav (supra). It was mentioned in the said order inter-alia as under:

"9. Whereas, the opinion of the Govt. Counsel was invited and according to opinion of the Govt. Counsel on the judgment dated February 12, 2015 passed by the Hon'ble High Court of Delhi in the said Writ Petition No. 3834 of 2013 titled as Parmanand Yadav and others Vs. Union of India and Ors warrants no interference.

10. Whereas, in order to implement the order dated 12.02.2015 passed by Hon'ble High Court of Delhi, the whole issue has been examined in detail and after inter-Ministerial consultation, it has been decided to implement aforesaid order of Hon'ble High Court of Delhi to extend the benefits of Old Pension Scheme to petitioners and other similarly situated SI/DE selected through CPOs

Exam-2002 as members of the old pension scheme, which was in vogue till 31/12/2003, subject to the condition that they will not be entitled for any back wages or seniority etc.

11. Now, therefore, in respectful compliance of order dated 12.02.2015, passed by Hon'ble High Court of Delhi, approval of Competent Authority i.e. Ministry of Home Affairs is hereby conveyed to convert the petitioners and other similarly situated SI/DE selected through CPOs Exam-2002 (as per list enclosed at Appendix-A) as members of the old pension scheme, which was in vogue till 31/12/2003 and the NPS corpus which were earlier subscribed should be transferred to the GPF accounts of each individual, subject to the condition that they will not be entitled for any back wages or seniority etc."

9. When despite the above order, the benefit of the Old Pension Scheme was not extended in respect of those SIs initially declared medically unfit but subsequently found fit by the Review Medical Board, they approached this Court in WP(C) No. 2810/2016 (Rajendra Singh & Ors. v. Union of India). By a judgment dated 27th March, 2017 this Court allowed the said writ petition. The Court in that process also referred to another order dated 17th September, 2015 passed in WP (C) No. 5830/2015 (Shoor Vir Singh Negi v. Union of India).

10. Hopeful that the Respondents would extend the same benefit to them, the Petitioners made representations on that basis to the BSF on 27th May, 2017 for grant of benefit of the Old Pension Scheme. However by the letter dated 22nd June, 2017 the Respondents rejected their claim and sought to distinguish their cases from that of Parmanand Yadav (supra) for the following reasons:

"As regards, claim of above applicant for granting him benefits of old pension scheme is concerned, it is pertinent to mention here that during the year 2003 and 2004 recruitment of CT (GD) was conducted at FTR level wherein completed recruitment process i.e. from publishing advertisement to issue of offer of appointment was done by the FTRs and none of the candidate was recruited with them have been converted with old pension scheme. Hence, their claim to treat them at par with the petitioners of Parmanand and Ors v. and Ors is not appropriate and justified."

11. It is in the above circumstances that the Petitioners filed the present writ petitions.

12. It is submitted by the Respondents that the cases of Avinash Singh and Naveen Kumar Jha "are entirely different from the instant case where according to the Respondents the advertisement was published in the month of September, 2003 and the entire process was completed in December, 2003. The Petitioner along with the batch mates joined in the month of February, 2004." Reliance is further placed on the judgment dated 11th September, 2017 of a Division Bench of this Court in WP(C) No. 6525/2016 (V. Ramana Murthy v. Union of India) where the aforementioned decisions were sought to be distinguished.

13. This Court has examined the decision in V. Ramana Murthy v. Union of India (supra). In the case of those Petitioners, the final results were declared between 22nd and 28th May, 2004. 192 Petitioners were asked thereafter to join the BSF. Reliance was placed on the decision in Shailender Kumar v. DHC 189 (2012) DLT 524 where inter-alia on the facts of those cases it was observed as under:

"This is not the case of the petitioners that their inability to join on or before 31.12.2003 was attributable to any negligence or lapse on the part of the respondents. If inability of the petitioners to join service on or before 31.12.2003 is not attributable to the respondents or to any order passed by a Court and was only on account of the time taken by the Hospital/Police in conducting medical examination and police verification, the petitioners cannot claim parity with the petitioners in the case of Dr. Pawan Kumar N.Mali (supra)."

14. The Court finds that in V.Ramana Murthy, the Division Bench of this Court did not take note of the order dated 13th January, 2016 issued by the BSF itself accepting the decision in Parmanand Yadav. By issuing the said order dated 13th January, 2016, the BSF was accepting that the delay in issuing the offers of appointment was for reasons not attributable to Parmanand Yadav and others similarly situated but on account of the Respondents. That factual situation made the decision in Shailender Kumar v. DHC (supra) referred to in V.Ramana Murthy (supra) inapplicable.

15. What is even more significant is that even after the decision in V.Ramana Murthy (supra), the BSF continued granting the benefit of the Old Pension Scheme to some of its members. An OM dated 13th April, 2018 was issued by the MHA (Police-II Division) which reads thus:

"OFFICE MEMORANDUM

"Sub:- Regarding implementation of the Court order passed in WP(C) No. 3834/2013 titled Parmanand Yadav & 125 others v. UOI and other & WP No. 2810/2016 titled Inspector Rajendra Singh & 29 others v. UOI and other before the Hon"ble High Court of Delhi.

SSC conducted CPO"s (SI) Exam during the year 2002, for which final result was declared in the month of August, 2003. BSF issued an offer of appointment during the month of December 2003 directing candidates to report Training Centres in the month of January, 2004.

2. In the meantime, the Government of India had introduced the New Pension Scheme vide GOI Notification dtd. 22.12.2003, which is applicable to the personnel who have entered into Government service w.e.f. 01.01.2004 and onwards.

3. Some BSF candidates approached Hon"ble High Court of Delhi with a prayer that issuing appointment letter after 01.01.2004 is the Administrative lapse on the part of CAPFs/BSF, hence, they may be extended the benefits of Old Pension Scheme by way of filing WP(C) No. 3834/2013 & WP(C) No. 2810/2016 before

the Hon"ble High Court of Delhi, which was allowed vide order dtd. 12.02.2015 & 27.03.2017 respectively.

4. This Ministry after detailed deliberation & in consultation of DoLA & DoP&PW agree to implement the Judgment i.e. to extend the benefits of Old Pension Scheme without any back wages or seniority in case of petitioner & other similar placed left over candidates.

5. Now, Competent authority desires that all other CAPFs (except BSF) may also check their record and if any similar case is found they may examine & take appropriate action on the similar lines by taking reliance of BSF case, to avoid similar litigation in future."

16. Thus, it is clear that even after the decision in V. Ramana Murthy, the MHA has decided to extend the benefit to all CAPFs. As far as BSF is concerned, even as recently as on 16th October, 2018 a detailed order was passed with reference to those who participated in the 2003 exam. The said order reads as under:

"Whereas, BSF Communication Directorate issued an advertisement in the Employment News published during the week 05-11 July 2003 and various other leading newspapers inviting applications to fill up total 250 posts of Head Constable (Radio Operator) by Direct Recruitment in BSF Communication set up. Further, BSF conducted the recruitment w.e.f 22nd September to 27th September 2003 at various Frontiers Centres and total 223 HCs (RQ) were recruited/selected in the said recruitment. Thereafter, the offer for appointment for the post of HCs (RO) of successful candidates were issued and the same were divided into two batches due to administrative constraints of STCs in BSF i.e. inadequate Training Infrastructure, Accommodation & Instructors.

2. Whereas, the call letters for the first batch comprising of 104 HCs/RO were issued In the month of Nov 2003, with direction to report to STC BSF Bangalore by 08th December 2003. The call letters for the second batch candidates comprising of 119 HCs (RO) were issued in the month of January 2004, with direction to report to STC BSF Bangalore by 14/02/2004. However, only 102 candidates reported for Basic Recruit Training in second batch. Out of which 3 resigned during the basic training. As a result, the selected candidates of first batch became eligible for pensionary benefits under Old Pension Scheme whereas the candidates of second batch were dealt under New Contributory Pension Scheme as they entered into Central Government Service after 1st January 2004 and were, therefore, not entitled for the benefits of Old Pension Scheme in compliance to Government of India, Ministry of Finance, Department of Economic Affairs (ECB &PR Division) Notification dated 22/12/2003.

3. Whereas there is a precedence of similar case in the matter of Insp. Parmanand Yadav & 125 others -Insp. (GD) posted at various HQrs of BSF who had prayed for grant of benefits of Old Pension Scheme on the ground that they were selected as SI (DE) through CPOs Examination 2002. The result of the examination was declared by SSC in the month of August, 2003.

The offer of appointment in respect of successful candidates allocated to others CAPFs were issued in the month of October 2003 and they were enrolled before 01/01/2004, whereas, offer of appointment were issued by BSF in December 2003. Consequent upon commencement of their training in January 2004, they were deprived of the benefits of Old Pension Scheme which became inoperative with effect from 01/01/2004 onward as BSF issued joining letter to all candidates in the month of December 2003. Insp. Parmanand Yadav & 125 other Inspectors filed a WP(C) No. 3834 of 2013 in Delhi High Court for grant of Old Pension Scheme to them. Hon"ble High Court of Delhi passed the judgment in the favour of petitioner"s on 12/02/2015. The whole issue had been examined in detail and after Inter-Ministerial consultation, it had been decided to implement aforesaid order of Hon"ble High Court of Delhi to extend the benefits of Old Pension Scheme to petitioners and other similar situated Cases/personnel as member of the Old Pension Scheme, which was in vogue till 31/12/2003 and the NPS corpus which were earlier subscribed was transferred to the GPF accounts of each individual, subject to the condition that they will not be entitled for any back wages or seniority etc. The decision was implemented vide FHQ BSF Pers. Dte (Rectt. Sec) Order No. A.8 (Estt)(DE) CPOs Exam-2002/Pers (Rectt. Sec)/BSF/2016/290-620 dated 13th January, 2016.

4. Whereas, aggrieved HCs (RO) of Second Batch conceptualized by HC (RO) Sunil Deals of BSF Signal Regiment have made representation, praying therein to extend the benefits of Old Pension Scheme at par with 1st Batch candidates in the light of the Hon"ble High Court of Delhi Judgment dated February 12, 2015 in case of Insp. Parmanand Yadav & 125 Others being similarly situated case.

5. Whereas, the similarity between the two cases is as follows:-

a) In both the cases, candidates appeared for open competitive examination in the year 2002 & 2003 and their results were announced in the month of Sept. 2003 i.e. prior to 01.01.2004 (prior to introduction of NPS), but some successful candidates were called for training in the month of November 2003 i.e. prior to 01.01.2004 and remaining after 01.01.2004 as a result of which the latter were deprived of Old Pension Scheme.

b) Administrative constraints of the department and the training institution resulted in calling some of the successful candidates for training after 01/01/2004.

c) Delay in appointment of second batch candidates is not attributable to these candidates.

6. Whereas, the whole issue was examined in detail in Ministry of Home Affairs and after Inter Ministerial Consultation i.e. Department of Pension & pensioner's Welfare (DoP&PW) and with Department of Personnel & Training (DoP&T) etc. Thereafter approval has been extended by Ministry of Home Affairs to extend the benefits of Old Pension Scheme to Candidates i.e 2nd batch of 99 Nos HC(RO) recruited in the year 2003 to whom the call letters were issued in the month of

January 2004 with direction to join training centre on or before 14.02.2004, subject to condition that they will not be entitled for any back wages or seniority etc.

7. Now. therefore, approval of Competent Authority i.e Ministry of Home Affairs is hereby conveyed to extend the benefits of Old Pension Scheme to second batch of 99 Nos HCs(RO) (as per list enclosed at Appendix- "A") as members of the Old Pensions Scheme, which was in vogue till 31.12.2003 and the NPS corpus which were earlier subscribed should be transferred to the GPF accounts of each individual, subject to the condition that they will not be entitled for any back wages or seniority etc.

8. This has the Financial Concurrence of Joint Secretary & Finance Advisor (JS &FA) BSF vide their Dairy No 2547 dated 12 October 2019 and approval of the DG BSF vide DG's Sectt Diary No 5166 dated 15 October 2018."

17. In other words, the BSF itself has accepted that the benefit of the decision in Parmanand Yadav (supra) and the option to continue the Old Pension Scheme should be extended to all those who had been selected in the exam conducted in 2003 but were only issued call letters in January or February, 2004.

18. For the above reasons, the Respondents are directed to extend the benefit of the Old Pension Scheme to all the Petitioners in the present petitions and pass consequential orders within a period of eight weeks from today.

19. The writ petitions are allowed in the above terms.