



W.P.Nos.415, 947, 901 and 766 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : **23.11.2023**

CORAM :

**THE HON'BLE MR. SANJAY V. GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

W.P. Nos.415, 947, 901 and 766 of 2021
and
W.M.P. Nos.1033, 820, 818 of 2021

In W.P.No.415 of 2021:

Lakshmichandra Harishchandra Sharma
Commandant, Retired (0090-D)

... Petitioner

Versus

1.Union of India,
Ministry of Defence,
Room No.234 - South Block,
Ministry of Defence,
New Delhi.

2.The Director General,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi – 110 001.

... Respondents



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In W.P.No.947 of 2021:

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Mr. Sanjay D Patil,
(Commandant (Junior Grade) Retd.

... Petitioner

Versus

1.Union of India,
Ministry of Defence,
Room No.234 - South Block,
Ministry of Defence,
New Delhi.

2.The Director General,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi – 110 001.

... Respondents

In W.P.No.901 of 2021:

Mr. Sanjay D Patil,
(Commandant (Junior Grade) Retd.

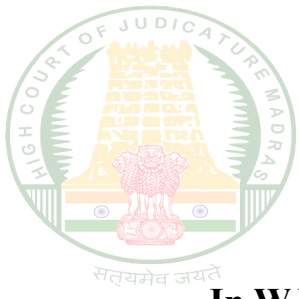
... Petitioner

Versus

1.Union of India,
Represented by Secretary to Ministry of Defence,
Room No.234 - South Block,
Ministry of Defence, New Delhi.

2.The Director General,
Indian Coast Guard,
Coast Guard Headquarters,
National Stadium Complex,
New Delhi – 110 001.

... Respondents



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In W.P.No.766 of 2021:

Commandant AKS Panwar, TM,
Apt No.5B, Vasavi Citrus Grove,
Seevarama 3rd Street, Ganpathy Nagar,
Perungudi, Chennai – 600 096.

... Petitioner

Versus

1.Union of India,
Represented by The Secretary Govt. of India,
Ministry of Defence,
1st Floor, South Block,
DHQ P.O., New Delhi – 110 001.

2.The Director General,
Coast Guard Head Quarters,
National Stadium Complex,
New Delhi – 110 001.

... Respondents

Prayer in W.P. No.415 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration to declare Rule 20(1) of the Coast Guard (General) Rule 1986, relevant SRO 76 dated 19 April 1999 and the impugned decision of the 1st respondent in No.14(14)2020-D(CG) communicated to the 2nd respondent dated 21.07.2020 fixing the retirement age as 57 for Commandant as null and void and non est in law and consequently direct the respondents to fix the retirement age of the petitioner as 60 years at par with Deputy Inspector



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General of Indian Coast Guard instead of 57 years with all consequential service and other attendant benefits.

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Prayer in W.P. No.947 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the communication of the 1st respondent to 2nd respondent in No.14(14) 2020-D(CG), dated 21.07.2020, quashing the same and consequently direct the respondents to continue the petitioner in service until the retirement age of 60 with all consequential and attendant benefits.

Prayer in W.P. No.901 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, to declare the Rule 20(1) of the Coast Guard (General) Rule, 1986 as unconstitutional and consequently direct the respondents to continue the petitioner in service until the retirement age of 60 with all consequential and attendant benefits.

Prayer in W.P. No.766 of 2021: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration to declare Rule 20(1) of the Coast Guard (General) Rule 1986, relevant SRO 76 dated 19 April 1999 and the impugned decision of the 1st respondent in



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letter No.14(14)2020-D(CG) dated 21.07.2020 fixing the retirement age as

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57 for Commandant as null and void and non-est in law and consequently direct the respondents to fix the retirement age of the Commandant/petitioner as 60 years at par with Deputy Inspector General of Indian Coast Guard with all consequential service, monetary and other attendant benefits in the Coast Guard.

In W.P.No.415 of 2021:

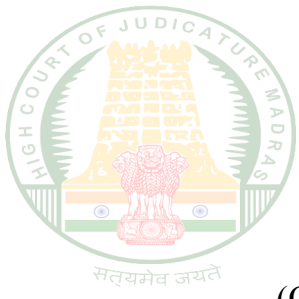
For Petitioner : Mr. Prabhu Mukunth Arun Kumar
For Respondents : Mr. A.R.L. Sundaresan,
Additional Solicitor General of India
Assisted by Mr.N.Ramesh, Senior Standing Counsel.

In W.P.No.947 & 901 of 2021:

For Petitioner : Mr. Niranjana Rajagopalan,
for M/s. G.R. Associates
For Respondents : Mr. A.R.L. Sundaresan,
Additional Solicitor General of India
Assisted by Mr. M. Aravind Kumar, CGSPC

In W.P.No.766 of 2021:

For Petitioner : M/s. Kavya Silambannan
for M/s. Kavya Silmbannan Associates.
For Respondents : Mr. A.R.L. Sundaresan,
Additional Solicitor General of India
Assisted by Mr. Subbu Ranga Bharathi, CGSC



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COMMON ORDER

(Order of the Court was made by Mr. Justice. D.Bharatha Chakravarthy)

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These writ petitions are filed by the petitioners, who were members of the Coast Guard with two limbs of prayers. Firstly, they challenge the constitutional validity of Rule 20(1) of Indian Coast Guard Rules, 1986. Secondly, they challenge the order passed by the Government of India, Ministry of Defense, dated 21.07.2020, refusing to enhance the age of retirement of the members of the Coast Guard up to the level of commandant also to be 60 years from 57 years. The impugned Rule reads as follows:-

“{20. Retirement (1) Retirement age for officers holding a rank higher than that of a Commandant shall be sixty years and for officers of other ranks it shall be fifty-seven years.

(2) Retirement age of enrolled persons shall be fifty seven years}

{Note: The retrospective effect of this rule shall not adversely effect any of the serving Coast Guard/enrolled persons.}”

Thus it can be seen that it provides for the age of retirement of the members of the Coast Guard upto the cadre of commandant as 57 years and in respect of the Ranks above the commandant as 60 years. The personnel working in the Ranks upto the commandant level including the



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writ petitioners in the Coast Guard service, as also in respect of similar

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Rules in the other services such as Central Police Organisation, Central Paramilitary Forces, Central Police Forces have been making representations to bring in parity in the matter of age of retirement.

2.As a matter of fact, one such rule prescribing different ages for retirement for different groups of service within the Indian Air Force was struck down by the Hon'ble Supreme Court of India, in ***Union of India and Ors., -Vs- Atul Shukla and Ors.***¹. In respect of some of the Central Paramilitary Forces(CAPFs), the issue was referred for consideration by the 7th Central Pay Commission, and the decision of the 7th Central Pay Commission in this regard stood as follows:-

“11.12.12 The Chairman and Dr. Rathin Roy recommended raising the retirement age to a uniform 60 years for all personnel in Indian Coast Guard as well as CAPFs.

11.12.13 However, Shri Vivek Rae, Member, Seventh CPC has not agreed with this recommendation, the reasons for which are explained in Chapter 11.22 in the context of CAPFs. Moreover, the Indian Coast Guard has not made any submission on this matter and neither have the views of Ministry of Defence been obtained by the Seventh CPC.

.....
Enhancement of Age of Retirement from Existing 57 years to 60 Years of Age.



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11.22.32 This demand has been made by CRPF, BSF, ITBP and SSB. As per the existing position the age of retirement in Assam Rifles and CISF is 60 while it is 57 in rest of the CAPFs up to the rank of Commandants. DoPT has stated that although the issue was dealt with by the V and the VI CPCs, neither of the Commissions recommended any changes in the age of superannuation. MHA has also declined to enhance the age of superannuation on the ground that the age of retirement has been fixed depending on operational need of that particular Organisation.

11.22.33 Having considered the entire position and the views of MHA and DoPT on this issue, the Chairman, Seventh CPC feels that the grounds stated for justifying differential age of superannuation are not very convincing. Further, members of the CAPFs squarely form a part of the civilian work force. Hence, the Chairman recommends a uniform age of superannuation of 60 years to all CAPFs. Dr. Rathin Roy, Member, Seventh CPC is in agreement with this recommendation.

11.22.34 However, Shri Vivek Rae, Member, Seventh CPC has not agreed with this recommendation for the following reasons:-

a. Ministry of Home Affairs is of the considered view that the age of superannuation cannot be enhanced from existing 57 years to 60 years for all ranks of CRPF, BSF, SSB and ITBP. Force personnel up to the rank of Commandant have operational/combat roles in the field, which require higher physical fitness and efficiency. The higher ranks of DIG and above in these four CAPFs are more supervisory and administrative in nature, which do not require physical fitness of the level required in field units. Therefore, in the ranks of DIG and above in the four CAPFs, the age of



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retirement is 60 years, while for ranks till the level of Commandant, the retirement age is 57 years.

b. Stipulating a lower age of superannuation up to the rank of Commandant in these four CAPFs is a well thought and conscious decision of the government based on ground realities and as per the administrative and operational requirement of the forces. Even in the Army, there are different ages for retirement, which increase in accordance with rank.

c. MHA has further observed that it is not correct to say that in Assam Rifles the age of retirement up to the rank of Commandant is 60 years. Assam Rifles is officered by the Army, and the retirement age at the level of Colonel is not 60 years but 57 years”

3.It can be seen that in the absence of any request from the coast guards, the same was left out and the seventh pay commission considered the issue in respect of the other CAPFs. However, even the recommendation of the pay commission by a majority opinion of 2:1 was not accepted by the Government of India, and by a communication dated 25.07.2016, it was decided that until a decision is taken on the administrative issue pertaining to a uniform retirement age for all ranks in CAPFs, where the commission could not arrive at a consensus, the status-quo shall be maintained.

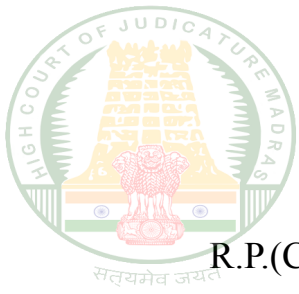


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4. In view of the same certain aggrieved officials belonging to the

CAPFs approached the Delhi High Court and by the Judgment in ***Dev Sharma -Vs- Indo Tibetan Border Police and Others.***², the Delhi High Court considered the issue in detail. The Delhi High Court held that the order of the Government of India in directing to maintain status-quo in the teeth of the recommendation of the expert body by a majority of 2:1 is unsustainable. Thereafter it examined the issue on merits and considered the reasons adduced by the Union of India to maintain different yardsticks for these cadres and considered the earlier Judgment of the Supreme Court of India in ***Atul Shukla's*** case, and held that the reasons put forth by the respondents to have different retirement dates as not convincing and therefore came to a conclusion that the petitioners made out a case of violation of Articles 14 and 16 of the Constitution of India and therefore struck down the relevant Rule 43(a) of the CRPF Rules.

5. Aggrieved by the Judgment, the Government of India approached the Supreme Court of India, by way of S.L.P. Civil Nos. 11944 of 2019 etc., and by a Judgment dated 10.05.2019, the Special Leave Petition was dismissed. Thereafter a Review Petition was also filed in



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R.P.(Civil).No.1555 of 2019 which was also dismissed by order

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16.07.2019. After the dismissal of the same, the Judgment of the Delhi High Court is implemented and the retirement age of all the ranks is made uniform as 60 years in the CAPFs.

6. Be that as it may, in the meanwhile, these writ petitioners and also others belonging to Coast Guard in the cadre of Assistant Commandant, etc., approached this court by way of writ petition in W.P.Nos.11956 of 2018, etc. By an order dated 18.07.2019, by considering the dismissal of the review application as dismissal on merits and treating that the law has been laid down by the Supreme Court of India under Article 141 of the Constitution of India to maintain a common age of retirement, the writ petitions were allowed by directing the respondents to continue them in service until they attain the age of 60 years.

7. However, the respondents filed Review Application No.156 of 2019 etc., and by an order dated 21.01.2020, this Court after considering the issue, allowed the review application on the ground that an error has crept into the reasoning of the Court and allowed the review application by recalling the earlier order but however, with the direction to the



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respondents to consider the case of the petitioners, who are members of the

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Coast Guard in the light of the Delhi High Court Judgment in **Dev Sharma** case becoming final in respect of the other paramilitary forces like BSF, CRPF, ITBP, etc., As a matter of fact, a similar order to consider and pass orders, was also passed in the writ petitions, which were pending as on that date, which were filed by the petitioners in the present cases.

8.As per the directions of this Court, the first respondent thereafter considered the case and by the impugned order Ref.No.14 (14) 14/2020 – D(CG), dated 21.07.2020 rejected the claim of the petitioners. The entire order needs to be extracted and read as under:-

“I am directed to refer to Hon'ble High Court judgment in Review application that the matter regarding increasing the retirement ren age of the officers of the rank of No. 156 of 2019 dated 10th March, 2019 on the above mentioned subject and to inform Commandant and below in Coast Guard has been considered in this Ministry and it has been decided with the approval of the Competent Authority to maintain status quo on retirement age of Indian Coast Guard personnel in view of the following factors:

*(i) **Younger age profile.** Indian Coast Guard (ICG) being a sea going service requires young and medically fit personnel amongst its ranks to man afloat and aviation platforms. The service has accordingly adopted commensurate profile for various*



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command and operational appointments to ensure optimum output and dynamic efficiency. Increasing superannuation again the rank of Commandant and below who have greater sea service requirement, will adversely affect the young age profile required for the service. Further, the growing force level requires manpower with younger age profile. Increase of superannuation age will adversely affect the manpower required for sustained growth of the ICG fleet.

*(ii) **Medical standards and employability.** Service has stringent medical standards at par with the other defence services by virtue of its operating environment and functional responsibilities. Age related afflictions and prevalence of lifestyle diseases has a visible impact on medical standards of personnel beyond the age of 50 years. As on date, about 34% officers and 50% Enrolled Personnel (EP) in the age group of 50-54 years are in low medical category (LMC). Many personnel owing to low medical category between S2A2 and S5A5 have a lot of factors influencing their appointment viz. presence of nearby Military/Command hospital with certain specialist facilities etc. Increase to 60 years may- lead to prolonged appointments at a few selected stations and adversely affect the equitable appointment policy of the service. This may deprive otherwise medically fit personnel of shore appointment derailing the ship-shore rotation policy.*

*(iii) **Command and control issues.** ICG by virtue of having well defined chain of Command structure entails clear cut delegation of authority to various officers and personnel. In case of increasing retirement age of Commandant and below to 60 years, the officers though junior in rank but senior in years of service would occupy certain billets where they may be placed under an officer superior in rank but*



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with less years of service. This scenario inadvertently may lead to Command and Control issues as all personnel who have been superseded cannot be given independent command appointments.

*(iv) **Career progression.** The rank of Commandant is a selection grade and if occupied by an officer for another three years, would deprive eligible and deserving officers of a promotional avenue due to lack of vacancies in the years to come as most of the ICG vacancies pertain to operational billets.*

*(v) **Supersession factor.** Officers of the rank of Commandant and below who superannuate at 57 years of age invariably get superseded in their respective ranks and do not have any further career progression or Non-Functional Upgradation. Such officers have to perform within the umbrella of this limitation. Although self-motivated and committed personnel would continue to give tangible outputs however factors of complacency and inertia cannot be ruled out. It may happen that some personnel would like to continue for the sake of pay and perks only contributing minimally to the service. Further, induction of manpower is dependent on posts falling vacant due to superannuation.*

*(vi) **Training similar to Indian Navy officers.** Both Indian Coast Guard (ICG) and Indian Navy (IN) being maritime Forces, have similar training requirements. Sharing of training facilities obviate duplication of training infrastructure and hence results in financial savings. Since Indian Navy has established training facilities, ICG is availing IN training. All standard operating procedures w.r.t Navigation, Communication, Engineering, Electrical etc., are similar to each other. Hence, the ab-initio training and professional training of ICG is conducted by IN in their training institutions. ICG has*



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to follow IN training policies and regulations. It is also inescapable that ICG personnel conform to the rank and seniority requirement as prescribed by IN, whilst undergoing training with them.

*(vii) **Cadre and career progression.** ICG rank nomenclature of officers is similar to CAPFs (Central Armed Police Forces) whereas that of EPs is ICG specific. The career progression time lines in ICG is akin to Indian Navy. The cadres/branches of officers and EPs are patterned on lines similar to IN. IN has the provision of early retirement of officers in case of non-promotion and fixed engagement policy in case of Sailors. These provisions are designed to maintain young age profile of the service considering the nature of tasks performed at sea. There is no such provision in ICG, whereas maintaining a young age profile is of paramount importance being a sea going service.*

2. CGHQ is requested to apprise the Hon'ble Madras High Court in the matter through Government Counsel.”

Aggrieved thereby, the present writ petitions are filed.

9.The writ petitions are resisted by filing counter affidavits. The stand of the respondent in essence is that the retirement age is to be prescribed in the relevant Service Rules. Rule 20(1) prescribes the age as 57. As a matter of fact, the Government of India has ordered maintenance of status-quo in respect of the age of retirement as no consensus could be arrived at even between the expert members in the seventh pay



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commission. The seventh pay commission considered only the cases of the other paramilitary forces and specifically did not consider the case of the Coast Guard since there was no request from the Coast Guard to reconsider the age. The Rule prescribes different age limits, considering very many factors. Most importantly, it is mentioned that the services up to the level of Commandant have a greater off-shore service and therefore there is justification for prescribing a lower age limit. The Ranks above the level of Commandant and are predominantly administrative in nature and as such the higher age limit of 60 years is prescribed. This apart, the other reasons mentioned in the order impugned in the writ petition is also reiterated.

10. We have heard *Mr. Prabu Mukunth Arun Kumar, M/s. Kavya Silmabannan,* and *Mr. Niranjana Rajagopalan* on behalf of the writ petitioners and *Mr. A.R.L. Sundaresan,* the learned Additional Solicitor General of India on behalf of the respondents.

11. *Mr. Prabhukumar Mukunth Arun Kumar* would submit that the status, rank structure, promotion rules, age of retirement, pay and allowances, reservation policy, and duties, such as president guard duties, defence attached duties, budget allocation, legal recourse, pension, leave rules are



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all similar to the Indian Coastal Guard as well as the CAPFs. Therefore,

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when the Judgment of the Delhi High Court has been implemented in respect of the other CAPFs by increasing the age as 60, there is no justification in continuing the age as 57 only in respect of Indian Coast Guards. He would submit that the classification up to the cadre of Commandant and the other higher ranks has no rationale and in any event, does not have any nexus with the object sought to be achieved. He would submit that even the Rank of commandant is in the group of Officers. He would submit that the personnel in the rank of Deputy Inspector General are also deemed to be a Commandant in respect of greater vessels and personnel even in the cadre of Inspector General, etc., have to perform on board duties and therefore the argument made in this regard is illegal. In support of submissions, the Learned Counsel relied upon the following Judgments :

“a. (1981) 4 SCC 335 Air India Vs. Nergesh Meerza and others.

b. (1983) 1 SCC 305 – D.S.Nakara and others Vs. Union of India.

c. (2005) 13 SCC 300 Harwindra kumar Vs. Chief Engineer Karmik.

d. (2006) 11 SCC 464 UP Jal Nigam Vs. Jaswant Singh

e. (2007) 11 SCC 507 UP Jal Nigam Vs. Radhey Shaym Gautam

f. (2013) 7 SCC 595 State of UP Vs. Dayanand Chakrawarty



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g. (2014) 10 SCC 432 *Union of India and others Vs. Atul Shukla*

h. 2019 SCC OnLine Del 6797 *Dev Sharma Vs. Indo Tibetan Boarder Police and others.*”

12. *Mr. Niranjana Rajagopalan*, the Learned counsel would submit that Rule 21 does not satisfy the test of intelligible differentia or reasonable nexus to the object of legislation while providing for different age of retirement among officers. The same is based on rank attained by promotion within the same services. Pointing out to Rules 7, 8 and 9 of the Rules, he would submit that the duties and powers, etc., are similar and any differentiation is only artificial. The reasons mentioned in the impugned order are all applicable in respect of the other services also. The reasons are expressly rejected by the Supreme Court of India in *Atul Shukla's* case (cited supra).

13. Per contra *Mr. A.R.L. Sundaresan*, the learned Additional Solicitor General of India, appearing for the respondents would submit that firstly the Indian Coast Guard being an Armed Force, as such Article 33 of the Constitution of India would be applicable. Therefore, if any law provides for a different treatment, the same by itself would not be invalid.

It is within the realm of the employer to provide for the age of retirement.



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The services are governed by the Coast Guard Act and as per Section 10 of the Coast Guard Act 1978, every member of the Coast Guard shall hold office during the pleasure of the President. The Central Government is empowered to make rules under Section 123 of the Coast Guard Act, 1978, more specifically under Section 123(2)(C) in respect of the conditions of service, including service privileges and directions from pay and allowances of the members of the Coast Guard and under Section 123(2)(E) in respect of retirement. In exercise of the said powers, the impugned Rule 20(1) of the Indian Coast Guard Rules, 1986 was framed.

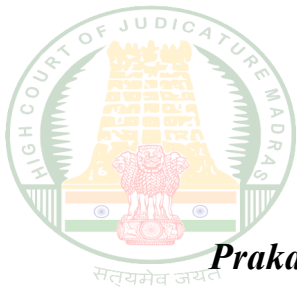
14. The only ground of attack in respect of the said rules is that the Delhi High Court has allowed similar claims. As a matter of fact, the Delhi High Court found that the pay commission has recommended in the majority of 2:1. The Delhi High Court further found that the reason stated by the respondents in that case for classification was not reasonable and on the facts and circumstance of the case, the writ petitions were allowed. The mere *in limine* dismissal of the Special Leave Petitions by the Supreme Court of India does not amount to confirmation of the said Judgment. In any event, the pay commission report itself makes clear that they are not considering in respect of the Indian Coast Guard. Secondly, even though in



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the earlier round, originally the respondents were directed to continue the incumbents up to the age of 60 years, subsequently, upon review being filed, the said order is recalled and only after the consideration of the Delhi High Court Judgment, the matter was remanded back to the respondent to reconsider the issue. The respondents have reconsidered the issue and have passed the impugned order, detailing the reasons for prescribing different age of retirement. The expertise and wisdom of the respondent, especially in respect of the armed forces, cannot be substituted or supplanted by the views of the Court. When proper reasons have been mentioned for classification, the same shall stand the test of Article 14, especially in the teeth of Article 33 of the Constitution of India. In the absence of a successful challenge to the rule, the respondents have no right to plead that they have to continue in service up to the age of 60 years.

15. In support of his submissions, the learned Additional Solicitor General of India, would rely upon the Judgment of the Hon'ble Supreme Court of India in *Central Council for Research in Ayurvedic Sciences and another -Vs- Das and others*³, more specifically referring to paragraph 44 of the said Judgment. He would further advert to the Judgment in *Dr*



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Prakashan MP and others -Vs- State of Kerala and another⁴, more

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specifically referring to paragraph 11 to contend that these are all matters of policy which should engage the Government which should take into account several considerations, including financial implications, administrative considerations, exigencies of service, etc. He would further submit that since the Government of India has taken a decision to maintain status-quo, in respect of the differential age prescribed to different cadres, the same is applicable in respect of the writ petitioners. The Judgment of the Delhi High Court is by considering different rules and for different services and therefore the mere implementation of the Judgment in respect of other CAPFs would not by itself give a right for the writ petitioners to challenge the impugned rules.

16. We have considered the rival submissions made on either side and perused the material records of the case. The points which arise for consideration are as to:

“i. Whether Rule 21 of the Coast Guard rules, prescribing differential age of retirement has to be struck down as unconstitutional?”



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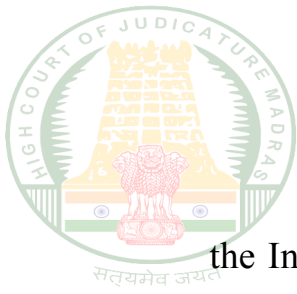
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ii. *Whether the respondents are right in rejecting the prayer of the petitioners to increase the age of retirement up to 60 by the impugned order?"*

17. Firstly, there can be no two opinions that Article 33 of the Constitution of India applies to the instant case. In matters of prescribing conditions of service such as age of retirement, etc., are matters of policy within the realm of the employer. Therefore, there will be minimal interference by the Courts by way of judicial review in such matters. The only exception is being the violation of Article 14 of the Constitution of India. To quote the Hon'ble Supreme Court of India, in ***Re: Special Reference No.1 of 2012***⁵:

"Nevertheless, it cannot, and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down".

18. The argument of the Learned Counsel for the petitioner that the matters have to be straightaway allowed based on the Judgment of the Delhi High Court in ***Dev Sharma case*** (cited supra) cannot be countenanced. Firstly, the Delhi High Court considered the recommendation of the Seventh Central Pay Commission. In the case of



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the Indian Coast Guard, no directions were issued by the Seventh Central Pay Commission. Secondly, the reasons put forth by the respondent for effecting classification in that particular case were considered in detail in paragraphs 94 to 109 and it was expressly found that the reasons were not convincing. Therefore, a similar exercise has to be carried out in the present case also. The rule position and the reasons mentioned in the present case have to be considered before coming to a conclusion as to whether the differential age of retirement is violative of Articles 14 and 16 of the Constitution of India. It is in this regard, it is relevant to advert to the earlier round of litigation in the present case. Considering the fact that by order dated 19.08.2019, in CRPF, BSF, ITBP, SSB, CISF and AR, the age of retirement is uniformly implemented as 60 years, this Court passed the following order and it is essential to extract paragraphs 16 and 17, which reads as under:-

“16. The said ratio applies to the present case also. For the reasons aforementioned, the Review needs to be allowed. However, it is to be mentioned that Union of India is considering the cases of other para-military forces like the BSF, CRPF, ITBP as directed by the Delhi High Court, in Dev Sharma (supra) which has become final by the dismissal of the Special Leave Petition (C) No.11944 of 2019 which had been filed challenging the judgement in Dev Sharma and the Review Petition being R.P.No.1555 of 2019 filed against the dismissal of the Special Leave Petition.



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17. In the light of the above, we direct Union of India to consider the case of the Officers below the rank of Commandant in Coast Guard as to whether their retirement age can also be increased to 60 years or not. We therefore allow the Review Petition and recall the judgement dated 18.07.2019 and dispose of the writ petition directing the Union of India to consider the case of the Coast Guard which is also a para-military force, performing functions akin to CRPF, ITBP and BSF as to whether the age of retirement of the Officers below the rank of Commandant in Coast Guard be increased to 60 as it is being considered for other para-military forces as directed by the High Court. Union of India is directed to take a decision in this regard within a period of three months from the date of the receipt of the copy of this order.”

19. The entire order of the first respondent passed after the direction as above was extracted supra. Firstly, it can be seen that even though the respondents have stated very many reasons within the Coast Guard Service for rejecting their claim, there is absolutely no application of mind whatsoever regarding the similarity or otherwise with the other CAPFs and nothing is even mentioned about the Judgment of the Delhi High Court in **Dev Sharma** and its implementation in respect of the other CAPFs.

20. Further, one of the reasons mentioned in the impugned order is that the other higher officials are involved in administrative duty and the



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personnel upto the rank of commandant are predominantly in offshore

duties and therefore it is desirable to prefer lower age is concerned. Firstly, we had directed the respondents to furnish the details of the duties etc, upon which it could be seen that depending on the size of the vessel, even the Deputy Inspector General whose retirement age is 60 years, automatically assumes the rank of Commandant in respect of certain types of vessels. The petitioners were also able to demonstrate that offshore duties are assigned to the other officer cadres also. In this regard, it is essential to advert to the decision of the Hon'ble Supreme Court of India in *Athul Shukla's case* (cited supra). In the said case also, the reasons pleaded by the respondents for prescribing, different age of retirement is extracted in paragraph 38 of the said Judgment which includes that the operational fighting younger force will be depleted and would affect the combat preparedness of the Indian Air Force. The said argument was rejected in paragraph 44 and ultimately in paragraph 46 the Hon'ble Supreme Court of India, held thus:-

“44. The assertion of the appellant that a parity in the retirement age reduces the combat effectiveness of the Force has been stoutly denied by the respondents who have asserted that if a Group Captain (Select) or for that an Air Commodore or an Air Vice Marshall gets superseded, his higher age neither automatically impedes the quality and



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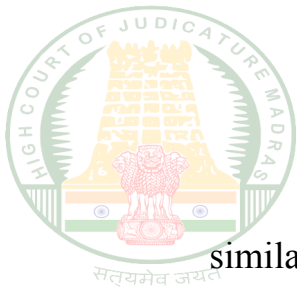


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standard of performance of his duties nor does IAF summarily curtail his residual service as a consequence of his supersession, on the ground that his higher age group may impact combat effectiveness.”

“46. Suffice it to say that the basis of classification in question for purposes of age of superannuation which the appellant has projected is much too tenuous to be accepted as a valid basis for giving to the Timescale Officers a treatment different from the one given to the Select Officers. We are also of the view that concerns arising from a parity in the retirement age of Timescale and Select Officers too are more perceptual than real. At any rate, such concerns remain to be substantiated on the basis of any empirical data. The upshot of the above discussion is that the classification made by the Government of India for purposes of different retirement age for Timescale Officers and Select Officers does not stand scrutiny on the touchstone of Articles 14 and 16 of the Constitution as rightly held by the Tribunal.”

21. Thus it can be seen that the argument relating to the reason mentioned by the respondent relating to younger age profile and suitability for offshore duties has been demonstrated to be doubtful. The Delhi High Court also in the Judgment in **Dev Sharma** held it to be a doubtful criteria, so as to effect the classification on that basis. But, however, in the instant case in the impugned order dated 21.07.2020, the respondents also mentioned about Medical Standards, Command and Control Issues, Carrier Progression, Supersession Factor, The Training of the Coast Guard being



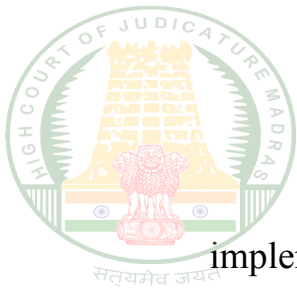
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similar to Indian Navy Officers, and Cadre and Carrier Progression, also as reasons.

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22. The contention of the petitioner relating to the other reasons of Caree Progression etc., mentioned in the impugned order is again primarily on the premise that the same are akin to the CAPFs in respect of which the Order has been passed on 19.08.2019 implementing the uniform age as 60 years. However, the similarity or otherwise has to be first considered by the respondents themselves to arrive at a conclusion. Without a decision being made it cannot be conclusively held that the discrimination in respect of the age of retirement will be in violation of Article 14 and 16 of the Constitution of India.

23. The impugned order does not address as to whether the rank and profile of the other CAPFs covered in the Delhi High Court Judgment are identically situated or not. It would be clear from the earlier order of this Court that it was incumbent upon the respondent to consider the same. It can be seen from the impugned order that nothing has been considered in respect of the similarity or otherwise of the other CAPFs and the



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implementation in respect of the common age pursuant to the Judgment of the Delhi High Court in ***Dev Sharma***.

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24. The petitioners have also demonstrated positively before this Court that atleast one reason relating to offshore duty in respect of the ranks upto the level of Commandant and the ranks above the level of Commandant is factually incorrect. The writ petitioners can also place before the respondent such materials as they wish, so as to justify their claim that the other reasons mentioned in the impugned order may not also be correct. It is for the respondents to consider the same and take a call in the matter.

25. In the result we dispose of the writ petitions with the following directions:

(i) The impugned order of the first respondent bearing reference No.14 (14/2020 – DCG), dated 21.07.2020 shall stand set aside and the matter shall be reconsidered by the first respondent in view of the reasonings contained supra in the Judgment;

(ii) It would also be open for the petitioners to make such representation in detail and bringing forth such material before the first



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respondent within a period of three weeks from the date of receipt of a

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copy of the order and thereafter, the first respondent shall reconsider the

issue in accordance with law, within a period of four months therefrom;

(iii) No costs. Consequently, the connected miscellaneous Petitions

are closed.

(S.V.G., CJ.) (D.B.C., J.)

23.11.2023

Index : Yes

Speaking Order

Neutral Citation : Yes

klt

To:

1. The Secretary Govt. of India,
Union of India,
Ministry of Defence,
1st Floor, South Block,
DHQ P.O., New Delhi – 110 001.

2. The Director General,
Coast Guard Head Quarters,
National Stadium Complex,
New Delhi – 110 001.



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**THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.,**

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and
W.M.P. Nos.1033, 820, 818 of 2021

23.11.2023