
Sagar Singh Pathania & Ors Vs Union Of India & Ors

Civil Writ Petition No. 3923 Of 2021, Civil Miscellaneous No. 11793 Of 2021

Court: Delhi High Court

Date of Decision: March 24, 2021

Acts Referred:

Constitution Of India, 1950 " Article 14

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

Bench: Division Bench

Advocate: Pawan Reley, Vinod Sharma, Aakanksha Kaul, Manek Singh

Final Decision: Dismissed

Judgement

Manmohan, J

1. Present writ petition has been filed with the following prayers:-

1. Issue a writ of mandamus or any other appropriate writ to set aside/quash the letters dated 15.01.2020, 17.10.2020, 5.11.2020,

11.11.2020, 05.02.2021, 09.02.2021 marked as Annexure P-7, Annexure P-8 Annexure P-9, Annexure P-10, Annexure P-11, Annexure P-

12 Respectively.

b. Issue a writ of mandamus or any other appropriate writ or directions directing the respondents to treat the age of superannuation of

petitioners as 60 years and thereby grant them retrial/financial benefits in terms of paragraph 72 of judgment dated 31.01.2019 passed by

this Hon'ble Court in W.P. (C) NO.1951/2012 titled as "Dev Shanna Vs. Union of India & Ors."

c. Issue a Writ of Mandamus or any other appropriate writ or directions directing the concerned respondents for re-fixing the pension of

the petitioners after granting the retirement benefit as mentioned under the office order dated 19th august 2019, bearing no.

F.N.45020/1/2019/legal-I, issued by the government of India through ministry of home affairs;

d. Pass any such other orders as it may deem fit to this Hon'ble Court in the facts and circumstances of the case.

2. The relevant portions of the two impugned orders dated 5th February 2021 and 9th February 2021 are reproduced herein below:

A. Memorandum dated 05th February, 2021

“In this regard, it is informed that Ministry of Home Affairs vide Order No.F.N. 45020/12019/Legal-I dated 17.12.2020 (order is also

available in the MHA’s website) received through FHQ SSB New Delhi vide OM No.I/81/2012/SSB/Pers-V (Org)(136) 5805-40 dated

28.12.2020 has clarified that –

a) The benefits of enhancement in the age of retirement as granted vide para-72 of the judgment of Hon’ble Delhi High Court dated

31.01.2019 in Writ Petition (C) No. 1951/2012 in the matter of I Dev Sharma and Ors V. UOI, would be available to all those in CAPFs who

had retired prior to 31.01.2019 provided that they had not crossed the age of 60 years as on 31.01.2019.

b) The benefits already extended vide para 2(c) of this Ministry’s order ibid dated 19.08.2019 to the petitioners in the Dev Sharma’s

matter (supra) shall not be disturbed.

Hence, as all above retirees have already crossed the age of 60 years before 31.01.2019 and they are not eligible for benefits of enhancement in the age of retirement of 60 years. For information please.

B. Letter dated 09th February, 2021 (Annexure 12)

“With reference to your letter, dated 18.12.2020 regarding Grant of pensionary / retired benefits on completion of 60 years as per

Hon’ble High Court judgment dated 31.01.2019.

As per concluding para of judgment of Hon’ble High Court, pensioner/retirement benefits is admissible only those CAPFs who retired

prior to 31.01.2019 provided they not crossed the age of 60 years as on 31.01.2019.

Keeping view of above direction, the benefits is not admissible to you.

3. Learned counsel for the petitioners states that the petitioners are similarly situated as the petitioners in the case of Dev Sharma vs. ITBP & Anr.,

W.P. (C) No. 1951/2012. He submits that the action of respondents of not treating the age of superannuation of petitioners as 60 years and not

granting them retiral/financial benefits in terms of paragraph 72 of judgment in Dev Sharma (supra) is unjust and arbitrary and thus violative of Article

14 of Constitution of India. Paragraph 72 of the said judgement is reproduced herebelow:

“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.Ã¢â¬â¸

4. Having heard learned counsel for the petitioners, this Court finds that the Division Bench which pronounced the judgment in Dev Sharma (supra)

had itself subsequently clarified in Bharat Singh & Ors. vs. Union of India & Ors., WP(C) 13195/2019, dated 19th December, 2019 that the judgment

in Dev Sharma (supra) as well as that of the Government order dated 19th August, 2019 would be applicable to those in the CAPFs, who had not

crossed the age of sixty years as on 31st January, 2019.

5. Since the petitioners had crossed the age of sixty years prior to 31st January, 2019, therefore they are not entitled to the benefit of increased

retirement age in accordance with the Division Bench judgment in Bharat Singh & Ors. (supra). The relevant portion of the judgment in Bharat Singh

& Ors. (supra) is reproduced hereinbelow:-

Ã¢â¬â¸9. It requires to be acknowledged that the Respondents have accepted part of the above directions by making the order dated 19th

August, 2019 applicable across the board to all CAPFs, including SSB, the personnel of which were not before the Court. Having done so,

it does not stand to reason that the Respondents should confine the benefit of paragraph 72 of the judgment in Dev Sharma (supra) and

batch only to the Ã¢â¬â¸PetitionersÃ¢â¬â¸ in those cases, and not to all persons across the board in all CAPFs who had retired prior to 31st

January, 2019 and who had not crossed 60 years as of that date.

10. It requires to be clarified that the benefit of paragraph 72 of the judgment of this Court in Dev Sharma (supra) will be available only to

those who had not crossed 60 years of age as on 31st January, 2009. It is further clarified that the present order will not disturb the benefit

already extended in terms of para 72 of that judgment and in terms of Para 2 (c) of the order dated 19th August 2019 to any of the Petitioners in the Dev Sharma batch, who may have crossed the age of 60 years as on 31st January 2019.

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.Ã¢â¬â¸

6. Consequently, the issue raised in the present writ petition is no longer res integra.

7. In view of the aforesaid, the present writ petition along with pending application is dismissed.