



2025:DHC:10356-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 29 July 2025

Pronounced on: 24 November 2025

+ W.P.(C) 6028/2021

CHEELI J RATNAM

.....Petitioner

Through: Mr. Himanshu Gautam, Mr.
Kishan Gautam, Ms. Anuradha Pandey, Mr.
Lokesh Sharma, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Raj Kumar Yadav, Senior
Panel Counsel alongwith Mr. Vaibhav
Bhardwaj and Ms. Tripti Sinha, Advs

+ W.P.(C) 9496/2020

COMDT. AVW RAO

.....Petitioner

Through: Mr. Himanshu Gautam, Mr.
Kishan Gautam, Ms. Anuradha Pandey, Mr.
Lokesh Sharma, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Jaswinder Singh, Adv.

+ W.P.(C) 7579/2024 & CM APPL. 31522/2024

JITENDER JIT SINGH JAMWAL

.....Petitioner

Through: Mr. Himanshu Gautam, Mr.
Kishan Gautam, Ms. Anuradha Pandey, Mr.
Lokesh Sharma, Advs.

versus



2025:DHC:10356-DB



UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Virender Pratap Singh
Charak, Ms. Shubhra Parashar and Gokul
Atrey Advs.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE OM PRAKASH SHUKLA**

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JUDGMENT**24.11.2025****C. HARI SHANKAR, J.****Facilitative Index to the Judgment**

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The *lis*

1. The petitioners call into question the constitutionality of Rule



20(1) and 20(2)¹ of the Coast Guard (General) Rules, 1986², which provide that, in the Indian Coast Guard³, officers of the rank of Commandant and below would retire at 57, whereas officers above the rank of Commandant would retire at 60.

2. We may note, at the outset, that, following the judgement of a coordinate Division Bench of this Court in **Dev Sharma v Indo Tibetan Border Police**⁴, this distinction in the age of retirement of officers upto the level of Commandant and above the level of Commandant no longer survives. All officers retire at 60. The Special Leave Petition and, thereafter, the Review Petition, preferred by the Union of India against the judgment in **Dev Sharma** stand dismissed by the Supreme Court.

3. The decision in **Dev Sharma**, though it covered all paramilitary forces including the Central Reserve Police Force⁵, Indo Tibetan Border Police⁶, Border Security Force⁷, Central Industrial Security Force⁸, Sashastra Seema Bal⁹ and even the Assam Rifles and all Central Armed Police Forces¹⁰, did not expressly extend to the Coast Guard, as the Coast Guard, though also a paramilitary force, is not a CAPF.

¹ 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.

² “the 1986 Rules” hereinafter

³ “Coast Guard” hereinafter

⁴ (2019) 174 DRJ 98 (DB)

⁵ CRPF

⁶ ITBP

⁷ BSF

⁸ CISF

⁹ SSB

¹⁰ “CAPFs” hereinafter



4. It is thus that the disparity in age of superannuation survives, in the case of the Coast Guard.

Facts

5. The petitioners in these writ petitions are retired officers of the Coast Guard. All of them were, however, in service at the time when the writ petitions were filed. They all have been retired at the age of 57 in accordance with Rules 20(1) and 20(2) of the 1986 Rules. Rule 20 provides that officers up to the rank of Commandant in the Coast Guard would retire at the age of 57 whereas officers above the rank of Commandant would retire at 60. Rule 20(2), similarly, provides that “enrolled persons” in the Coast Guard would retire at the age of 57. “Enrolled person” is defined, in Section 2(k) of the Coast Guard Act, 1978, as meaning “a subordinate officer, sailor or other person enrolled under this Act”.

6. The petitioners assail the constitutionality of Rule 20 (1) and (2) of the 1986 Rules. They plead that the retirement of officers above the rank of Commandant at 60 and other officers at 57 results in invidious and unconstitutional discrimination, which cannot sustain the scrutiny of Articles 14 and 16 of the Constitution of India.

7. There is some history to this litigation.

8. A similar dispute, involving officers of the BSF, CRPF, ITBP



and SSB was decided by a Division Bench of this Court in **Dev Sharma**. The Division Bench of this Court held the prescription, in the concerned rule in that case, of a higher age of superannuation for officers above the rank of Commandant and the lower age of superannuation for officers upto the rank of Commandant, to be unconstitutional. The Rule was accordingly struck down. In paras 113 and 114 of the report, the Division Bench has directed that its judgment be implemented across all CAPFs, without requiring individual petitioners to approach the Court.

9. *The Coast Guard, we may note here, is not a CAPF.*

10. The Special Leave Petition preferred by the UOI against the judgment of the Division Bench in **Dev Sharma** was dismissed by the Supreme Court *in limine* on 10 May 2019. A review petition, preferred thereagainst, was also dismissed by the Supreme Court on 16 July 2019.

11. Relying on the decision of this Court in **Dev Sharma**, certain officers of the BSF and the CRPF approached the High Court of Madras in certain writ petitions, challenging the Rule applicable in their case with respect to superannuation of officers of the rank of Commandant and below. Following the judgment of this Court in **Dev Sharma**, the High Court of Madras, by judgment dated 18 July 2019, allowed the said writ petitions. However, by judgment dated 10 March 2020 in Review Application 156/2019 – instituted by the UOI – the judgment dated 18 July 2019 was reviewed and the UOI was



permitted to consider whether parity in the age of superannuation could be granted to officers upto the rank of Commandant and above the rank of Commandant in the Coast Guard, at 60 years, noting the fact that it was a para military force performing functions similar to the CRPF, ITBP and BSF.

12. Purportedly in compliance with the order passed in the Review Application, the Ministry of Defence¹¹ issued order dated 21 July 2020, rejecting the claim for parity in retirement age between officers of the rank of Commandant and below, and officers above the rank of Commandant, in the Coast Guard. By judgment dated 23 November 2023, rendered in WP 415/2021 and connected petitions, the High Court of Madras held that the decision dated 21 July 2020 was not in accordance with the directions contained in the judgment dated 10 March 2020 in Review Application 156/2019 and, therefore, directed the respondents to re-consider the matter and pass a fresh order.

13. In purported compliance with the judgment of the High Court of Madras, the Coast Guard Headquarters has issued a fresh order dated 20 May 2024, again reiterating that it was not possible to equalize the age of superannuation of officers upto the rank of Commandant in the Coast Guard with the age of superannuation of officers above the rank of Commandant.

14. That order dated 20 May 2024 is subject matter of challenge in

¹¹ “MOD”, hereinafter



WP (C) 7579/2024¹².

The issue in controversy

15. It is in this backdrop that these writ petitions have to be decided. Clearly, the only issue before the Court is whether Rule 20 of the 1986 Rules, to the extent it fixes 57 as the age of superannuation for officers upto the rank of Commandant, and 60 as the age of superannuation for officers above the rank of Commandant, is, or is not, legally sustainable.

A preliminary observation

16. One of the principal contentions of the petitioners is that the issue is no longer *res integra*, as it is covered by the judgment in **Dev Sharma**. This submission is obviously incorrect. The Division Bench of the High Court of Madras, in its judgment dated 10 March 2020 in Review Application 156/2019 has clearly held that the aspect of differential ages of superannuation of officers up to the rank of Commandant, and above the rank of Commandant, in the Coast Guard, is not covered by the decision in **Dev Sharma**. We, too, agree, as the Division Bench, in **Dev Sharma**, was concerned with the situation obtaining in the CAPFs. The judgment in the review application, in fact, also goes to the extent of doubting the correctness of the judgment of the Division Bench of this Court in **Dev Sharma**.

¹² **Jitender Jit Singh Jamwal v UOI & Ors.**



17. In any event, we cannot blindly rely on the decision in ***Dev Sharma*** as covering the issue in controversy.

18. Of the petitioners in these writ petitions, Cheeli J. Ratnam was a *Pradhan Adhikar*, whereas AVW Rao and Jitender Jit Singh Jamwal were Commandants. By operation of Rule 20 of the 1986 Rules, they all retired at the age of 57.

19. Proceedings before the High Court of Kerala – ***V. Thulasi Nair***

19.1 We may, at this stage, advert to a judgment dated 30 January 2015, passed by a learned Single Judge of the High Court of Kerala in ***V. Thulasi Nair v Chief of the Army Staff***¹³. The petitioner, in that case was, a retired officer of the Assam Rifles. He petitioned the High Court aggrieved by non-extension to him, and other retired personnel of the Assam Rifles, of the benefit of the Ex-servicemen Contributory Health Scheme¹⁴. The dispute in that case may not be of particular significance for us. Suffice it to note that para 13 of the judgment, the learned Single Judge, observed that the Special Frontier Forces¹⁵ and the Coast Guard were Paramilitary Forces of India. The petitioner contends, based on this finding of the High Court of Kerala that the ICG is also a Paramilitary Force.

19.2 The judgment of the High Court of Kerala was challenged by the Chief of Army Staff and the UOI by way of WA 709/2015, which

¹³ 2015 SCC OnLine Ker 4004

¹⁴ “ECHS”, hereinafter

¹⁵ “SFF”, hereinafter



was dismissed by the Division Bench of the High Court of Kerala by judgment dated 10 August 2017. The Division Bench, too, in its judgment, observed that the Coast Guard and the SFF were not part of the Armed Forces but were central Paramilitary Forces.

19.3 SLP (C) Diary No.1044/2018, preferred by the Union of India UOI, against the aforesaid judgment dated 10 August 2017, passed by the Division Bench of the High Court of Kerala was dismissed by the Supreme Court in *limine* on 9 February 2018.

19.4 All that emerges from these decisions, to the extent they are relevant for our purpose, is, therefore, the proposition that the Coast Guard is a Paramilitary Force.

20. Recommendations of the 7th CPC and Resolution dated 25 July 2016 of the Ministry of Finance

20.1 In the Central Industrial Security Force¹⁶ and the Assam Rifles, the position was as it exists today in the Coast Guard. In other words, officers of the rank of Commandant and below used to retire at the age of 57, whereas the officers above the rank of Commandant used to retire at the age of 60.

20.2 The issue of whether this discrepancy in the age of superannuation of officers of the rank of Commandant and below *vis-à-vis* officers above the rank of Commandant, could continue in the CRPF, BSF, ITBP and SSB, when there was no such discrepancy in

¹⁶ "CISF", hereinafter



the CISF and Assam Rifles, was taken up for consideration by the 7th Central Pay Commission¹⁷. Before the 7th CPC, it was contended that the duties of officers in the CAPFs like ITBP and BSF were, functionally more akin to the Army, as they were generally deployed for internal security duties, counter insurgency operations or at the border, at high altitudes and in difficult terrains. It was advisable, therefore, that officers of the rank of Commandant and below were not continued beyond the age of 57 years, whereas officers above the rank of Commandant generally performed duties which were more supervisory in nature, justifying a higher age of superannuation.

20.3 The 7th CPC, by a majority of two members to one, opined that the age of superannuation for all officers in the CRPF, ITBP, BSF and SSB were, like the CISF and the Assam Rifles, required to be the same, irrespective of the rank of the officers concerned. In other words, the 7th CPC, by majority, advocated equating the ages of superannuation of officers of the rank of Commandant and below with officers above the rank of Commandant at 60 years in the CRPF, ITBP, BSF and SSB.

20.4 The Ministry of Finance after perusing the report dated 19 November 2015 of the 7th CPC, resolved, however, *vide* Resolution dated 25 July 2016 that, till a decision was taken by the Government on administrative issues pertaining to uniformity in the retirement age for all ranks in the CAPFs, *status quo* would be maintained.

¹⁷ "CPC", hereinafter



21. Judgment of this Court in *Dev Sharma*

21.1 Eight members of the CRPF, ten members of the ITBP and one member of the BSF together petitioned this Court in a batch of writ petitions, which came to be decided by judgment in *Dev Sharma*, dated 31 January 2019.

21.2 All the petitioners before this Court in *Dev Sharma* were officers of the rank of Commandant and below. Their prayer was the same as the prayer of the petitioners in the present case, i.e., that the age of superannuation of officers of the rank of Commandant and below in the CRPF, ITBP and BSF be enhanced to 60, at par with the age of superannuation of officers above the rank of Commandant in the said CAPFs.

21.3 By judgment dated 31 January 2019, a Division Bench of this Court allowed the writ petitions and ultimately directed thus:

“113. 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.

114. 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



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.

115. 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.

21.4 In arriving at the said decision, the Division Bench reasoned as under:

(i) While the matter of fixation of age of superannuation was undoubtedly a policy decision, there was no absolute bar on judicial interference in policy decisions. If the policy was plainly discriminatory, the Courts would not hesitate to interfere.

(ii) The respective Rules governing the CRPF, BSF and ITBP provided for retirement of officers of the rank of Commandant and below at the age of 57 and of officers above the rank of Commandant at 60 years. The Court was, therefore, was called upon to examine whether this discrepancy could sustain the scrutiny of Articles 14 and 16 of the Constitution of India.



(iii) The Court did not accept the submissions of the Union of India that bringing about parity in the retirement age of officers of the rank of Commandant and below with the retirement age of officers above the rank of Commandant would reduce combat effectiveness of the CAPFs. Reliance was placed in this context on the judgment of the Supreme Court in *Union of India v Atul Shukla*¹⁸. The issue in *Atul Shukla* also concerned retirement age of Time Scale Promoted Group Captains in the Indian Air Force. The applicable policy provided for retirement of Time Scale Promoted Group Captains at the age of 52 years in the case of Flying Branch Officers and 54 years in the case of Ground Duty Branch Officers. For Group Captains who were promoted on the basis of merit, officers in the Flying Branch retired at the age of 54 years and the officers in the GD Education and Met Branches retired at the age of 57 years. This discrimination was first challenged before the AFT, which upheld the challenge and quashed the decision to have different retirement ages in the rank of Group Captain. The decision of the AFT was challenged before the Supreme Court, which in its judgment in *Atul Shukla*, upheld the decision of the AFT.

(iv) Among the submissions which were advanced before the Supreme Court in *Atul Shukla* was the contention that parity in the retirement age of Group Captains would reduce combat effectiveness of the IAF. The Supreme Court observed that this

¹⁸ (2014) 10 SCC 432



submission, as a justification having different ages of superannuation, was “much too tenuous to be accepted as valid base for giving to the Time Scale officers the treatment different from the one given to the Select Officers”.

(v) The Division Bench of this Court, in **Dev Sharma**, relied on **Atul Shukla** to observe that a Court, before which a challenge to discriminatory ages of superannuation was laid, would examine the basis for the justification provided by the government for the difference in ages of superannuation, and whether such justification was rational or had a nexus to the object sought to be achieved.

21.5 Before the Division Bench, it was contended, by the UOI, thus:

(i) Personnel upto the rank of Commandant had operational/combat roles in the field, requiring higher physical fitness and efficiency, whereas the duties of personnel of the rank of DIG and above were more supervisory and administrative in nature, not requiring physical fitness of the level required in field units.

(ii) The decision to have different ages of retirement was, therefore, a conscious governmental decision, based on ground realities, as per the administrative and operational requirement of the Forces.



(iii) The work profile of ITBP, BSF and CRPF was akin to the Army, as they were posted at the border, on high altitudes or in difficult terrains, or for internal security and counter insurgency operations.

21.6 The Division Bench found the submissions difficult to accept. It noted that the 7th CPC, before which similar arguments have been put forward had, by a majority of two to one, recommended a uniform age of retirement of personnel in all the CAPFs irrespective of the ranks held by them. This recommendation, being made by an expert body like the 7th CPC, was required to be given due weight by the government.

21.7 The submission that officers of the rank of DIG and above in the BSF, ITBP and CRPF did not perform combat/operational duties and were not required to have the same fitness level as officers below that rank, was not found to be correct on facts. All ranks, from Combatants to ADG¹⁹, were required to be in SHAPE-1, as per Rule 6 of the ITBP Force General Duty Cadre (Group-A post) Recruitment Rules, 2010. The Medical Manual applicable to the Forces also required the same tests to be cleared for personnel of the ages of 55 to 60 years.

21.8 The Division Bench, therefore, held that the petitioners before it had made out a case of discrimination and violation of Articles 14 and 16 of the Constitution of India, based on empirical data. The

¹⁹ Additional Director General



difference in ages of superannuation of officers of the rank of Commandant and below, *vis-à-vis* the officers above the rank of Commandant in the ITBP, CRPF, BSF and SSB, was held not to be based on any rational criteria having a nexus with the object sought to be achieved, which was keeping high the morale of the CAPFs who were performing yeoman service and supplementing the effect of the Armed Forces and Police throughout the country. It was difficult to conceive of the government, at the centre or at the states, being able to combat serious challenges of safety and security of its people without the participation and the sacrifices made by the members of the CAPFs. The preservation of their morale was, therefore, required to be ensured. Discrimination in the matter of age of retirement, amongst members of two wings of the CAPFs would contribute to lowering their morale rather than bolstering it. Moreover, the 7th CPC, which was an expert body had also favoured enhancement of retirement age.

21.9 Following the above reasoning, the Division Bench held Rule 43(a) of the CRPF Rules, as well as the corresponding Rules applicable to the other CAPFs, which envisaged age of superannuation of 57 for members of the Forces of the rank of Commandant and below and 60 for members of the Forces above the rank of Commandant, to be discriminatory and violative of Articles 14 and 16 of the Constitution of India.

21.10 We have already reproduced, earlier, the concluding paras 113 to 115 of the decision in *Dev Sharma*. In the said paragraphs, the Division Bench of this Court directed implementation of the judgment



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across the Board to all members of the CAPFs without requiring each of them to approach the Court.

21.11 SLP (C) 11944/2019²⁰ preferred by the UOI before the Supreme Court, challenging the judgment of the Division Bench of this Court in ***Dev Sharma***, was dismissed by the Supreme Court, *in limine*, on 10 May 2019. Review Petition (C) 1555/2019, seeking review of the order dated 10 May 2019, was also dismissed by the Supreme Court on 16 July 2019.

22 MHA Order dated 19 August 2019

Following the dismissal of the SLP and, thereafter, the review petition, preferred by the UOI challenging the judgment of this Court in ***Dev Sharma***, the Ministry of Home Affairs²¹, proceeded to pass the following order dated 19 August 2019.

“F. No.45020/1/2019/Legal-1
Government of India,
Ministry of Home Affairs,
(Pers-II Desk, Police II Division)

Dated, the 19th Aug, 2019

ORDER

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

²⁰ **UOI v Dev Sharma**

²¹ “MHA” hereinafter



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.

02. 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.

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



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Sd/-
(Lalit Kapoor)
Deputy Secretary (Pers-II)”

23 WP 11956/2019 and connected writ petitions before the High Court of Madras

23.1 Relying on the decision of this Court in *Dev Sharma*, certain officers of the BSF and the CRPF approached the High Court of Madras by way of writ petitions, led by WP 11956/2019²² challenging the Rule applicable in their case with respect to superannuation of officers of the rank of Commandant and below. They contended, relying on *Dev Sharma*, that, even in the BSF and the CRPF, there could be no discrimination in the age of superannuation, between officers up to the rank of Commandant and those above the rank of Commandant. Following the judgment of this Court in *Dev Sharma*, the High Court of Madras allowed the said writ petitions.

23.2 On 18 July 2019, when the said writ petitions, led by WP 11956/2019 instituted by officers of the BSF and the CRPF were heard by the High Court of Madras, WP 29647/2019²³, instituted by officers of the Coast Guard raising a similar grievance, was *not* listed before the Court. However, it appears that, thereafter, the High Court was informed that the controversy involved in WP 29647/2019 was identical. Accordingly, the High Court proceeded, in its order dated 18 July 2019, to set aside the distinction in the age of superannuation between officers above the rank of Commandant and officers of the rank of Commandant and below, holding that all officers would be

²² *A. Raghavan v Union of India & ors*

²³ *Commndt A.K.S. Panwar v Union of India & ors*



entitled to superannuate at the age of 60. This judgment also decided WP 29647/2019.

24 Review Application 156/2019 before High Court of Madras

24.1 The UOI sought review of the said decision dated 18 July 2019, to the extent it allowed WP 29647/2019, *vide* Review Application 156/2019²⁴. It was contended by the UOI, before the High Court, that officers of the Coast Guard were situated differently from officers of the CAPFs and that, though WP 29647/2019 was not listed before the High Court on 18 July 2019, when other writ petitions filed by the officers of BSF and CRPF were so listed, the High Court had been erroneously told that the issue was the same in respect of the Coast Guard. The UOI contended that the Coast Guard was a Force *sui generis*, and that considerations which applied to other CAPFs could not *mutatis mutandis* be made applicable to the Coast Guard. As such, review of the judgment dated 18 July 2019 was sought, to the extent it was made applicable to the Coast Guard.

24.2 Arguing the Review Application, the UOI contended, before the High Court of Madras, that officers of the Coast Guard, till the level of Commandant, spent most of the time at sea, whereas officers above the rank of Commandant primarily performed desk jobs. This, it was submitted, was the consideration which prevailed while fixing the age of superannuation of officers of the rank of Commandant and below at 57 and officers above the rank of Commandant at 60. It was contended

²⁴ **Union of India & ors v Commdt A.K.S. Panwar**



that this constituted a valid classification, and did not infract Article 14 of the Constitution of India. It was further contended that this Court, in its decision in *Dev Sharma*, did not consider the import of Article 33²⁵ of the Constitution of India. Reliance was placed, in this context, on para 15 of the judgment of the Constitution Bench of the Supreme Court in *Ram Sarup v Union of India*²⁶, para 19 of *Union of India v Ex. Flt Lt G.S. Bajwa*²⁷ and *Lt. Col. Prithi Lal Singh Bedi v Union of India*²⁸.

24.3 By judgment dated 10 March 2020, the High Court of Madras allowed Review Application 156/2019 of the Union of India and modified the direction contained in the judgment dated 18 July 2019, in so far as it applied to the Coast Guard. The Division Bench of the High Court of Madras expressed its agreement with the submission of the Union of India that the decision of this Court in *Dev Sharma* had not considered the issues raised by it in the Review Application. Inasmuch as WP 29647/2018 was not listed before the High Court on the day when other writ petitions, filed by officers of the CRPF and BSF, were listed and heard, the Union of India was unable to urge the submissions before the Bench. In view of this reasoning, the Division

²⁵ **33. Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc.** – Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to, -

- (a) the members of the Armed Forces; or
- (b) the members of the Forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter intelligence; or
- (d) persons employed in, or in connection with, the telecommunication systems set up for the purposes of any Force, bureau or organisation referred to in clauses (a) to (c),

be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

²⁶ **AIR 1965 SC 247**

²⁷ **(2003) 9 SCC 630**

²⁸ **(1982) 3 SCC 140**



Bench, after noting the fact that the judgment of this Court in *Dev Sharma* had become final with the dismissal of the SLP and, thereafter, the Review Petition filed before the Supreme Court, proceeded to dispose of the Review Petition in the following terms:

“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 judgment dated 18.07.2019 and dispose of the writ petition directing the Union of India to consider the case of the Coast Guard also 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 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.”

25 MOD Order dated 21 July 2020

Purportedly in compliance with the order passed in the review application, the Ministry of Defence²⁹ issued order dated 21 July 2020, opining that it was not possible, given the peculiarities of the Coast Guard as a Force, to equalise the age of superannuation of officers upto the rank of Commandant with the age of superannuation of officers above the rank of Commandant. The Order read thus:

“No. 14(14)/2020-D(CG)
Government of India
Ministry of Defence
D(CG)

Room No 218, B-Wing, Sena Bhawan
New Delhi, 21st July 2020

²⁹ “MOD”, hereinafter



To

The Director General
Indian Coast Guard
Coast Guard Headquarters
National Stadium Complex
New Delhi

Subject: Directives of Madras High Court in its Judgment dated 10th March 2020 in Review Application No. 156 of 2019 to decide as to whether the age of retirement of officers of the rank of Commandant and below in Indian Coast Guard be increased to 60 years.

I am directed to refer to Hon'ble High Court judgment in Review application No. 156 of 2019 dated 10th March, 2019 on the above mentioned subject and to inform that the matter regarding increasing the retirement age of the officers of the rank of 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 command and operational appointments to ensure optimum output and dynamic efficiency. Increasing superannuation age in 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 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 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.

Sd/-
(Ashis Bishayee)
Under Secretary (CG)”

26 Second round of proceedings before the High Court of Madras – WP 415/2021 – Judgment dated 23 November 2023

26.1 This decision, dated 21 July 2020, was again assailed before the High Court of Madras in a batch of writ petitions headed by WP 415/2021³⁰, which came to be decided by judgment dated 23 November 2023.

26.2 The High Court of Madras framed the issues arising before it

³⁰ **Lakshmichandra Harishchandra Sharma v UOI, MANU/TN/6619/2023**



for consideration thus:

- i. Whether Rule 20(1) and 20(2) of the Coast Guard rules, prescribing differential age of retirement has to be struck down as unconstitutional?
- ii. Whether the Respondents are right in rejecting the prayer of the petitioner is to increase the age of retirement up to 60 by the impugned order?"

26.3 The Madras High Court observed, at the outset of its analysis, that Article 33 of the Constitution of India applied, and that prescribing conditions of service, such as age of retirement, etc, were matters of policy within the realm of the employer, with which Courts were to exercise minimal interference in judicial review. Relying on *In re. Special Reference No. 1 of 2012*³¹, it was held that interference in such cases was justified only if the policy or law was “patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution”.

26.4 Apropos the decision dated 21 July 2020, of the MOD, under challenge before it, the High Court observed that, though several reasons had been cited to reject the claim of the Coast Guard employees for equalising the age of retirement, no application of mind to the similarity, or otherwise, of Coast Guard employees with *other CAPFs*, or the judgment of this Court in *Dev Sharma*, was contained therein.

26.5 Besides, the High Court also returned certain observations on

³¹ (2012) 10 SCC 1



merits, albeit tentatively. With respect to the contention of the UOI that there was a difference in the nature of the duties undertaken by officers of the rank of Commandant and below, and officers above the rank of Commandant in the Coast Guard, the High Court observed that the correctness and acceptability of the said contention was doubtful, thus:

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

26.6 Having so observed, however, the Division Bench went on to note that, in the order dated 21 July 2020, the UOI had also referred to medical standards, command and control issues, career progression, suppression factors, training of Coast Guard officers being similar to officers of the Indian Navy, and cadre considerations. With respect to these factors, the High Court noted that the challenge, before it, was on the premise that they were akin to the CAPFs, in respect of which a uniform retirement age of 60 stood implemented by the earlier Order dated 19 August 2019. The High Court further observed that this plea of discrimination and consequent violation of Articles 14 and 16 of the Constitution of India, could not be adjudicated upon, without a decision in that regard by the respondents.

26.7 The High Court proceeded to conclude and direct as under:

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

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

27 We may note, here, that one of the prayers in WP (C) 6028/2021 is to quash and set aside the communication dated 21 July 2020. That prayer has been rendered infructuous as the said communication already stands set aside by the High Court of Madras in its judgment dated 23 November 2023 *supra*.



28 Impugned order dated 20 May 2024

Following the judgment of the High Court of Madras, and in purported compliance thereof, the Coast Guard Headquarters has issued a fresh order dated 20 May 2024, again reiterating that it was not possible to equate the age of superannuation of officers upto the rank of Commandant in the Coast Guard with the age of superannuation of officers above the rank of Commandant. The order read thus:

“OF/0303/Policy

20 May 2024

Comdt AKS Panwar, TM (Retd)

E-Mail: aksp04@gmail.com

Subject: Disposal of representations in compliance of Hon'ble High Court of Madras common order dated 23 Nov 2023 in WP Nos. 415, 947, 901 and 766 all of 2021 alongwith WMP Nos. 1033,820, 818 all of 2021 to decide as to whether the age of retirement of officers of the rank of Commandant and below in Indian Coast Guard be increased to 60 years – regarding.

Reference is invited to your representation AKSP/Retirement Age dated 22 Jan 24 on the subject mentioned above. In compliance with the above mentioned order of Hon'ble High Court of Madras, the matter regarding increasing the age of retirement of the officers of the rank of Commandant and below in Indian Coast Guard has been reconsidered in consultation with the Ministry of Defence.

2. The Hon'ble High Court vide para 22 & 23 of aforesaid common order has directed the Respondent No. 1 to decide whether there are any similarities in service conditions of the Indian Coast Guard (CG) vis-a-vis Central Armed Police Forces (CAPFs), in addition whether the rank and profile of the other CAPFs covered in the Hon'ble High Court of Delhi Judgment in



the matter of Dev Sharma Vs Indo Tibetan Border Police and Ors (2019 SSC Online Del 6797 refers) are also identically situated or not with the Indian Coast Guard. The salient points wherein the Indian Coast Guard and CAPFs differ are as follows:-

(a) Whilst CRPF, BSF, ITBP and SSB had approached the 7th Pay Commission seeking enhancement of age of retirement from existing 57 years to 60 years of age, there has been no such submission made to the said Commission on behalf of the Indian Coast Guard. In addition, the views of the Ministry of Defence were not sought by the 7th CPC on this aspect (Paras 11.12.12, 11.12.13, 11.12.32 of 7th Pay Commission report refers).

(b) The Indian Coast Guard officers attain the selection in rank of Commandant at around 16 years of service. This is not the case of CAPF officers who attain selection rank much later.

(c) CAPFs are primarily land based forces and perform land based duties. Hence in case of medical emergencies involving personnel over 57 years, a quick medical aid is readily available. However, this is not case with the Indian Coast Guard being a maritime service. Any medical evacuation from sea will entail considerable time and will also burden the exchequer and will lead to depletion of force level at the sea besides risking the life of the person.

3. The Hon'ble Madras High Court vide para 25(ii) of the aforesaid order had provided for the petitioners to make representations. The said representations by the petitioners have been examined and comments on certain specific issues brought out in the representation are as under:-

(a) The averment made through representations that "Coast Guard is a non military Armed Force to police the Territorial Waters during peacetime" has no basis in law since such expressions do not exist in any provisions of the Coast Guard Act, 1978 or its subordinate legislation.

(b) The similarity between Indian Coast Guard and Central Armed Police Forces as mentioned in representations are in the realm of status, rank structure, Pay & Allowance, LTC/ Travel Rules etc. However, any similarity of service working conditions viz. Terrain etc., between Indian Coast Guard and Central Armed Police Forces has not been mentioned in the representations.



(c) The representations also state that the superannuation age of 57 years has been specified for all ranks upto the rank of Commandant, and as a result, officers have been made equal to Enrolled Persons. If this averment is to be accepted as valid for the limited purpose of argument, it is pertinent to mention that the same situation as brought out above by the Petitioner would arise, in case a common retirement age of 60 years for all ranks in Indian Coast Guard is specified as laid down in Central Armed Police Forces.

(d) Differential superannuation age structure is also being followed by Central Armed Police Forces in respect of General Duty Medical Officers sub-cadre/ Specialist Medical Officers of Central Armed Police Forces who retire at 65 years vis-à-vis the regular Cadre personnel of Central Armed Police Forces who retire at 60 years.

(e) The Petitioners have averred that the Government of India (Allocation of Business) Rules, 1961 has not considered Indian Coast Guard as Armed Force but only as an organization. It is brought out that the Coast Guard Act, 1978 which was passed by the Parliament of India has described Indian Coast Guard as an "Armed Force of the Union" both in its preamble as well as Section 4 of the Coast Guard Act, 1978.

4. In view of the position mentioned above and also in view of the following grounds, it has been decided with the approval of the Competent Authority to maintain Status Quo on retirement age of ICG personnel:-

(a) The Indian Coast Guard is an Armed Force of the Union in accordance with the Coast Guard Act, 1978 and is constituted under Section 4 of the said Act. Therefore, the Parliament is empowered to make laws that would restrict the application of fundamental rights under Article 33(a) of the Constitution of India which also applies to the instant case, being an Armed Force of the Union. The Hon'ble Court in para 17 of their Common Order dated 23 Nov 2023 has agreed to the fact that Article 33 of the Constitution of India applies to the instant case, being an Armed Force of the Union.

(b) In accordance with Gazette of India Notification No. GSR 767/E) dated 11 Aug 18, the age of



superannuation in respect of the doctors belonging to the General Duty Medical Officers sub-cadre/Specialist Medical Officers of Central Armed Police Forces has been increased to 65 years whereas the superannuation age of all other members of CAPFs remain at 60 years. It is clear that a common retirement age even within an Armed Force of the Union is not feasible due to differing service conditions and requirements for each Cadre/Branch.

(c) The Hon'ble Supreme Court vide para 44 of their judgment dated 16 Aug 2023 in Central Council for Research in ***Ayurvedic Sciences & Anr Vs Bikirtan Das & Ors*** (CA No.3339/2023 refers) has stated the following, "The age of superannuation is always governed by the Statutory Rules governing the appointment on a particular post. Hence, even if it is averred that the nature of work involved in two posts is similar, the same cannot be a ground to increase or alter the service conditions of an employee as each post is governed by its own set of rules." In view of the unambiguous assertion by the Hon'ble Supreme Court regarding the age of superannuation being governed by the statutory rules, the provisions of Rule 20 of the Coast Guard (General) Rules, 1986 requires no amendment at this stage.

(d) It is significant to mention that Indian Coast Guard and Indian Navy are the only maritime forces under the Union of India. Indian Navy follows a differential retirement age structure. ICG has also adopted differential retirement age structure as per the needs and requirements of the service.

(Raj Kamal Sinha)
Dy Inspector General
Principal Director (OA&R)
for Director General"

29 The order dated 20 May 2024 is subject matter of challenge in WP (C) 7579/2024.

Rival Contentions



30 The submissions of learned Counsel proceeded on predictable lines.

31 Submissions of Mr. Himanshu Gautam for the petitioners

31.1 Mr. Himanshu Gautam, appearing for the petitioners, submits that the issue is covered by the judgment of the Coordinate Bench in ***Dev Sharma***. Inasmuch as the SLP, as well as the Review Petition, preferred before the Supreme Court by the UOI were both dismissed, he submits that the writ petition has necessarily to be allowed and Rule 20(1) and 20(2) of the 1986 Rules quashed.

31.2 Mr. Gautam places reliance on the recommendations of the 7th CPC and the judgment of the High Court of Kerala in ***Thulasi Nair***. He submits that, in its judgment, the High Court of Kerala has clarified that the Coast Guard is also a paramilitary force. He submits, therefore, that there could be no justification to differentiate between one paramilitary force and another; if, as things stand today, the age of superannuation for officers of the rank of Commander and below, *vis-à-vis* officers above the rank of Commander, has been equalized in all other paramilitary forces, there is no reasonable justification for continuing the discrepancy in the Coast Guard.

31.3 Mr. Gautam also submits that, from the 4th CPC onwards, the Coast Guard has been treated at par with other paramilitary forces in so far as pay parity is concerned. Even on this ground, therefore, the relief sought by the petitioners deserves to be granted.



32 Submissions of Mr. Jaswinder Singh, learned CGSC

32.1 Responding to the submissions of Mr. Gautam, Mr. Jaswinder Singh submits that, in view of the overarching provision of Article 33 of the Constitution of India, there is no merit in the petitioner's prayer for quashing of Rule 20(1) and 20(2) of the 1986 Rules. He relies, for this purpose, on the judgment of the Supreme Court in *Ram Sarup v Union of India*, *Union of India v Ex Flt Lt G S Bajwa* and *Lt. Col. Prithi Pal Singh Bedi v Union of India*.

32.2 Mr. Singh further submits that there is a qualitative difference between the Coast Guard and other paramilitary Forces. The Coast Guard is a sea going service which requires a young age profile and medically fit personnel to man afloat and aviation platforms, command and control issues, cadre and career progression etc. These, he submits, are germane considerations, which have informed the decision to superannuate officers of the rank of Commandant and below and officers above the rank of Commandant, at different ages.

32.3 The decision in *Atul Shukla*, submits Mr. Singh, is clearly distinguishable, as that case dealt with differential ages of retirement for the same post of Group Captain, the only difference being that one post was of Group Captain (Select) and other of Group Captain (Timescale). The present case, on the other hand, involves a claim to parity in age of retirement of posts of the rank of Commandant and below with posts above the rank of Commandant.



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32.4 Mr. Singh further submits that, after the filing of these petitions, the impugned decision dated 20 May 2024 was, as also the earlier decision dated 21 July 2020, were reiterated by order dated 2 December 2024, which reads thus:

“No. 14(14)/2020-D(CG)
Government of India
Ministry of Defence
D(CG)

29 Room No. 38, South Block
New Delhi, 02nd December, 2024

To,

Commandant LH Sharma (Retired)
44/8, New CPWD Complex,
Flat 032, Tower-3, Cluster-2,
DLF Garden City, Semmencherry, Thalambur,
Chennai, Tamilnadu-600119

Reference: (i) Hon'ble High Court of Madras Common
Order dated 23.11.2023 passed in W.P. Nos. 415,
947, 901 and 766 of 2021 and W.M.P. Nos. 1033
820, 818 of 2021
(ii) Coast Guard letter OF/0303/Policy dated 20
May 24
(iii) Coast Guard letter OF/0303/Policy(ii) dated
26 Jul 24

Subject: **Disposal of representations in compliance of
Hon'ble High Court of Madras common order
dated 23 Nov 2023 in WP Nos. 415, 947, 901 and
766 all of 2021 alongwith WMP Nos. 1033, 820,
818 all of 2021 to decide as to whether the age of
retirement of officers of the of Commandant and
below in Indian Coast Guard be increased to 60
years – regarding.**

Sir,



I am directed to refer to your representations LHS/24 dated 21 Jan 2024, LHS/242 dated 01 Jun 2024 and CGHQ letters referred above. In compliance with the above referred Order of Hon'ble High Court of Madras, the matter regarding increasing the age of retirement of the officers of the rank of Commandant and below in Indian Coast Guard has been reconsidered.

2. The Hon'ble High Court vide para 22 & 23 of aforesaid common order has directed the Respondent No. 1 to decide whether there are any similarities in service conditions of the Indian Coast Guard (CG) vis-à-vis Central Armed Police Forces (CAPFs), in addition whether the rank and profile of the other CAPFs covered in the Hon'ble High Court of Delhi Judgment in the matter of Dev Sharma Vs Indo Tibetan Border Police and Ors (2019 SSC Online Del 6797 refers) are also identically situated or not with the Indian Coast Guard. The salient points wherein the Indian Coast Guard and CAPFs differ are as follows:

(a) Whilst CRPF, BSF, ITBP and SSB had approached the 7th Pay Commission seeking enhancement of age of retirement from existing 57 years to 60 years of age, there has been no such submission made to the said Commission on behalf of the Indian Coast Guard. In addition, the views of the Ministry of Defence were not sought by the 7th CPC on this aspect (Paras 11.12.12, 11.12.13, 11.12.32 of 7th Pay Commission report refers).

(b) The Indian Coast Guard officers attain the selection in the rank of Commandant at around 16 years of service. This is not the case of CAPF officers who attain selection rank much later.

(c) CAPFs are primarily land based forces and perform land based duties. Hence in case of medical emergencies involving personnel over 57 years, a quick medical aid is readily available. However, this is not case with the Indian Coast Guard being a maritime service. Any medical evacuation from sea will entail considerable time and will also burden the exchequer and will lead to depletion of force level at the sea besides risking the life of the person.

3. The Hon'ble Madras High Court vide para 25(ii) of the aforesaid order had provided for the petitioners to make representations. The said representations by the petitioners have been examined and comments on certain specific issues brought out in the representations are as under:



(a) The averment made through representations that "Coast Guard is a non military Armed Force to police the Territorial Waters during peacetime" has no basis in law since such expressions do not exist in any provisions of the Coast Guard Act, 1978 or its subordinate legislation.

(b) The similarity between Indian Coast Guard and Central Armed Police Forces as mentioned in representations are in the realm of status, rank structure, Pay & Allowance, LTC/Travel Rules etc. However, any similarity of service working conditions viz. Terrain etc., between Indian Coast Guard and Central Armed Police Forces has not been mentioned in the representations.

(c) The representations also state that the superannuation age of 57 years has been specified for all ranks upto the rank of Commandant and as a result, officers have been made equal to Enrolled Persons. If this averment is to be accepted as valid for the limited purpose of argument, it is pertinent to mention that the same situation as brought out above by the Petitioner would arise, in case a common retirement age of 60 years for all ranks in Indian Coast Guard is specified as laid down in Central Armed Police Forces.

(d) Differential superannuation age structure is also being followed by Central Armed Police Forces in respect of General Duty Medical Officers sub-cadre/ Specialist Medical Officers of Central Armed Police Forces who retire at 65 years vis-à-vis the regular Cadre personnel of Central Armed Police Forces who retire at 60 years.

(e) The Petitioners have averred that the Government of India (Allocation of Business) Rules, 1961 has not considered Indian Coast Guard as Armed Force but only as an organization. It is brought out that the Coast Guard Act, 1978 which was passed by the Parliament of India has described Indian Coast Guard as an "Armed Force of the Union" both in its preamble as well as Section 4 of the Coast Guard Act, 1978.

4. In view of the position mentioned above and also in view of the following grounds, it has been decided with the approval of the Competent Authority to maintain Status Quo on retirement age of ICG personnel:



(a) The Indian Coast Guard is an Armed Force of the Union in accordance with the Coast Guard Act, 1978 and is constituted under Section 4 of the said Act. Therefore, the Parliament is empowered to make laws that would restrict the application of fundamental rights under Article 33(a) of the Constitution of India which also applies to the instant case, being an Armed Force of the Union. The Hon'ble Court in para 17 of their Common Order dated 23 Nov 2023 has agreed to the fact that Article 33 of the Constitution of India applies to the instant case, being an Armed Force of the Union.

(b) In accordance with Gazette of India Notification No. GSR 767/E) dated 11 Aug 2018, the age of superannuation in respect of the doctors belonging to the General Duty Medical Officers sub-cadre/ Specialist Medical Officers of Central Armed Police Forces has been increased to 65 years whereas the superannuation age of all other members of CAPFs remain at 60 years. It is clear that a common retirement age even within an Armed Force of the Union is not feasible due to differing service conditions and requirements for each Cadre/Branch.

(c) The Hon'ble Supreme Court vide para 44 of their judgment dated 16 Aug 2023 in **Central Council for Research in Ayurvedic Sciences & Anr v Bikirtan Das & Ors**³² (CA No. 3339/2023 refers) has stated the following, "The age of superannuation is always governed by the Statutory Rules governing the appointment on a particular post. Hence, even if it is averred that the nature of work involved in two posts is similar, the same cannot be a ground to increase or alter the service conditions of an employee as each post is governed by its own set of rules." In view of the unambiguous assertion by the Hon'ble Supreme Court regarding the age of superannuation being governed by the statutory rules, the provisions of Rule 20 of the Coast Guard (General) Rules, 1986 requires no amendment at this stage.

(d) It is significant to mention that Indian Coast Guard and Indian Navy are the only maritime forces under the Union of India. Indian Navy follows a differential retirement age structure. ICG has also adopted differential retirement age structure as per the needs and requirements of the service.

³² (2023) 16 SCC 462



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Yours faithfully,

(Alka Ahuja)
Director (CG-P&P)”

Analysis

33 Superannuation is an often uncomfortable, and rarely welcome, reality of service life. One who enters service, governmental or otherwise, has also, after his innings are over, to exit it. The boots have to be hung up some day.

34 It goes without saying that no one can have a claim to retire at a particular age. The decision in *Dev Sharma* itself notes that fixation of age of retirement is essentially the matter of executive policy. The decision also notes that interference, by way of judicial review, with executive policy, is normally to be eschewed. It is only where the policy is found to be manifestly arbitrary or unconstitutional that Court would step in.

35 The decision in *Dev Sharma*

35.1 *Dev Sharma* does not deal with the Coast Guard. The issue in *Dev Sharma* was with respect to differential ages of superannuation of the rank of Commander and below, *vis-à-vis* officers above the rank of Commander, in CAPFs. The Coast Guard is not a CAPF, though the High Court of Madras, in its decision in *Lakshmichandra Harishchandra Sharma*, wrongly assumes that it is. *Dev Sharma*



does not, expressly or by necessary implication, extend its reach to the Coast Guard, as it restricts itself to CAPFs and does not cover all para-military forces.

35.2 The High Court of Madras, in its order dated 10 March 2020 in Review Application 156/2019, returns two pertinent observations. The first is that the decision in ***Dev Sharma*** did not notice Article 33 of the Constitution of India. The second was that the Coast Guard was “also a para military force performing functions akin to CRPF, ITBP and BSF”.

35.3 The finding that ***Dev Sharma*** does not notice Article 33 of the Constitution of India is unquestionably true. Indeed, a reading of the judgment in ***Dev Sharma*** indicates that no submissions, predicated on Article 33, were even advanced before the Division Bench in that case.

36 Our remit, *vis-à-vis* ***Dev Sharma***

36.1 ***Dev Sharma***, having been rendered by a Coordinate Division Bench of this Court, binds us.³³ Besides, the judgment in ***Dev Sharma*** was subjected to challenge by the UOI before the Supreme Court twice, first in SLP 11944/2019 and thereafter in Review Petition 156/2019. Both attempts failed.

36.2 This is important because one of the key observations in ***Dev***

³³ Refer ***Mary Pushpam v Telvi Curusumary***, (2024) 3 SCC 224



Sharma, on which the conclusion was based, was that difference in the ages of superannuation of officers above the rank of Commandant, vis-à-vis those of the rank of Commandant and below, would lower the morale of the members of the CAPFs. This finding, to our mind, would apply, with equal force, to the Coast Guard.

36.3 We, therefore, are required to examine whether there is any justification for not applying the ratio of *Dev Sharma*, rendered in the context of CAPFs, to the Coast Guard. The issue can be decided, in our view, by answering the following two questions:

- (i) What is the impact of Article 33 of the Constitution of India on the dispute at hand?
- (ii) Do the reasons cited in the order dated 20 May 2024, under challenge in WP (C) 7579/2024, suffice to insulate Rules 20(1) and 20(2) of the 1986 Rules from Articles 14 and 16 of the Constitution of India?

37 Article 33 of the Constitution of India

37.1 Article 33 empowers Parliament to modify the rights conferred by Part III of the Constitution of India in their application to the Armed Forces. It confers an absolute power on Parliament to, by law, determine the extent to which the fundamental rights conferred by Part III of the Constitution of India would apply to members of the Armed Forces, as well as the extent to which such rights may be restricted or abrogated *so as to ensure proper discharge of the duties of the*



members of the armed forces and maintenance of discipline among them. Thus, at the cost of repetition, Article 33 empowers the Parliament to, by law, decide both (i) the extent to which members of the Armed Forces would be entitled to the Fundamental Rights conferred by Part III of the Constitution of India and (ii) the extent to which such Fundamental Rights conferred by Part III would be restricted or abrogated, in their application to members of the Armed Forces. The restriction or abrogation of the rights conferred by Part III of the Constitution, in their application to members of the Armed Forces, in exercise of the powers conferred by Article 33, has, however, to be either

- (i) for ensuring proper discharge of the duties of the such members and/or
- (ii) for maintenance of discipline among them.

37.2 So long as abrogation of the fundamental rights conferred by Part III of the Constitution, in their application to members of the Armed Forces, is for ensuring proper discharge of duties by such members of Armed Forces or maintaining discipline among them, we are clear in our mind that judicial interference would ordinarily not be justified, except where the claim is found to be false on facts, or amount to colourable exercise of legislation.

37.3 While dealing with the Armed Forces, some degree of circumspection is expected to be exercised by Courts. The best judge, of the manner in which the duties conferred on members of the Armed Forces would be discharged at their optimum level, would,



undoubtedly, be the executive administration and, particularly, the administration to the extent it is concerned with the Armed Forces. Unless, therefore, the Court finds that Article 33 has been invoked, in a particular case, arbitrarily, *mala fide* or for some ulterior purpose, the Court would not interfere.

37.4 That said, it is equally true that if the Court finds that Article 33 has been blindly invoked, without any basis to indicate that the abrogation of the fundamental rights, to members of the Armed Forces, cannot be said, howsoever one were to view it, to be necessary to ensure proper discharge of duties by such members of Armed Forces or maintain discipline among them, the Court *would* interfere.

37.5 The executive administration, we are clear, cannot be allowed the last word in such matters, even if they are to be allowed considerable latitude. It is possible, in a given case, that the executive takes a decision to abrogate the fundamental rights of members of the Armed Forces while enacting a particular piece of legislation but that, in fact, there is no need to enact the legislation either to ensure proper discharge of duties by such members of Armed Forces or to maintain discipline among them. In such a case, the legislation, being destructive of fundamental rights, cannot be allowed to continue for an instant. Ultimately, it is for the Court, before whom the challenge is brought, to weigh the issue in the balance and arrive at an informed decision.

37.6 The Coast Guard is an Armed Force, as is clear from Section



4(1)³⁴ of the Coast Guard Act, 1978. If, therefore, the fundamental right of a member of the Coast Guard is abrogated by parliamentary legislation, that legislation can seek amnesty under Article 33. As to whether the legislation would be entitled to such protection is, of course, for the Court to decide.

37.7 We may now advert to the decisions in *Ram Sarup*, *G.S. Bajwa* and *P.P.S. Bedi*, on which Mr. Jaswinder Singh places considerable reliance.

37.8 *Ram Sarup*

37.8.1 Ram Sarup was a sepoy in the 131st Platoon, subject to the Army Act, 1950. He shot dead two other sepoys, following which he was tried by the General Court Martial³⁵ and sentenced to death. The sentence was confirmed by the Central Government. Ram Sarup approached the Supreme Court under Article 32 of the Constitution of India seeking setting aside of the order of the GCM and the confirmation thereof by the Central Government.

37.8.2 It is not necessary to enter into all the issues which were addressed by the Supreme Court, which dealt with the merits of the case against Ram Sarup. Among the contentions advanced by Ram

³⁴ 4. **Constitution of the Coast Guard.** –

(1) There shall be an armed force of the Union called the Coast Guard for ensuring the security of the maritime zones of India with a view to the protection of maritime and other national interests in such zones.

³⁵ “GCM”, hereinafter



Sarup was, however, the plea that Section 125³⁶ of the Army Act was discriminatory and violative of Article 14 of the Constitution of India, as it invested the officer mentioned in that Section with uncanalised jurisdiction to decide whether a charged officer would be tried by Court Martial or by a criminal Court. It was also pleaded that, as Ram Sarup had not been allowed to be defended, in the GCM by a legal practitioner of his choice, his fundamental right under Article 22(1)³⁷ of the Constitution of India was infringed.

37.8.3 The Attorney General, appearing for the Central Government, responded by contending that, as the Army Act was parliamentary legislation, if any provision of the Army Act was found to be violative of the fundamental rights of any person, it had to be presumed that Parliament had modified the fundamental rights, insofar as they applied to such person, in exercise of the power conferred by Article 33 of the Constitution of India. The Supreme Court expressed its agreement with the said submission, thus in para 15 of the report:

“15. ...We agree that each and every provision of the Act is a law made by Parliament and that if any such provision tends to affect the fundamental right under Part III of the Constitution, that provision does not, on that account become void, as it must be taken that Parliament has thereby, in the exercise of its power under Article 33 of the Constitution, made the requisite modification to affect the respective fundamental right.”

³⁶ **125. Choice between criminal court and court-martial.** – When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

³⁷ **22. Protection against arrest and detention in certain cases.** –

(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.



37.8.4 Having so observed, the Supreme Court also went on to hold that Section 125 of the Army Act did not, in fact, infract any of the fundamental rights under Article 14 of the Constitution of India.

37.8.5 While the ultimate conclusion of the Supreme Court may not be of strict relevance, what is significant is the ratio, contained in the decision in *Ram Sarup*, to the effect that, if any provision of a parliamentary legislation, insofar as it applies to a member of the Armed Forces, is found to be violative of any of the fundamental rights enshrined in Part III of the Constitution of India, that provision must be taken to have been enacted in exercise of the power vested by Article 33 and, therefore, not unconstitutional in character.

37.9 G.S. Bajwa

37.9.1 G.S. Bajwa was another case which involved an allegation of violation of fundamental right of the charged officer in GCM proceedings.

37.9.2 G.S. Bajwa³⁸, the respondent before the Supreme Court, was charged with offences punishable under Sections 41(2) and 65 of the Air Force Act, 1950 and was, therefore, subjected to a GCM. He wrote to the President of India, praying that he be permitted to be represented by a Counsel at state expense, as he did not have the financial wherewithal to engage Counsel. This request was rejected by

³⁸ “Bajwa” hereinafter



the Air Force Authorities, who permitted Bajwa to be represented by a Counsel of his choice, at his own expense.

37.9.3 Bajwa approached this Court, contending that, in not being permitted to be represented by a Counsel of his choice at state expense in the Court Martial proceedings, his rights under Article 21³⁹ of the Constitution had been violated. The writ petition was allowed by this Court. The UOI appealed to the Supreme Court.

37.9.4 The Supreme Court held, in para 19 of this judgment, thus:

“19. It is indeed surprising that while considering the submissions urged on behalf of the respondent alleging the breach of his fundamental right under Article 21 of the Constitution of India, the High Court neither noticed the provisions of Article 33 of the Constitution of India nor does it appear to have been brought to its notice. Article 33 of the Constitution of India expressly empowers Parliament to determine by law the extent to which any of the rights conferred by Part III of the Constitution, in their application, inter alia, to the members of the armed forces, shall be restricted or abrogated to ensure the proper discharge of their duties and the maintenance of discipline among them. Parliament can, therefore, in exercise of powers conferred by Article 33 of the Constitution of India restrict or abrogate the fundamental rights guaranteed under Part III of the Constitution in their application to the members of the armed forces. It, therefore, follows that if any provision of the Act or the Rules restricts or abrogates any right guaranteed under Part III of the Constitution of India, it cannot be challenged on the ground that it is violative of the fundamental rights as guaranteed under Part III. It is no doubt true that the restriction or abrogation is dependent on parliamentary legislation and only a law passed by virtue of Article 33 can override Articles 21 and 22 of the Constitution of India....”

In arriving at the above conclusion, the Supreme Court relied on *Ram*

³⁹ **21. Protection of life and personal liberty.** – No person shall be deprived of his life or personal liberty except according to procedure established by law.



Sarup as well as the following passage from **P.P.S. Bedi**:

“20. In **Lt. Col. Prithi Pal Singh Bedi v Union of India** this Court observed:

15. Article 33 confers power on Parliament to determine to what extent any of the rights conferred by Part III shall, in their application to the members of the armed forces, be restricted or abrogated so as to ensure the proper discharge of duties and maintenance of discipline amongst them. Article 33 does not obligate that Parliament must specifically adumbrate each fundamental right enshrined in Part III and to specify in the law enacted in exercise of the power conferred by Article 33 the degree of restriction or total abrogation of each right. That would be reading into Article 33 a requirement which it does not enjoin. In fact, after the Constitution came into force, the power to legislate in respect of any item must be referable to an entry in the relevant list. Entry 2 in List I: naval, military and air forces; any other armed forces of the Union, would enable Parliament to enact the Army Act and armed with this power the Act was enacted in July 1950. It has to be enacted by Parliament subject to the requirements of Part III of the Constitution read with Article 33 which itself forms part of Part III. Therefore, every provision of the Army Act enacted by Parliament, if in conflict with the fundamental rights conferred by Part III, shall have to be read subject to Article 33 as being enacted with a view to either restricting or abrogating other fundamental rights to the extent of inconsistency or repugnancy between Part III of the Constitution and the Army Act.”

37.9.5 The Supreme Court further held, in the said decision, thus:

“21. This Court referred to the observations in **Ram Sarup** and held that the question was no longer res integra in view of the decision of the Constitution Bench. The Court, therefore, rejected the submission that the law which prescribed procedure for trial of offences by Court Martial must satisfy the requirement of Article 21 because to the extent the procedure is prescribed by law and if it stands in derogation of Article 21, to that extent Article 21 in its application to the armed forces is modified by enactment of the procedure in the Army Act itself. The Court noticed that there operate two conflicting public interests; the maintaining of discipline in the armed forces to safeguard national security, to



ensure enjoyment by the people of India of their fundamental rights, and the right of members of armed forces themselves to fundamental rights.

22. In *Delhi Police Non-Gazetted Karmachari Sangh v Union of India*⁴⁰ the challenge to the Act and the Rules impugned therein was on the ground of infringement of fundamental right guaranteed under Article 19(1)(c) read with Article 19(4) of the Constitution of India. It was argued in that case that recognition of the Association carries with it the right to continue the Association as such. It is a right flowing from the fact of recognition. To derecognize the Association in effect offends against the freedom of association. This Court held:

“13. That the Sangh and its members come within the ambit of Article 33 cannot be disputed. The provisions of the Act and Rules taking away or abridging the freedom of association have been made strictly in conformity with Article 33. The right under Article 19(1)(c) is not absolute. Article 19(4) specifically empowers the State to make any law to fetter, abridge or abrogate any of the rights under Article 19(1)(c) in the interest of public order and other considerations. Thus the attack against the Act and Rules can be successfully met with reference to these two articles as members of the police force, like the appellants herein, are at a less advantageous position, curtailment of whose rights under Article 19(1)(c) comes squarely within Article 33 in the interest of discipline and public order.”

23. Having regard to the authorities it must be held that the provisions of the Act cannot be challenged on the ground that they infringe the fundamental right guaranteed to the respondent under Article 21 of the Constitution of India. Since the Air Force Act is a law duly enacted by Parliament in exercise of its plenary legislative jurisdiction read with Article 33 of the Constitution of India, the same cannot be held to be invalid merely because it has the effect of restricting or abrogating the right guaranteed under Article 21 of the Constitution of India or for that reason under any of the provisions of Chapter III of the Constitution.”

37.10 Resulting principles

⁴⁰ (1987) 1 SCC 115



37.10.1 The position of law, is, therefore, as good as fossilized. The State possesses absolute authority to enact law which abrogates fundamental rights of the members of the Armed Forces, in exercise of the powers conferred by Article 33 of the Constitution. The only caveat is that the modification of the rights conferred by Part III of the Constitution in their application to the Members of the Armed Forces must be “so as to ensure proper discharge of their duties and the maintenance of discipline among them.”

37.10.2 Both these are expressions of wide and compendious import, with ensuring of proper discharge of duties by members of the Armed Forces being an aspect with regard to which Court must cede a great deal of latitude to the Union. Discharge of duties by members of the Armed Forces, and the best way in which that could be ensured, is something which falls widely outside the province of the jurisdiction of Courts and the expertise – if any – which Courts can be said to possess. The Courts are woefully ill equipped to sit in subjective appeal over the decision of the executive on the best way to ensure that the Members of the Force properly discharged their duties.

37.10.3 That said, if the justification for the discriminatory legislation, as adduced by the executive to the Court, does not indicate, in any manner of speaking, that the legislation was enacted either to ensure proper discharge of duties by members of the Armed Forces, or to maintain discipline among them, and that Article 33 has been blindly invoked without application of mind, the legislation must perish as breaching the fundamental rights conferred by Part III of the



Constitution of India.

37.10.4 These, to our mind, are the peripheries of the area within which the Court can peregrinate, in such cases, when testing the validity of the discriminatory legislative measure and its entitlement to protection under Article 33.

38. Applying the law

38.1 When one views the order dated 20 May 2024 in the backdrop of the above legal position, it is seen that the grounds on which the order dated 20 May 2024 proposes to continue the disparate age of superannuation of officers above the rank of Commandant vis-à-vis officers of the rank of Commandant and below in the Coast Guard are the following:

(i) While the CRPF, BSF, ITBP and SSB had approached the 7th CPC, seeking enhancement of the age of retirement from 57 years to 60 years, no such submission had been made on behalf of the Coast Guards, nor were the views of the MOD sought by the 7th CPC on the aspect of maintaining a common age of superannuation among the members of all ranks in the Coast Guard.

(ii) Coast Guard Officers attained selection in the rank of Commandant after around 16 years of service. CAPF officers attained selection in the rank much later.



(iii) CAPFs were land based forces which performed land based duties. In the case of medical emergencies involving personnel over the age of 57 years, quick medical aid was readily available. However, as the Coast Guard was a maritime service, medical evacuation from sea would entail considerable time, would burden the exchequer, lead to depletion of force level at the sea, and risk the life of the persons evacuating.

(iv) Differential age of superannuation was also existing in respect of general duty medical officers vis-à-vis specialist medical officers in the CAPFs. The former retire at 65 years whereas the latter retire at 60 years.

(v) The Parliament was empowered under Article 33 of the Constitution of India to make laws which would restrict the application of fundamental rights to members of the Armed Forces. The Coast Guard was an Armed Force.

(vi) “A common retirement age even within an Armed Force of the Union is not feasible, due to differing service conditions and requirements for each cadre/branch.”

(vii) Reference is made to the statement of law, contained in ***Bikirtan Das***, to the effect that the age of superannuation was always governed by statutory rules governing appointment to a post and even if the nature of work involved in two posts was



similar, that could not be a ground to increase or alter the service conditions of an employee. The provisions of Rule 20 of the 1986 Rules did not require any amendment.

(viii) The Coast Guard had adopted differential retirement age structure, as per the needs and requirements of the service.

38.2 As we have observed earlier, Article 33 of the Constitution of India empowers framing of legislation which would abrogate the fundamental rights conferred by Part III of the Constitution, *provided such abrogation is for the purposes of ensuring proper discharge of duties of the Members of the Armed Forces or for maintenance of discipline among them*. The decisions in **Ram Sarup**, **G.S. Bajwa** and **P.P.S. Bedi** were cases which dealt with disciplinary/GCM proceedings, and the procedure to be followed therein. The restrictions placed on the rights, otherwise available, to the Members of the Armed Forces, were, therefore, related to maintenance of discipline among Members of the Force. In a sense, it could also ensure that Members of the Force discharged their duties and responsibilities appropriately and adequately.

38.3 As against this, the aforementioned considerations, on the basis of which the order dated 20 May 2024 seeks to justify the fixation of 60 years as the age of superannuation for officers above the rank of Commandant and 57 years as the age of superannuation for persons of the rank of Commandant and below, employed in the Coast Guard, have nothing whatsoever to do, either with proper discharge of the



duties of the Members of the Coast Guard or maintenance of discipline among them.

38.4 Indeed, some of these considerations, as cited in the said letter, are truly surprising. We are flabbergasted at the justification, cited in the order dated 20 May 2024, of a hypothetical Coast Guard employee, between the age of 57 and 60, being stranded at, and the expense, difficulty, and risk to life which rescuing him would entail. Despite racking our minds as to how this somewhat unfortunately conceived circumstance could have any relevance whatsoever to different ages of superannuation of members of the Coast Guard above the rank of Commandant and of the rank of Commandant and below, we have failed to arrive at an answer. Is it that persons below the age of 57 years would not fall sick while at sea or that there would be any lesser difficulty in bringing them back? We leave it at that.

38.5 Howsoever expansive be the scope of the latitude that may be available to the respondents, under Article 33 of the Constitution of India, in abrogating or restricting the fundamental rights of the members of the Armed Forces, the communication dated 20 May 2024 does not indicate that the fixation of different and disparate ages of retirement, of members of the Coast Guard above the rank of Commandant, *vis-à-vis* members of the rank of Commandant or below, is guided by any consideration which can be said to be germane to Article 33.

38.6 Notably, the order dated 20 May 2024 does not refer to any



duties or operational responsibilities of Members of the Coast Guard which could justify such a disparate age of superannuation.

38.7 We are in agreement with the view expressed by the Division Bench of this Court in *Dev Sharma* that fixing of such disparate ages of superannuation has the possibility of lowering the morale of members of the Coast Guard. In fact, therefore, it would be in the interests of ensuring proper discharge of duties by members of the Coast Guard that there is a uniform age of superannuation.

38.8 Article 33 cannot, therefore, save Rule 20.

39 Whether Rule 20(1) and 20(2) can sustain the scrutiny of Articles 14 and 16 of the Constitution of India?

39.1 Articles 14 and 16 of the Constitution of India forbid legislation which discriminates between persons similarly situated, unless there is an intelligible differentia between them, which bears a rational nexus to the object of the legislation.

39.2 So voluminous is the body of law with respect to Articles 14 and 16 of the Constitution of India that, if one were to exhaustively refer to precedents in that regard, it would result in a veritable thesis. The legal position is, however, not only well settled but well understood, and it is not necessary, therefore, to multiply precedents. For the sake of reference one may, however, allude to *D.S. Nakara v*



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*Union of India*⁴¹, *Sukanya Shantha v Union of India*⁴², *R.K. Garg v Union of India*⁴³, *Chebrolu Leela Prasad Rao v State of A.P.*⁴⁴, *State of W.B. v Anwar Ali Sarkar*⁴⁵ and *Union of India v Munshi Ram*⁴⁶.

39.3 In order, therefore, to examine whether a legislation under challenge subscribes to the tenets of Articles 14 and 16, therefore, the Court has to address the following queries:

- (i) Does the legislation discriminate between persons similarly situated?
- (ii) Is there any intelligible differentia between such persons?
- (iii) What is the object of the legislation?
- (iv) Does the intelligible differentia have a rational nexus to the object of the legislation?

39.4 We may, therefore, examine the challenge to Rule 20 (1) and 20 (2) of the 1986 Rules, by addressing the aforementioned four questions.

39.5 Do Rule 20(1) and 20(2) discriminate between persons similarly situated?

⁴¹ (1983) 1 SCC 305

⁴² (2024) 15 SCC 535

⁴³ AIR 1981 SC 2138

⁴⁴ (2021) 11 SCC 401

⁴⁵ (1952) 1 SCC 1

⁴⁶ 2022 SCC OnLine SC 1493



The first question to be addressed is whether Rule 20(1) and 20(2) discriminate between persons or classes of persons similar situated. The answer has obviously to be in the affirmative, as Rules 20(1) and 20(2) result in disparate ages of superannuation of members of the Coast Guard of the rank of Commandant and below, *vis-à-vis* members of the Coast Guard above the rank of Commandant. They are all members of the Coast Guard and are, therefore, similarly situated.

39.6 Is there an intelligible differentia?

39.6.1 The second question to be addressed is whether there is an intelligible differentia between these two categories of the members of the Coast Guard. The only readily discernible difference between them is their rank. The Division Bench of the High Court of Madras, has, even in its judgment in Review Application No.156/2019, already observed that members of the Coast Guard performed duties akin to Members of the CAPFs. The reasons cited in the order dated 21 July 2020 already stand discountenanced by the judgment of the High Court of Madras in WP (C) 415/2021. The respondents were given an opportunity, by judgment dated 23 November 2023 in the said writ petition, to re-consider the matter and provide convincing reasons to justify discrimination. The result is the order dated 20 May 2024. We have already extracted that order *in extenso*, hereinabove and also identified the various justifications contained in that order for the disparate age of superannuation, in para 38.1 *supra*.



39.6.2 The criteria set out in para 38.1 *supra*, therefore, are the only criteria cited by the respondents on the basis of which the respondents seek to plead the existence of an intelligible differentia between the Members of the Coast Guard, who are of the rank of Commandant and below, and Members of the Coast Guard above the rank of Commandant.

39.7 What is the object of Rule 20, insofar as it prescribes different ages of superannuation?

39.7.1 The next question to be addressed is the object of fixing disparate ages of superannuation between the Members of the Coast Guard above the rank of Commandant and Members of the Coast Guard of the rank of Commandant and below. This question is answered by the concluding para 4(d) of the order dated 20 May 2024, which states that the Coast Guard has “adopted differential retirement age structure *as per the needs and requirements of the service*”.

39.7.2 Insofar as the “needs and requirements of the service” are concerned, the letter dated 20 May 2024 provides no enlightenment whatsoever, except for the considerations already reproduced in para 38.1 *supra*.

39.7.3 Following the order dated 20 May 2024, the respondents issued a further order on 2 December 2024, which combines the factors noted in the order dated 21 July 2020 and the order dated 20 May 2024.

39.7.4 At the highest, therefore, the objects of fixation of disparate



ages of retirement can be sought to be justified only on the basis of the considerations stated in the order dated 2 December 2024, reproduced in para 32.4 *supra*.

39.8 Is there a rational nexus between the intelligible differentia and the object of the legislation?

39.8.1 Which leaves us with the last issue to be addressed, i.e., whether the intelligible differentia which exists between the Members of the Coast Guard above the rank of Commandant and Members of the Coast Guard of the rank of Commandant and below, can be said to have a rational nexus to the object of fixation of such disparate ages of retirement.

39.8.2 No such rational nexus, to our mind, is apparent from the order dated 20 May 2024 or even the subsequent order dated 2 December 2024.

39.8.3 The considerations mentioned in the order dated 21 July 2020 have already been held, by the Division Bench of the High Court of Madras in its judgment in ***Lakshmichandra Harishchandra Sharma*** not to constitute a justifiable basis for discriminating between the officers so far as their ages of superannuation is concerned.

39.8.4 The considerations mentioned in the letter dated 20 May 2024 stands extracted in para 38.1 *supra*. Not one of them has any connection with the needs and requirements of the Coast Guard.



39.8.5 We, however, have independently examined the considerations cited in the order dated 21 July 2020, which are the following:

(i) The Coast Guard is a sea going service. It requires young and medically fit personnel to man afloat and aviation platforms and ensure optimum output and dynamic efficiency. Increasing the age of superannuation in the rank of Commandant and below, who have greater sea service requirement, will adversely affect the young age profile required for the service and sustained growth of the Coast Guard fleet.

(ii) Age related afflictions and prevalence of lifestyle diseases have a visible impact on medical standards of personnel *beyond the age of 50 years*. As on date, 34% officers and 50% enrolled personnel, *in the age group of 50-54*, are in low medical category.

(iii) If the age of retirement of officers of the rank of Commandant and below is increased to 60 years, officers junior in rank but senior in years of service would occupy billets where they may be placed under an officer superior in rank but with less years of service. This may lead to command and control issues, as persons who are superseded cannot be given independent command appointments.

(iv) Commandant is a selection grade rank. If it is occupied



by an officer for three years, it would deprive eligible and deserving officers of promotional avenue due to lack of vacancies in the years to come.

(v) Officers of the rank of Commandant and below, who superannuate at 57, invariably gets superseded in their respective ranks and have no further career progression or non-functional upgradation. The officers have to perform within the umbrella of this limitation. Factors of complacency and inertia cannot be ruled out. Some personnel would like to continue for the sake of pay and perks, contributing minimally to the service. Induction of manpower is also dependent on posts falling vacant due to superannuation.

(vi) The Coast Guard and the Indian Navy, being maritime Forces, have similar training requirements. Sharing of training facilities obviates duplication of training infrastructure and results in financial savings. The Coast Guard is availing training facilities provided by the Navy. This results in the Coast Guard personnel having been required to conform to the rank and seniority requirement as prescribed by the Navy whilst undergoing training with them.

(vii) Career progression timelines in the Coast Guard are akin to those in the Navy. The Navy has a 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 the Coast Guard, whereas maintaining a young age profile is of paramount importance as the Coast Guard is a sea going service.

39.8.6 We are truly astonished at the reasons adduced for justifying retiring officers above the rank of Commandant at 60 and all other officers and personnel of the Coast Guard at 57. Far from being in the least convincing, let alone realistic, the reasons are not supported by one scintilla of empirical data, placed before us. Vague expressions and exaggerated assumptions have been employed, as if to justify the decision to have disparate ages of retirement at any cost.

39.8.7 On what basis, we wonder, do the respondents assume that officers would be less medically fit at 60 than at 57? Or that a uniform age of superannuation, which would involve increasing the age of superannuation of officers upto the rank of Commandant by a mere three years, would adversely affect sustained growth of the fleet? Or that there are more “age related afflictions” and “prevalence of lifestyle diseases” at 60, than at 57? Or that increasing the age of superannuation of personnel upto the rank of Commandant to 60 would result in juniors with greater lengths of service being placed under officers who are senior but with lesser length of service, resulting in supersession? (This assertion is truly surprising.) Or that if Commandants retire at 60, it would deprive other officers of promotional avenues? (If this assumption is accepted, it would mean



that, at every level till Commandant, there is severe prejudice being caused to the promotional avenues of officers at every stage, as there is a uniform age of 57 in place.) Or that there is “invariable supersession” (another astonishing assumption, without any basis whatsoever being disclosed) in officers of the rank of Commandant and below? Or that a mere increase of three years in the age of personnel upto the rank of Commandant would result in “complacency” and “inertia”, and in personnel “continuing for the sake of pay and perks, contributing minimally to the service”? Or that the mere fact that the Coast Guard avails the training facilities of the Navy results both forces to conform to the same requirements of rank and seniority?

39.8.8 The reasons cited are replete with rhetoric, but little else. Abstract expressions such as “optimum output and dynamic efficiencies”, “sustained growth of the ICG fleet”, “age related afflictions and prevalence of lifestyle diseases”, “command and control issues”, “invariable supersession”, “complacency and inertia”, continuation of officers “for the sake of pay and perks only contributing minimally to the service”, and the like, have been employed, without any clear justification, much less any empirical data. It is apparent that the respondents have merely sought to justify the continuance of Rule 20 of the 1986 Rules, any which way, even if it is at the cost of discontent in the Coast Guard fleet and its members.

39.8.9 In fact, from the material on record, after the dispute at hand has weathered three rounds of litigation, which have culminated in



judgment dated 18 July 2019, Review Application judgment dated 10 March 2020, judgment dated 23 November 2023 and is now enduring a fourth, there is still nothing available on the basis of which it can be said that retiring officers of the Coast Guard of the rank of Commandant and below three years before officers above the rank of Commandant retire can be said to have any rational nexus to the object of maintaining efficiency in the Coast Guard.

39.8.10 The CRPF, CISF, BSF, SSB, ITBP, Assam Rifles and the Coast Guard are all paramilitary Forces. It cannot be disputed that the nature of duties performed by these Forces are distinct and different. *The disparate age of retirement between officers of the rank of Commandant and below, and officers above the rank of Commandant, stands effaced in all these Forces, except the Coast Guard. The Coast Guard is, on date, to our knowledge, the only paramilitary force in which there continues to exist a 3-year disparity in the age of superannuation of its members above the rank of Commandant, vis-à-vis those of the rank of Commandant and below.* This fact, even by itself, is sufficient to indicate that the difference in nature of duties of the individual paramilitary Forces is, in fact, no justification for this disparity.

39.9 Continuance of this 3-year disparity has already been held, by the Division Bench of this Court in ***Dev Sharma***, to be likely to adversely affect the morale of members of the Force. That decision has been upheld by the Supreme Court both in SLP and, thereafter, in Review. In the absence of any factor which indicates a rational nexus



between fixing of different ages of superannuation for officers of the rank of Commandant and below and officers above the rank of Commandant in the Coast Guard, we are constrained to hold that Rule 20(1) and 20(2) of the 1986 Rules, insofar as it fixes different ages of superannuation, is unconstitutional and violative of Articles 14 and 16 of the Constitution of India.

40. The sequitur

The Rule has, therefore, necessarily to be struck down.

Conclusion

41. Resultantly, we hold that the impugned Rule 20(1) and 20(2) of the 1986 Rules cannot sustain scrutiny of Articles 14 and 16 of the Constitution of India, to the extent they fix the age of superannuation of officers of the rank of Commandant and below, and enrolled persons, at 57. They are, therefore, quashed and set aside. We hold, therefore, that the age of superannuation of 60 would apply to officers of the Coast Guard at all ranks.

42. The petitioners, in these writ petitions, already stand superannuated at the age of 57. Inasmuch as they were prevented from continuing in service till the age of 60 only because of Rule 20 of the 1986 Rules, which we have declared to be illegal, they would be entitled to be treated as having continued in service till the age of 60, and to the pay of the post held by them at the time of their retirement



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for a further period of three years, which would include any increments or pay refixation benefits to which they might have become entitled during that period. Their retiral benefits would also be recomputed accordingly.

43. Differential payments to which the petitioners would become entitled, by virtue of our decision, would be disbursed by the respondents within 12 weeks from the date of uploading of this judgment on the website of this Court.

44. The writ petitions stand allowed in the aforesaid terms with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

NOVEMBER 24, 2025

AR/AKY/YG