

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% ***Reserved on: December 01, 2022***  
***Pronounced on: January 11, 2023***

- 1) + W.P.(C) 12712/2021  
PAWAN KUMAR AND ORS.
- 2) + W.P.(C) 11947/2022 & CM APPL. 35705/2022  
SHIV RAM YADAV AND ORS.
- 3) + W.P.(C) 12474/2022 & CM APPL. 37668/2022  
DR SURJEET SINGH RAINA AND ORS
- 4) + W.P.(C) 3956/2017 & Rev. Pet. 14/2022  
SANTOSH KUMAR SINGH AND ORS.
- 5) + W.P.(C) 1480/2020  
SUNIL SHARMA AND ORS.
- 6) + W.P.(C) 2116/2021 & CM APPL. 6202/2021  
NARENDER KUMAR AND ORS.
- 7) + W.P.(C) 6900/2021  
VIPUL KUMAR MISHRA AND ORS.
- 8) + W.P.(C) 12645/2021  
AMIT GHILDIYAL AND ORS.
- 9) + W.P.(C) 14105/2021 & CM APPL. 44520/2021  
DR. ANIL KUMAR BHARTI AND ORS.
- 10) + W.P.(C) 14227/2021  
DILIP KUMAR AND ORS.
- 11) + W.P.(C) 15271/2022 and CM APPL. 47344/2022  
DHARMENDRA SINGH AND ORS.
- 12) + W.P.(C) 5333/2022  
VIKASH KUMAR

- 13) + W.P.(C) 6789/2022  
TAPAS SAHA AND ORS.
- 14) + W.P.(C) 127/2022  
YOGESH KUMAR AND ORS.
- 15) + W.P.(C) 1347/2022 & CM APPL. 34892/2022  
BIPIN KUMAR AND ORS.
- 16) + W.P.(C) 2089/2022  
RITESH RANJAN AND ORS.
- 17) + W.P.(C) 2829/2022 & CM APPL. 8152/2022  
BIJENDRA SINGH AND ORS.
- 18) + W.P.(C) 6020/2022 & CM APPL. 18063/2022  
CHARAN SINGH AND ORS.
- 19) + W.P.(C) 7065/2022  
PARDEEP KUMAR AND ORS.
- 20) + W.P.(C) 9740/2022  
PRITESH KUMAR & ORS.
- 21) + W.P.(C) 10447/2022  
DHARMENDER SINGH AND ORS.
- 22) + W.P.(C) 11059/2022  
AMANDEEP SINGH AND ORS.
- 23) + W.P.(C) 12321/2022 & CM APPL. 36977-978/2022  
BALEE SAHAY AND ORS.
- 24) + W.P.(C) 13391/2022  
SATISH KUMAR DIVA AND ORS.
- 25) + W.P.(C) 16525/2022 & CM APPL. 51908/2022

MOHD. AKSAR AND ORS.

....Petitioners

**Through: Mr. Ankur Chhibber &  
Mr. Anshuman Mehrotra,  
Advocates**

- 26) + W.P.(C) 16201/2022  
CT/GD SONUPAL AND ORS.
- 27) + W.P.(C) 8879/2021 and CM APPL. 27575/2021  
CT BAIDYANATH DHIBAR AND ORS.
- 28) + W.P.(C) 8995/2021 & CM APPLs. 27969/2021, 9640/2022,  
14159/2022 & 17654/2022  
CT JITENDRA KUMAR
- 29) + W.P.(C) 13762/2021 and CM APPL. 22065/2022  
KULJINDER SINGH AND ORS.
- 30) + W.P.(C) 11390/2021 and CM APPL. 21032/2022  
HC/GD SACHIN KUMAR KATARIA
- 31) + W.P.(C) 11393/2021 and CM APPL. 14509/2022  
HC/GD PAL MANOJ KUMAR AND ORS.
- 32) + W.P.(C) 13948/2021  
BHUPENDRA SINGH CHANDEL AND ORS.
- 33) + W.P.(C) 13989/2021 and CM APPLS. 19495/2022 and  
20886/2022  
RAVI PRATAP SINGH
- 34) + W.P.(C) 6137/2022 and CM APPL. 18510/2022  
HC/GD ALOK KUMAR AND ORS.
- 35) + W.P.(C) 6156/2022 and CM APPL. 18558/2022  
INSP/GD SUJEET SINGH AND ORS.
- 36) + W.P.(C) 6869/2022 & CM APPL. 20898/2022  
INSP/GD KULDEEP AND ORS.

- 37) + W.P.(C) 7168/2022  
HC/GD JAMEER O AND ORS.
- 38) + W.P.(C) 7214/2022  
SI/EXE MUKESH KUMAR MEENA AND ORS. .
- 39) + W.P.(C) 8575/2022  
ASI/PH R. SIVANANDAM AND ORS.
- 40) + W.P.(C) 8602/2022 & CM APPL. 25888/2022  
SI/MECH V KUMARESAN
- 41) + W.P.(C) 8641/2022 & CM APPL. 26008/2022  
JAYANTA TALUKDAR AND ORS.
- 42) + W.P.(C) 10631/2022  
HC/GD MUKHTYAR SINGH AND ORS.
- 43) + W.P.(C) 10674/2022  
HC/GD DHARMPAL SINGH AND ORS.
- 44) + W.P.(C) 11626/2022 & CM APPL. 34502/2022  
HC/GD SATISH KUMAR AND ORS.
- 45) + W.P.(C) 11735/2022 & CM APPL. 34907/2022  
HC/GD SANDEEP KUMAR AND ORS.
- 46) + W.P.(C) 11737/2022 & CM APPL. 34910/2022  
DY. COMMANDANT DINESH KUMAR SAMBHRAWAL
- 47) + W.P.(C) 13112/2022  
HC/GD RAJ KUMAR AND ORS.
- 48) + W.P.(C) 13161/2022  
HC/GD SUNIL KUMAR SINGH AND ORS.
- 49) + W.P.(C) 13174/2022  
CT/COOK JOGINDER SINGH AND ORS.

- 50) + W.P.(C) 13181/2022  
SH TEJNARAYAN SINGH
- 51) + W.P.(C) 15951/2022  
INSP/EXE SUMAN KUMARI AND ANR.
- 52) + W.P.(C) 15977/2022  
CONST SHIV KUMAR AND ORS.
- 53) + W.P.(C1) 8759/2021  
PARMENDRA KUMAR ...Petitioners  
**Through: Ms. Ankita Patnaik,  
Advocate**
- 54) + W.P.(C) 14293/2022  
SHAILESH KUMAR AND ANR.
- 55) + W.P.(C) 14436/2021  
HARJI LAL BAIRWA
- 56) + W.P.(C) 709/2022  
SHREE NIWAS SHARMA AND ORS.
- 57) + W.P.(C) 10614/2022  
LALIT PRASAD AND ORS. ....Petitioners  
**Through: Mr. Nikhil Bhardwaj,  
Advocate**
- 58) + W.P.(C) 7088/2021  
ARVIND NAGAR AND ORS. & ORS.
- 59) + W.P.(C) 12838/2022  
VIDHYADHAR MEENA
- 60) + W.P.(C) 13827/2022  
CT SANJAY KUMAR & ORS.
- 61) + W.P.(C) 13853/2022



CONST. JEEUT GOND, & ORS. .... Petitioners  
**Through: Mr. Nikhil Palli, Advocate**

- 62) + W.P.(C) 14501/2022  
SANTOSH SINGH AND OTHERS
- 63) + W.P.(C) 10511/2021 and CM APPL. 27285/2022  
ANAND KUMAR PANDEY AND ORS.
- 64) + W.P.(C) 12634/2021  
DANANJAY MISHRA AND ORS.
- 65) + W.P.(C) 14238/2021 & CM APPL. 17126/2022  
RAJIB PRAMANICK AND ORS.
- 66) + W.P.(C) 6177/2022  
BHOITE MANOJ KUMAR JAYAWANT RAO AND  
OTHERS
- 67) + W.P.(C) 2314/2022 and CM APPL. 6669/2022  
BALRAM AND ORS.
- 68) + W.P.(C) 7258/2022  
JAYANNA K.K AND OTHERS
- 69) + W.P.(C) 11166/2022  
DEEPESH KUMAR GUPTA AND OTHERS ...Petitioners
- Through: Mr. Rajat Arora, Mr. Dipu  
Kumar Jha and Mr. Miraj  
Kumar, Advocates**
- 70) + W.P.(C) 6379/2021 & CM APPL. 42393/2021  
RANJAN KUMAR JHA .....Petitioner

**Through: Mr. Pankaj Kumar,  
Mr. Sandeep Kr. Singh,  
Mr. Shubhendu Saxena &  
Mr. Rishabh Agarwal,**

**Advocates.**

- 71) + W.P.(C) 14891/2021  
HARISH KUMAR AND ORS. ....Petitioners  
**Through: Mr. Padma Kumar.S,**  
**Advocate**
- 72) + W.P.(C) 1785/2022 and CM APPL. 5134/2022  
ASHOKA NANDINI MOHANTY & ANR.
- 73) + W.P.(C) 11113/2022  
RAJ KUMAR CHAKRADHARI .... Petitioners  
**Through: Mr. Amit Bardhan**  
**Mohanty, Advocate**
- 74) + W.P.(C) 10815/2022 & CM APPL. 31436/2022  
PANCHAL RAJABHAU JANARDHAN AND ORS.
- 75) + W.P.(C) 10849/2022 & CM APPL. 31537/2022  
LONDHE AUDUMBAR AND ORS.
- 76) + W.P.(C) 15537/2022  
KAMBOD SINGH AND ORS. .... Petitioners  
**Through: Mr.Akash Mohan &**  
**Mr.Amit Bardhan**  
**Mohanty, Advocates**
- 77) + W.P.(C) 11133/2022  
A. SARAVANAN AND ORS.
- 78) + W.P.(C) 15809/2022 & CM APPL. 49223/2022  
GOPAL ISHWAR PATGAR AND ORS.
- 79) + W.P.(C) 3424/2022  
CONST. KULDEEP SINGH & ORS.
- 80) + W.P.(C) 110/2020  
P. SANTHA

- 81) + W.P.(C) 3456/2022  
CT/GD BHOSALE VIKAS NIVRUTTI & ORS.
- 82) + W.P.(C) 16548/2022  
GORAKH NATH YADAV ..... Petitioners  
**Through: Advocate (appearance not given)**

Versus

UNION OF INDIA AND ORS. .... Respondents  
**Through:** Mr. Jatin Singh, Advocate in  
W.P.(C) 16201/20229  
Mr. Ripu Daman Bhardwaj, CGSC  
in W.P.(C) 11947/2022  
Mr. J.P.N. Shahi with Ms. J. Kiran,  
Advocates in W.P.(C) 12474/2022  
Mr. Nirvikar Verma with Ms.  
Poonam, Advocates in W.P.(C)  
14293/2022  
Mr. N.K. Aggarwal & Mr. Jatin  
Singh, Senior Panel Counsel with  
Ms. Geetanjali Tyagi, Government  
Pleader in W.P.(C) 14501/2022  
Ms. Aakansha Kaul & Mr. Harsh  
Ojha, Advocates with Mr. Anirudh  
Shukla, Government Pleader in  
W.P.(C) 6379/2021; W.P.(C)  
6900/2021; W.P.(C) 13112/2022;  
W.P.(C) 13181/2022  
Mr. Jivesh Kumar Tiwari, Senior  
Panel Counsel & Ms. Samiksha,  
Advocate with Mr. Paramveer  
Singh, AC, LAW, BSF in W.P.(C)  
3956/2017



Mr. T.P.Singh, Senior Central Government Counsel with Mr.Paramveer Singh, AC, LAW, BSF in W.P.(C) 110/2020; W.P.(C) 7088/2021; W.P.(C) 13762/2021; W.P.(C) 7065/2022

Mr. Harish Vaidyanathan, CGSC with Mr. Srish Kumar Mishra, Mr. Sagar Mehlawat & Mr. Alexander Mathai Paikaday, Advocates in W.P.(C) 12712/2021; W.P.(C) 2116/2021; W.P.(C) 11390/2021; W.P.(C) 11393/2021; W.P.(C) 14891/2021

Ms. Anju Gupta, Senior Panel Counsel with Mr. R.L. Goel, Advocate in W.P.(C) 1480/2020

Mr. Vikrant N. Goyal, Advocate in W.P.(C) 8759/2021; W.P.(C) 12645/2021; W.P.(C) 709/2022; W.P.(C) 10674/2022

Ms. Nidhi Raman, CGSC with Mr.Zubin Singh and Ms. Charu Modi, Advocates in W.P.(C) 8879/2021

Mr. Ajay Digpaul, CGSC, Mr. Kamal Digpaul & Ms. Swati Kwatra, Advocates in W.P.(C) 8995/2021; W.P.(C) 14238/2021; W.P.(C) 1347/2022

Mr. Rajesh Kumar and Mr. Shaurya Katoch, Advocates in W.P.(C) 10511/2021

Ms. Archana Gaur, Senior Panel Counsel with SI Prahlad Devenda,

CISF in W.P.(C) 13948/2021;

W.P.(C) 1785/2022

Mr. Shashank, Senior Panel Counsel, Mr. Jitendra Kumar Tripathi, Government Pleader in W.P.(C) 13989/2021

Ms. Bharathi Raju, Senior Panel Counsel in W.P.(C) 14105/2021; W.P.(C) 14436/2021

Mr. Apporv Kurup, CGSC & Ms. Swati Bhardwaj, Ms. Aparna Arun, Ms. Damini Garg, Mr. Ojashia Pathak, Advocates in W.P.(C) 14227/2021

Mr. Sanjay Kumar, Senior Panel Counsel with Mr. Vedansh Anand, Govt. Pleader SI Prahlad Devenda in W.P.(C) 14227/2021; W.P.(C) 6177/2022

Mr. Shoumendu Mukherji, Senior Panel Counsel & Ms. Megha Sharma, Advocate in W.P.(C) 15271/2022

Mr. Dev. P. Bhardwaj, CGSC, Ms. Anubha Bhardwaj, Mr. Sarthak Anand, Mr. Madhulak Bhardwaj & Ms. Ankita Gautam, Advocates in W.P.(C) 2314/2022

Mr. Ritesh Vikram Srivastva, Senior Panel Counsel, Mr. Prajesh Vikram Srivastva, Advocates with Sh. Paramveer Singh, AC, LAW, BSF in W.P.(C) 3424/2022

Mr. Avnish Singh, Senior Central Government Counsel with Mr. Aditya Vikram Dembla, Advocates with

Sh. Paramveer Singh, AC, LAW, BSF in W.P.(C) 3456/2022

Mr. Manish Mohan, CGSC & Mr. Jatin Teotia, Advocates in W.P.(C) 5333/2022

Ms. Talish Ray, Advocate in W.P.(C) 6137/2022

Mr. Hemant Kumar Yadav with Mr. Abhigyan Siddhant, Government Pleader in W.P.(C) 6789/2022

Ms. Pratima N. Lakra, Central Government Standing Counsel with Mr. Paramveer Singh, AC, LAW, BSF in W.P.(C) 127/2022

Mr. Jaswinder Singh Phull, Senior Panel Counsel & Mr. Anirudh Shukla, Advocate with Mr. Paramveer Singh, AC, LAW, BSF in W.P.(C) 2089/2022

Mr. Jaswinder Singh, Advocate in W.P.(C) 2829/2022; W.P.(C) 13391/2022

Mr. Nirvikar Verma, Senior Panel Counsel, Mr. Chetanya Puri & Mr. Anand Awasthi, Advocates in W.P.(C) 6020/2022

Ms. Garima Sachdeva, Senior Advocate with Ms. Archana Surve,

Advocate in W.P.(C) 6156/2022

Mr. Anil Soni, CGSC, Mr. Rahul Mourya & Mr. Jitender Kumar Tripathi, Advocate in W.P.(C) 6869/2022

Mr. Amit Gupta, Senior Panel Counsel with Mr. Rishav Dubey, Govt Pleader in W.P.(C) 7168/2022

Mr. Pradeep Kumar Jha, Senior Panel Counsel, Mr. Keshav Sehgal, Mr. Kashish Bajaj, Mr. Shubham Agarwal & Mr. Shivam Gaur, Advocates in W.P.(C) 7214/2022

Mr. Nirvikar Varma, Senior Panel Counsel with Mr. Anirudh Shukla, Government Pleader in W.P.(C) 7258/2022

Mr. Sandeep Tyagi, PC for UOI with Mr. Paramveer Singh, AC (LAW) BSF in W.P.(C) 8575/2022

Mr. Akshay Amritanshu, Mr. Samyak Jain & Mr. Divyansh Singh, Advocates in W.P.(C) 8602/2022

Mr. Siddharth Khatana, Senior Panel Counsel with Mr. Rishav Dubey, Government Pleader in W.P.(C) 8641/2022

Mr. Bhagvan Swarup Shukla, Central Government Standing Counsel with Mr. Sarvan Kumar, Advocate in W.P.(C) 9740/2022  
Mr. Paramveer Singh, AC (LAW) in

W.P.(C) 10447/2022

Mr.S.A. Haseeb, Senior Panel  
Counsel with Mr.Gokul Sharma,  
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10614/2022

Mr.Anurag Ahluwalia, Central  
Government Standing Counsel,  
Mr.Danish Faraz Khan & Mr.Rahul  
Sharma, Advocates in W.P.(C)  
10631/2022

Mr.Santosh Kumar Pandey, Senior  
Panel Counsel with Mr.Reshesh  
Mani Tripathi, Government Pleader  
in W.P.(C) 10815/2022

Mr.Jitesh Vikram Srivastava,  
Senior Panel Counsel with  
Mr.Prajesh Vikram Srivastava,  
Advocate for UOI in W.P.(C)  
10849/2022

Mr.Chiranjeev, Senior Panel  
Counsel with Mr.R.M.Tripathi,  
Government Pleader in W.P.(C)  
11059/2022

Mr.Jatin Singh Puniyani, Central  
Government Standing Counsel &  
Ms.Geetanjali Tyagi, Government  
Pleader with Inspector Sanjay  
Kumar CISF in W.P.(C)  
11113/2022

Mr.Kavindra Gill, Senior Panel  
Counsel with Mr.Sajan Shankar  
Prasad, Government Pleader in  
W.P.(C) 11133/2022

Mr.Niraj Kumar, Senior Central



Government Counsel with  
Mr.Rishav Dubey, Government  
Pleader in W.P.(C) 11166/2022

Mr.Akshay Amritanshu, Senior  
Panel Counsel, Mr.Samyak Jain,  
Mr.Divyansh Singh, Advocates  
with Mr.R.M. Tripathi,  
Government Pleader in W.P.(C)  
11626/2022

Mr.Rajnish Kumar Gaiind, Senior  
Panel Counsel in W.P.(C)  
11735/2022

Mr.Jatin Singh, Mr.Keshav Sehgal,  
Mr.Kashish Bajaj, Mr.Shubham  
Agarwal & Mr.Shivam Gaur,  
Advocates with Mr.Paramveer  
Singh, AC(LAW) BSF in W.P.(C)  
11737/2022

Mr.Ajay Kumar Pandey, Senior  
Panel Counsel, Mr.Piyush Mishra  
& Mr.Sahib Gurdeep Singh,  
Government Pleader

Mr.Sushil Raaja, Senior Panel  
Counsel with Ms.Vidhi Gupta,  
Government Pleader &  
Mr.Paramveer Singh, AC (LAW)  
BSF in W.P.(C) 12838/2022

Mr.Tanveer Ahmed Ansari, Senior  
Panel Counsel & Mr.Rudra Paliwal,  
Government Pleader in W.P.(C)  
13161/2022

Mr.Farman Ali, Senior Panel  
Counsel, Ms.Usha Jamnal &

Mr.Krishan Kumar, Advocates in  
W.P.(C) 13174/2022

Mr.Sushil Kumar Pandey, Senior  
Panel Counsel with Mr.Paramveer  
Singh, AC (LAW) BSF in W.P.(C)  
13827/2022

Mr.Atul Gulderia, Special Public  
Prosecutor for CBI,Ms.Preeti  
Sharma, Advocate with  
Mr.Paramveer Singh, AC(LAW)  
BSF in W.P.(C) 13853/2022

Mr.Sandeep Vishnu, Senior Panel  
Counsel & Ms.Tanvi Sharma,  
Advocate with Mr. Amit Acharya,  
Government Pleader in W.P.(C)  
15537/2022

Mr.Vineet Dhanda, Central  
Government Standing Counsel with  
Mr.Hussain Taqvi, Advocate with  
Ms.Archana Surve, Government  
Pleader in W.P.(C) 15809/2022

Mr.Ankur Yadav, Senior Panel  
Counsel with Mr.Anukalp Jain,  
Government Pleader in W.P.(C)  
15951/2022

Mr.Manish Kumar, Senior Panel  
Counsel with Ms.Chetanya Puri,  
Government Pleader in W.P.(C)  
15977/2022

Mr. Vineet Dhanda, Central  
Government Standing Counsel,  
Mr.Hussain Taqvi, Advocate with  
Mr.Paramveer Singh, AC(LAW)  
BSF in W.P.(C) 16548/2022

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**

**JUDGMENT**

**SURESH KUMAR KAIT, J**

1. The petitioners in the above captioned petitions are employees of different forces i.e. Central Reserve Police Force ('CRPF'), Sashastra Seema Bal ('SSB'), Border Security Force ('BSF') and Central Industrial Security Force ('CISF') Indo Tibetan Border Police ('ITBP') etc., who have preferred these petitions under Article 226/227 of the Constitution of India seeking issuance of a writ of certiorari to the respondents for quashing of orders denying them the benefit of Old Pension Scheme ('OPS') in accordance with CCS (Pension) Rules, 1972 to them vide different Office Memorandums and Signals issued by the respondents. In addition, also sought quashing of OM dated 17.02.2020 issued by respondents to the extent it does not grant benefit of Old Pension Scheme to the personnel who have been appointed pursuant to notifications/ advertisements dated 01.01.2004.

2. The primary relief sought by the petitioners in these petitions is for grant of OPS to the personnel, who have though been appointed after 01.01.2004, but had applied for the posts prior to 01.01.2004. Since the relief sought in these petitions is similar, therefore, vide order dated 08.08.2022 [in W.P.(C) No. 3424/2022] this Court had directed that W.P.(C) No. 12712/2021 shall be treated as the lead matter and with the

consent of learned counsel for the parties, Mr. Ankur Chibber, Advocate and Harish Vaidyanathan Shankar, learned Standing Counsel, were called upon to put-forth the case on behalf of the petitioners and respondents respectively.

3. Mr. Ankur Chibber, learned counsel appearing on behalf of petitioners submitted that The Special Selection Board (CPOs-2002) in June 2002 had issued an advertisement inviting applications from eligible candidates for filling up the Group 'A' post of Assistant Commandants in the Border Security Force, Central Reserve Police Force, Indo-Tibetan Border Police Force and Special Security Bureau (Now Sashastra Seema Bal). As per the said advertisement, the last date for applying under the said examination was 30.06.2002. The written examination was scheduled for 02.03.2003 and the successful candidates appeared for PET, Interview and Medical examination between October, 2003 till February, 2004. The final result was declared in July, 2004. The petitioners were offered appointment for the post of Assistant Commandant during the period October, 2004 till 2005. In the interregnum, vide Notification dated 22.12.2003, New Contributory Pension Scheme ('NPS') was implemented w.e.f. 01.01.2004, however, the said scheme was not applicable to Armed Forces, as the Forces shall be governed by the OPS already existing.

4. Finding that the NPS was less beneficial than the OPS, a few personnel whose selection process had started prior to 01.01.2004 but had received appointment letters thereafter, preferred writ petitions before this Court and the said petitions being *Naveen Kumar Jha Vs. UOI & Ors.* 2012 SCC OnLine Del 5606; *Avinash Singh Vs. UOI & Ors.* 2011 SCC

OnLine Del 2432; *Parmanand Yadav Vs. UOI & Ors.* 2015 SCC OnLine Del 7274, were allowed by this Court. The Special Leave Petition ('SLP') preferred by the respondents [SLP (Civil) CC No.13755/2013] against the decision dated 02.11.2012 was dismissed by the Hon'ble Supreme Court vide order dated 12.08.2013 with direction to implement the order dated 02.11.2012 in three months.

5. Thereafter, Directorate General Border Security Force, Ministry of Home Affairs, Government of India, vide order dated 13.01.2016 directed to convert the petitioners and other similarly situated SI/DE selected through CPOs examination 2002 as members of the OPS.

6. The similar issue was again raised and decided by this Court in *Inspector Rajendra Singh & Ors. Vs. UOI & Ors.* 2017 SCC OnLine Del 7879 and *Tanaka Ram & Ors. Vs. UOI & Ors.* 2019 SCC OnLine Del 6962 where-under in view of the fact that the advertisements were prior to coming into force NPS, the relief was granted to petitioners. Even the SLP [SLP (C) Diary No.25228/2019] preferred by the respondents/UOI was dismissed by the Supreme Court vide order dated 02.09.2019.

7. The Ministry of Home Affairs ('MHS') thereafter vide OM dated 13.04.2018 directed all the CAPFs to extend similar benefits of "Old Pension Scheme to all affected personnel" in terms of decisions of this Court in W.P.(C) No.3834/2013 and W.P.(C) No. 2810/2016. Vide another letter dated 16.10.2018, respondent-BSF had notified that the selections done prior to 01.01.2004 will be governed by OPS. Further, vide Signal dated 23.10.2018, the respondents had clarified that all candidates selected through advertisement prior to 22.12.2003, need to be



treated as members of Old Pension Scheme.

8. Learned counsel for petitioners submitted that contrary to their own orders, the respondents vide order dated 11.12.2018 extended the benefit of OPS to only those personnel whose recruitment process was completed by 31.12.2003 but joined the force after 01.01.2004. However, the petitioners before this Court have not been granted the benefit of OPS for the reason that their recruitment process completed after 01.01.2004 i.e. when the NPS was in force, which is contrary to the law laid down by this Court in **Gopal Babulal & Ors. Vs. Union of India & Ors** 2019 SCC OnLine Del 11894. Learned counsel submitted that even thereafter, vide orders dated 06.02.2019 and 19.07.2019, the benefit of OPS has been extended to certain officials/ personnel, however, have been denied to the petitioners.

9. Afterwards, another writ petition being **Shyam Kumar Choudhary & Ors. Vs. UOI & Ors.** 2019 SCC OnLine Del 11891 was filed by a few personnel who had joined the 37<sup>th</sup> Batch of CRPF and had had been selected in the examination conducted in 2003; but were issued call letters in January or February, 2004 and this Court in view of the fact that those petitioners could not join prior to 01.01.2004 due to fault of the respondents, granted them benefit of OPS vide order dated 09.04.2019. Again, the SLP [SLP (C) No.31539/2019] preferred by the respondents was dismissed by the Supreme Court vide judgment dated 27.09.2019 and even the Review Petition preferred against the said order was dismissed by the Supreme Court vide order dated 24.11.2020.

10. In the meanwhile, respondent-CRPF issued a Memorandum dated

26.08.2020 whereby it decided to extend the benefit of OPS only to the petitioners in the case of *Shyam Kumar Choudhary (Supra)* and 13 other similarly situated personnel, excluding the personnel such like petitioners. Vide Signal dated 28.08.2020, a direction was issued to the Directorate to ensure compliance of order dated 09.04.2019. Thereby, the order dated 09.04.2019 attained finality in all respects and become the settled position of law.

11. Further submitted that pursuant to judgment dated 09.04.2019, this Court in vide decision dated 13.12.2019 in *Niraj Kumar Singh and Ors. Vs. Union of India and Ors.* 2019 SCC OnLine Del 11892 and vide judgment dated 16.12.2019 in W.P.(C) No.11169/2019, titled as *Chander Veer Singh and Ors. Vs. Union of India and Ors.* directed the respondents to grant the benefit of OPS to the petitioners therein. Yet again, another SLP (being SLP No.9950/2020) preferred by the respondents was dismissed by the Supreme Court vide order dated 16.04.2021. Thereafter, vide order dated 28.01.2020 in writ petition bearing No.756/2020, this Court directed the respondents to grant similar benefit to the petitioners therein and the SLP filed by respondents/Union of India (Being SLP No.173/2021) stood dismissed by the Supreme Court.

12. Learned counsel for petitioners submitted that once vide judgment dated 09.04.2019 in W.P. (C) No.1358/2017 it was held that the personnel belonging to the 37<sup>th</sup> Batch, being the juniors of petitioners, will be entitled to Old Pension Scheme; then it implies to senior batch to which the petitioners belong. Despite being a settled law on the subject that where an advertisement has been issued prior to 01.01.2004 but the

successful candidates have been issued appointment letters subsequent to the NPS due to administrative delay on the part of respondents, then all such candidates must be given the benefit of OPS. Thus, the refusal of respondents to grant similar benefit to persons such like petitioners is arbitrary and illegal and deserves to be set aside.

13. Learned counsel for petitioner placed reliance upon decision of Supreme Court in ***State of U.P. and Ors. Vs. Arvind Kumar Srivastava and Ors.*** 2015 (1) SCC 347 to submit that when a set of employees has been given relief by the Court, then all other identically placed persons need to be treated alike by extending the benefit to them.

14. It was next submitted by learned petitioners' counsel that the OM dated 17.02.2020 issued by the Department of Pension and Pensioner's Welfare, which mentions that in cases where the final result for recruitment were declared before 01.01.2004 against the vacancies occurring on or before 31.12.2003, only those candidates shall be eligible for OPS under the CCS (Pension) Rules, 1972, is bad in law, as it is the settled position that in cases where the recruitment process had been initiated prior to the notification dated 22.12.2003 but appointment letters have been issued on a subsequent date, they shall be entitled to OPS.

15. Learned petitioners' counsel submitted that writ petitions filed by the personnel of BSF, being ***Vipul Pandey and Ors. Vs. Union of India and Ors.*** 2020 SCC OnLine Del 1243 and ***Ithape Pandit Kisanrao and Ors. Vs. Union of India and Ors.*** 2020 SCC OnLine Del 1295, were decided by this Court vide common Judgment dated 06.11.2020, whereby benefit of OPS have been granted to the petitioners therein and the SLP

(being SLP (C) No. 11543/2021) preferred by the respondents stood dismissed on 12.07.2021 and 17.09.2021. The respondents have in compliance of aforesaid judgment, granted benefit of OPS to the petitioners therein, who are infact juniors to the petitioners in these petitions.

16. The petitioners, aggrieved by the fact that they were not granted OPS by the respondents, filed various representations praying for extension of the benefit of coverage under CCS (Pension) Rules, 1972, however, respondents vide Signal dated 12.10.2021, declared petitioners ineligible for switching over to pension Scheme under the Rules.

17. Learned counsel for petitioner submitted that respondents vide Memo dated 26.08.2020, Signal dated 28.08.2020 and order dated 22.09.2021, have granted benefit of OPS to batch-mates and juniors of petitioners but the petitioners have been discriminatively treated for reasons best known to respondents only.

18. Even thereafter, vide common judgment dated 15.01.2021, this Court in W.P.(C) No.9252/2020 titled as ***Shabad Prakash Punia and Ors. Vs. Union of India and Ors.***; W.P.(C) No.5075/2020 titled as ***Sudesh Kumar Singh and Ors. Vs. Union of India*** and W.P.(C) No.7445/2020, titled as ***Harbir Singh and Ors. Vs. Union of India and Ors.*** granted benefit of OPS to the petitioners therein and again the SLP (being SLP (C) No. 7373/2021) preferred by the respondents against thereof, stood dismissed by the Supreme Court vide judgment dated 09.07.2021.

19. Learned petitioners' counsel pointed out that furthermore, this Court in ***Jas Winder Singh & Ors. Vs. UOI & Ors. 2021*** SCC OnLine



Del 3194 vide order dated 15.02.2021 directed the respondents to grant benefit of OPS to petitioners therein on parity to their batch-mates and the SLP[ being SLP(C) No. 11749/2021] preferred by the respondents stood dismissed on 31.08.2021.

20. Learned counsel sturdily submitted that despite various aforesaid decisions and the fact that the Supreme Court has clarified that CRPF is an Armed Force of the Union of India and the notification dated 06.08.2004 issued by the Government of India stating that the CRPF is the Armed Force of the Union, respondents are not covering the petitioners under the OPS, as has been applied in case of Army, Air force and Navy.

21. On the other hand, Mr. Harish Vaidyanathan Shankar, learned Standing Counsel appearing on behalf of respondents, submitted that petitioners have joined the respective Forces during the years 2004 and 2005 and the Ministry of Finance, Government of India, vide Notification No.5/7/2003-ECB & PR dated 22.12.2003, published in the Gazette of India, Extraordinary, Part-I, Section 1, dated 22.12.2003 implemented NPS for new entrants to Central Government Service, except to Armed Forces, thereby replacing the OPS. Since the petitioners joined the services after coming into force the aforesaid Notification, these petitioners were not entitled to OPS under the CCS(Pension) Rules, 1972 (Old Pension Scheme. Learned Standing Counsel pointed out that the petitioners in W.P.(C) No. 1358/2017; W.P.(C) No. 3834/2013 and W.P.(C) No. 2810/2016 had qualified the recruitment process prior to notification of NPS, however, the petitioners herein had not qualified the recruitment process prior to Notification dated 22.12.2003. It was



submitted that only one stage of examination was complete prior to 01.01.2004 and all the other three stages were conducted thereafter. It was submitted that there were factual errors in judgment dated 09.04.2019 passed in W.P.(C) No. 1358/2017, however, since SLP against the said order [being SLP(C) Diary No. 31539/2019] was dismissed by the Supreme Court vide order dated 27.09.2019; the Department of Personnel and Pensioners' Welfare ('DOP&PW') advised the MHA vide OM dated 26.08.2020 to implement the judgment dated 09.04.2019 only in the case of petitioners therein. Similarly, the benefit of OPS was extended to the petitioners in WPC No. 6548/2020 as there were factual errors in the Judgment dated 06.11.2020 passed by this Court and also since, SLP against the said Judgment was dismissed by the Supreme Court of India vide order dated 12.07.2021, the MHA accorded to implement the said benefit to the petitioners in WP(C) No. 6548/2020 in persona.

22. Learned Standing Counsel submitted that the various representations / references received by the DOP & PW, vide OM dated 17.02.2020 clarified that in all cases where the recruitment results were declared before 01.01.2004 against vacancies occurring on or before 31.12.2003, the candidates declared successful for recruitment shall be eligible for coverage under CCS(Pension) Rules, 1972 and the Government servants appointed on or after 01.01.2004 will not be eligible for OPS. Thereafter, the Board of Officers constituted under chairmanship of IG, NS, CRPF to assess eligibility of officers who were appointed in CRPF on or after 01.01.2004 by qualifying the competitive examination advertised prior to 01.01.2004, examined their representations/ references

made by them and found them ‘ineligible’ for OPS, as their final result was declared after 01.01.2004.

23. Next, on the pleas of petitioners that NPS is not applicable to the members of the CRPF, learned Standing Counsel for the respondents submitted that in terms of Section 3 of CRPF Act, 1949, CRPF is an Armed Force of the Union of India and the Notification dated 22.12.2003, the ‘ARMED Forces’ implies to Army, Navy and Air Force and not to the entire armed forces of the Union.

24. Lastly, learned Standing Counsel for respondents placed reliance upon recent decision of a Division Bench of this Court in ***Satya Dev Prajapati and Others Vs. Delhi High Court, through its Registrar General and Anr.*** 2022 SCC OnLine Del 3911, whereby the petitioners have been denied benefit of OPS. Also submitted that in ***Shyam Kumar Choudhary (Supra)*** and ***Ithape Pandit Kisanrao (Supra)*** the petitioners have been granted relief in persona and the said decisions are not applicable to the case of petitioners herein and so, these petitions deserve to be dismissed.

25. In rebuttal, learned counsel for petitioners submitted that respondents have failed to appreciate that the advertisement was issued in June, 2002; final result was declared in July, 2004 and petitioners were appointed in November, 2004 – January, 2005, when the OPS was in vogue and for the fault of respondents for not completing the recruitment process in a timely manner, the petitioners cannot be made to suffer. Further submitted that petitioners are entitled to similar benefit as has been granted to petitioners in W.P.(C) 1358/2017; W.P.(C) 6548/2020 and

W.P.(C) No. 6989/2020 vide judgments dated 09.04.2019 and 06.11.2020 respectively. Thus, the petitioners sought quashing of Memorandum dated 26.08.2020, Signal dated 28.08.2020 and order dated 22.09.2021 to the extent respondents have granted benefit of OPS only to the petitioners in W.P.(C) 1358/2017; W.P.(C) No. 6548/2020 in compliance to the order dated 09.04.2019 and 06.11.2020 respectively, excluding the similarly situated personnel like the petitioners. Lastly, learned petitioners' counsel submitted that petitioners deserve benefit of OPS in terms of notification dated 22.12.2003, MHA letter dated 06.08.2004 and in accordance with CCS (Pension) Rules, 1972 by treating them members of Armed Forces of the Union of India.

26. This Court had heard extensive arguments addressed on behalf of both the sides. On perusal of material placed before this Court as well as decisions relied upon by both the sides, we find that the petitioners in these petitions are personnel belong to different Forces i.e. CRPF, BSF, CISF, SSB, ITBP (CAPFs) etc. Subsequent upon publishing of advertisements for filling up different posts in these Forces, the petitioners herein claim to have applied in the years 2002-03, 2003-04. While the recruitment/ selection process was in progress, the NPS was introduced vide Notification dated 22.12.2003, which was to be implemented w.e.f. 01.01.2004. The petitioners, employed in various Forces, claim that according to the said Notification, the scheme of NPS was not applicable to the Armed Forces. Meaning thereby, the Armed Forces shall be governed by the Old Pension Scheme already existing. However, given that this benefit was not extended to the personnel of the armed forces, a

quite many of them took the plea that since their recruitment/ selection process commenced prior to Notification dated 22.12.2003, they shall be covered under the OPS, though the respondents have treated them as a member of NPS.

27. The petitioners claim to have made different representations before the competent authority of their respective Force, however, their prayer for grant of benefit of OPS was turned down vide different Office Memorandums, Signals etc. Hence, aggrieved against the denial of respondents to grant the petitioners these petitions have been filed. The relief sought in the present petitions is as under:-

Writ Petition/ W.P.(C) No.	Relief sought and Quashing/modification of OM/Signal
16201/2022	Issue a writ of mandamus directing the respondents to extend the benefit of Old Pension Scheme in accordance with CCS(Pension) Rules, 1972 OM dated 17.02.2020
11947/2022	Letters dated 14.12.2013 and 23.04.2014 Signal dated 12.11.2014 Memorandum dated 26.08.2020, Signal dated 28.08.2020 and order dated 22.09.2021
12474/2022	OM dated 17.02.2020 memorandums dated 07.10.2019, 14.01.2021, signal dated 01.02.2022, inter office note dated 25.04.2022 and memorandum dated 19.07.2022

14293/2022	memorandum dated 26.08.2020
14501/2022	Memorandum dated 05.07.2022
6379/2021	No reply to the representation dated 09.06.2021
3956/2017	Issue a writ of mandamus directing the Respondents to extend the benefit of Old Pension Scheme in accordance with CCS(Pension) Rules, 1972
110/2020	letter dated 7.10.2019
12712/2021	OM dated 26.08.2020 Signal dated 28.08.2020 order dated 22.09.2021 OM dated 17.02.2020
1480/2020	Parity with batch mates
2116/2021	OM dated 17.02.2020 OM dated 30.09.2020
6900/2021	Memorandum dated 26.08.2020 signal dated 28.08.2020
7088/2021	Direction to respondents to extend the benefit of OPS
8759/2021	OM dated 17.02.2020
8879/2021	OM dated 17.02.2020
8995/2021	OM dated 17.02.2020
13762/2021	OM dated 17.02.2020
10511/2021	OM dated 17.02.2020
11390/2021	OM dated 17.02.2020



11393/2021	OM dated 17.02.2020
12634/2021	OM dated 17.02.2020
12645/2021	OM dated 17.02.2020
13948/2021	OM dated 17.02.2020
13989/2021	OM dated 17.02.2020
14105/2021	Memorandum dated 26.08.2020 Signal dated 28.08.2020 Order dated 22.09.2021
14227/2021	OM dated 17.02.2020
14238/2021	OM dated 17.02.2020
6177/2022	OM dated 17.02.2020
15271/2022	OM dated 17.02.2020
2314/2022	OM dated 17.02.2020
3424/2022	To direct respondents to extend the benefit of OPS
3456/2022	To direct respondents to extend the benefit of OPS
5333/2022	OM dated 17.02.2020
6137/2022	OM dated 17.02.2020
6789/2022	Memorandum dated 26.08.2020 Signal dated 28.08.2020 Order dated 22.09.2021
14436/2021	To direct respondents to extend the benefit of OPS
14891/2021	OM dated 17.02.2020 Letter dated 3.03.2020

127/2022	OM dated 17.02.2020
709/2022	Order dated 29.12.2021
1347/2022	Letter dated 25.06.2019 Orders dated 22.04.2021 and 12.08.202 OM dated 17.02.2020
1785/2022	Memorandum dated 17.02.2020
2089/2022	OM dated 17.02.2020
2829/2022	Memorandum dated 26.08.2020 Signal dated 28.08.2020 Order dated 22.09.2021 OM dated 17.02.2020
6020/2022	OM dated 17.02.2020 order dated 04.10.2021 letters dated 25.10.2021 & 10.11.2021 OM dated 15.11.2021
6156/2022	OM dated 17.02.2020
6869/2022	OM dated 17.02.2020
7065/2022	Memorandum dated 26.08.2020 Signal dated 28.08.2020 Order dated 22.09.2021 OM dated 17.02.2020
7168/2022	OM dated 17.02.2020
7214/2022	OM dated 17.02.2020
7258/2022	OM dated 17.02.2020
8575/2022	OM dated 17.02.2020
8602/2022	OM dated 17.02.2020
8641/2022	OM dated 17.02.2020

9740/2022	Memorandum dated 26.08.2020 Signal dated 28.08.2020 Order dated 22.09.2021
10447/2022	Orders dated 10.07.2020 and 02.08.2020 OM dated 17.02.2020
10614/2022	OM dated 17.02.2020
10631/2022	OM dated 17.02.2020
10674/2022	OM dated 17.02.2020
10815/2022	OM dated 17.02.2020
10849/2022	OM dated 17.02.2020
11059/2022	OM dated 17.02.2020
11113/2022	OM dated 17.02.2020 Order dated 12.07.2022
11133/2022	To direct respondents to extend the benefit of OPS
11166/2022	OM dated 17.02.2020
11626/2022	OM dated 17.02.2020
11735/2022	OM dated 17.02.2020
11737/2022	OM dated 17.02.2020
12321/2022	Memorandum dated 26.08.2020 Signal dated 28.08.2020 Order dated 22.09.2021
12838/2022	To direct respondents to extend the benefit of OPS
13112/2022	OM dated 17.02.2020
13161/2022	OM dated 17.02.2020
13174/2022	OM dated 17.02.2020
13181/2022	OM dated 17.02.2020

13391/2022	Memorandum dated 26.08.2020 Signal dated 28.08.2020 Order dated 22.09.2021 OM dated 17.02.2020
13827/2022	To direct respondents to extend the benefit of OPS
13853/2022	To direct respondents to extend the benefit of OPS
15537/2022	OM dated 17.02.2020
15809/2022	To direct respondents to extend the benefit of OPS
15951/2022	OM dated 17.02.2020
15977/2022	OM dated 17.02.2020
16525/2022	OM dated 17.02.2020
16548/2022	Extend benefit of OPS

28. To submit that the personnel appointed pursuant to advertisement which have been issued prior to 31.12.2003 shall be eligible to get OPS is no longer *res integra*, learned counsel for petitioners placed reliance upon various decisions of this Court. The relevant paras of decisions relied upon are as under:-

(i) In ***Naveen Kumar Jha (Supra)***, it has been held as under:-

*“9. With respect to the Pension Scheme it assumes importance to note that petitioner's batch mates were issued letters offering appointment in March 2003 and had petitioner likewise been issued a letter offering appointment, he too would have*

*been a member of the old Pension Scheme. As a result of petitioner being offered employment in April 2004, he has perforce been made a member of the new Pension Scheme.*

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11. *We highlight in the instant case the fortuitous circumstance of the petitioners being made to join as Assistant Commandant on 08.08.2005 is not the result of anything created by the petitioners but is a result of a supine indifference and negligence on the part of the ITBP officials.*

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18. *On the subject of the petitioner being entitled to the old Pension Scheme, in similar circumstances, deciding WP(C) No. 10028/2009 Amrendra Kumar v. UOI, where the petitioner therein was also similarly deprived the opportunity to join with his batch on account of delay in conducting medical re-examination, the Court had directed that said writ petitioner would be entitled to the benefit of the old Pension Scheme which remained in force till December 31, 2003.*

19. *The petitioner would be entitled to similar benefit and accordingly the next mandamus issued is by way of a direction to the respondents to treat the petitioner as a member of the pension scheme which remained in vogue till December 31, 2003”*

(ii) In ***Parmanand Yadav (Supra)***, this Court observed and held as under:-



*“9. With respect to the Pension Scheme it assumes importance to note that petitioner's batchmates were issued letters offering appointment in March 2003 and had petitioner likewise been issued a letter offering appointment, he too would have been a member of the old Pension Scheme. As a result of petitioner being offered employment in April 2004, he has perforce been made a member of the new Pension Scheme.”*

(iii) In ***Tanaka Ram (Supra)***, this Court observed and held as under:-

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

*7. A batch of the Petitioners who were selected pursuant to a Sub-Inspector (DE), Central Police Organisation (‘CPO’) Examination 2002 and were also deprived of the benefit of the Old Pension Scheme on account of the delay on the part of the Respondents in issuing the appointment orders. They filed WP (C) No. 3834/2013 (Parmanand Yadav v. Union of India) in this Court. By a judgement dated 12<sup>th</sup> February, 2015 this Court allowed the said writ petition. The*

*Court in doing so followed its earlier order dated 26<sup>th</sup> May, 2011 in WP (C) No. 5400/2010 (Avinash Singh v. Union of India) which was followed in the decision dated 2<sup>nd</sup> November, 2012 in WP (C) No. 3827/2012 (Naveen Kumar Jha v. Union of India).*

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

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

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

(iv) In ***Inspector Rajendra Singh (Supra)*** it has been

held as under:-

*“17. Had the petitioners and others, who opted for the Border Security Force, known that by opting for the Border Security Force, they would have been denied the benefit of the Old Pension Scheme, they would perhaps have not opted for the Border Security Force.*

*18. In our view, basic terms and conditions of service, such as the right to receive pension upon superannuation, as applicable at the time of notification of the posts, cannot later be altered to the prejudice of the incumbents to the post, after commencement of the selection process.”*

- (v) Thereafter, in ***Niraj Kumar Singh and Others Vs. Union of India and Others*** 2019 SCC OnLine Del 11892, in the light of decisions in ***Naveen Kumar Jha*** (Supra), ***Parmanand Yadav*** (Supra), ***Inspector Rajendra Singh*** (Supra) relied upon by learned counsel for petitioners, this Court observed and held as under:-

*“5. The short question that arises in this petition is whether the Petitioners are covered by the OPS which was replaced by the new Contributory Pension Scheme, which came into effect from 1<sup>st</sup> January, 2004?*

*6. It has been consistently held by this Court in a series of orders that those who had participated in the examination of 2003 would be covered by the OPS, notwithstanding that they had been offered letters of appointment only after 1<sup>st</sup> January, 2004. Among the several orders of this Court is an order dated 2<sup>nd</sup> November 2012 in W.P.(C) 3827 of 2012 (*Naveen Kumar Jha v. Union of India*) where in*

*the context of a delay in the issuance of the letter of appointment of a Sub-Inspector (SI) of the Central Reserve Police Force (CRPF), beyond 1<sup>st</sup> January 2004, on account of the delay in the authorities having him examined by a Review Medical Board, it was held that the Petitioner would be covered by the OPS.*

*7. By a subsequent order dated 12<sup>th</sup> February, 2015 in W.P.(C) 3834/2013 (Parmanand Yadav v. Union of India) in the context of SIs of the Border Security Force (BSF) whose letters of appointment were delayed beyond 1<sup>st</sup> January 2004, it was held that they too would be covered by the OPS. The BSF accepted this and other judgments that followed and its Director General (DG) issued an order dated 13<sup>th</sup> January 2016 in which inter alia it was stated:*

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

*8. Subsequently, after a judgment dated 27<sup>th</sup> March 2017 of this Court in the case*

*of Inspectors of the BSF in W.P. (C) 2810 of 2016 (Inspector Rajendra Singh v. Union of India), the Ministry of Home Affairs (MHA) issued an Office Memorandum (OM) dated 13<sup>th</sup> April 2018, accepting the said judgment for implementation and inter alia directing as under:*

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

*9. Another order dated 16<sup>th</sup> October 2018 was issued by the BSF implementing the decisions of this Court extending the benefit of the OPS in the case of Head Constable (Radio Operators) who had been selected prior to 1<sup>st</sup> January 2004 but issued appointment letters thereafter.*

*10. This Court, in the context of certain Constables of BSF, by a judgment dated 12<sup>th</sup> February, 2019 in W.P. (C) 6680 of 2017 (Tanaka Ram v. Union of India) allowed the prayers of those Petitioners and held that they should be covered by the OPS. The order of this Court in Tanaka Ram (supra) was affirmed by the Supreme Court by dismissal of SLP (CC) Diary No. 25228/2019 (Union of India v. Tanaka Ram) on 2<sup>nd</sup> September 2019.*

*11. In W.P.(C) 1358/2017 (Shyam Kumar Choudhary v. Union of India), relief similar to the one sought in the present case was being claimed by certain Assistant Commandants in the CRPF, who had successfully cleared the examinations of*



*2003. They were, however, offered letters of appointment after January, 2004. By an order dated 9<sup>th</sup> April, 2019, their petition was allowed by this Court. That order has been affirmed by the Supreme Court inasmuch as SLP(C) 31539/2019 filed by Union of India has been dismissed by an order dated 27<sup>th</sup> November, 2019.*

*12. In that view of the matter, the Court finds no reason to treat the present Petitioners who belong to the SSB, another CAPF, different from their counterparts in the CRPF and BSF.*

*13. The Court accordingly allows the present petition and quashes the order dated 25<sup>th</sup> January, 2018 passed by the Respondents by which the Petitioners' representation dated 8<sup>th</sup> September 2017, requesting that the OPS be extended to them, was rejected. A direction is issued to the Respondents to extend the benefit of the OPS to each of the Petitioners in terms of CCS (Pension) Rules 1972, by issuing appropriate orders within a period of 12 weeks from today."*

29. It is a matter of record that against the aforesaid decisions, respondents preferred SLP as well as review petitions, which were dismissed by the Supreme Court. Thereby, it is the settled position of law that those candidates who had appeared in the selection process prior to coming into force the NPS on 22.12.2003, but were offered letters of appointment after 01.01.2004, would be covered by the OPS.

30. The respondents, on the other hand, have relied upon decision in ***Satya Dev Prajapati (Supra)***. In the said case, though the advertisements for different posts was issued in the year 2003 but the written examination, skill test and viva voce could be completed in May, 2004

and the appointment letters were issued between May, 2004 till August, 2004. So, the petitioners had filed the aforesaid writ petitions seeking benefit of OPS, which was denied by the department in view of Office Memorandum dated 17.02.2020, whereby the benefit of OPS was confined to only those candidates who were recruited against vacancies arising on or before 31.12.2003 and the selection results were declared on or before 01.01.2004. The Coordinate Division Bench of this Court while relying upon OM dated 17.02.2020 refused to grant the benefit of OPS to the petitioners therein holding that the Central Government had thought it fit to extend the benefit of the Old Pension Scheme to those employees, where the selection results (for filling up vacancies that had arisen) were declared before 01.01.2004. The Coordinate Bench in ***Satya Dev Prajapati*** (*Supra*) took note of the decisions in ***Naveen Kumar Jha*** (*Supra*), ***Parmanand Yadav*** (*Supra*), ***Tanaka Ram*** (*Supra*), ***Inspector Rajendra Singh*** (*Supra*), ***Niraj Kumar Singh and Others*** (*Supra*) and ***Avinash Singh*** (*Supra*); relied upon by petitioners as well as in these petitions and observed that:-

*“47. It is clear from the above analysis that the petitioners rely upon cases that follow the decision in the case of Naveen Kumar Jha v. Union of India, which in turn referred to the decision in the case of Avinash Singh v. Union of India As noted above, the decision in Naveen Kumar Jha v. Union of India was based on the principle that there could be no discrimination between a batch of candidates that participated in the given recruitment process. On the principles of parity, the Court did not accept that the benefits of the Old Pension Scheme would be available to some of the candidates and not to others for no reasons attributable to them. It is also*

**material to note that all of the cases referred to by the petitioners were essentially cases pertaining to recruitment to the paramilitary forces.** The controversy in these cases had arisen largely on account of a delay in the petitioners joining their services either because the letters of joining had been issued later or a delay in the completion of the procedure for their medical fitness, which had placed them in a disadvantageous position vis-a-vis other similarly placed candidates. It was also found that there was a difference in the dates of issuing appointment letters to candidates based on the paramilitary service to which they were appointed.

31. Since the Coordinate Division Bench itself has noted in Para-47 of ***Satya Dev Prajapati (Supra)*** that the cases referred to were related to paramilitary forces where there was huge delay caused on completion of recruitment process and so, the petitioners therein were given appointment on parity, whereas the petitioners in ***Satya Dev Prajapati (Supra)*** were covered under the Central Government Rules and so were denied benefit of OPS, the said decision is of no help to the case of respondents being distinguishable on facts.

32. To persuade this Court that the petitioners, deployed under different Forces, were members of Armed Forces and hence, covered under the OPS, learned petitioners' counsel had submitted before this Court that under Article 246 read with List 1 Entry 2 of the Seventh Schedule of Constitution of India, the Armed Forces of the Union of India included the Naval, Military and Air Forces and any other armed forces of the Union. Further submitted that even the Central Reserve Police Force was raised as an Armed Force of Union of India and is governed by a special Act

called CRPF Act, 1968.

33. The provisions of Section 3(1) of the CRPF Act, 1949 stipulate that the CRPF is a part of armed forces. It reads as under:-

*“CONSTITUTION OF THE FORCE*

*3. Constitution of the Force.-(1) There shall continue to be an armed force maintained by the Central Government and called the Central Reserve Police Force.”*

34. Furthermore, Article 246 read with List 1 Entry 2 of the Seventh Schedule of Constitution of India envisages Armed Forces of the Union of India and includes “Naval, Military and Air Forces; any other armed forces of the Union”.

35. Also, learned counsel for petitioners had drawn attention of this Court to Notification dated 22.12.2003 issued by the Ministry of Finance, Government of India as well as Circular dated 6<sup>th</sup> August, 2004 issued by the Ministry of Home Affairs, Government of India.

36. The Contributory Pension Scheme was introduced vide Notification dated 22.12.2003, which was to be implemented w.e.f. 01.01.2004. The Notification dated 22.12.2003 reads as under:-

***“MINISTRY OF FINANCE  
(Department of Economic Affairs)  
(ECB & PR Division)***

***NOTIFICATION***

*New Delhi, the 22<sup>nd</sup> December, 2003*

***F.No.5/7/2003-ECB & PR – The Government  
approved on 23<sup>rd</sup> August, 2003 the proposal to  
implement the budget announcement of 2003-2004***

*relating to introducing a new restructured defined contribution pension system for new entrants to Central Government service, except to Armed Force, in the first stage, replacing the existing system of defined benefit pension system.*

*(i) The system would be mandatory for all new recruits to the central Government service from 1<sup>st</sup> of January, 2004 **(except the armed forces in the first stage)**. The monthly contribution would be 10 percent of the salary and DA to be paid by the employee and matched by the Central Government. However, there will be no contribution from the Government in respect of individuals who are not Government employees. The contributions and investment returns would be deposited in a non-withdrawable pension tier-I account. The existing provisions of defined benefit pension and GPF would not be available to the new recruits in the central Government service.*

*(ii) In addition to the above pension account, each individual may also have a voluntary tier-II withdrawable account at his option. This option is given as GPF will be withdrawn for new recruits in Central Government service. Government will make no contribution into this account. These assets would be managed through exactly the above procedures. However, the employee would be free to withdraw part or all of the 'second tier' of his money anytime. This withdrawable account does not constitute pension investment, and would attract no special tax treatment.*

*(iii) Individuals can normally exist at or after age 60 years for tier-I of the pension system. At exit the individual would be mandatorily required to*



*invest 40 percent of pension wealth to purchase an annuity (from an IRDA-regulated life insurance company). In case of Government employees the annuity should provide for pension for the lifetime of the employee and his dependent parents and his spouse at the time of retirement. The individual would receive a lump-sum of the remaining pension wealth, which he would be free to utilize in any manner. Individuals would have the flexibility to leave the pension system prior to age 60. However, in this case, the mandatory annuitisation would be 80% of the pension wealth.*

***Architecture of the New Pension System***

*(iv) It will have a central record keeping and accounting (CRA) infrastructure, several pension fund managers (PFMs) to offer three categories of schemes viz. option A, B and C.*

*(v) The participating entities (PFMs and CRA) would give out easily understood information about past performances, so that the individual would be able to make informed choices about which scheme to choose.*

*2. The effective date for operationalisation of the new pension system shall be from 1<sup>st</sup> of January, 2004.”*

37. A perusal of aforesaid Notification dated 22.12.2003 shows that in Para (i) thereof it has been categorically mentioned that ‘*the system would be mandatory for all new recruits to the central Government service from 1<sup>st</sup> of January 2004 (except the armed forces in the first stage)*’. Meaning thereby that the Scheme was not applicable to Armed Forces and the

Armed Forces will be governed by the Old Pension Scheme already existing. Also, the said Notification stipulated that the scheme shall not be applicable to Armed Forces and they shall be governed by the Old Pension Scheme already existing.

38. The Supreme Court in ***Akhilesh Prasad Vs. Union Territory of Mizoram***, (1981) 2 SCC 150, has held as under:-

*“10. The first question which falls for determination by us is as to whether the appellant was a member of the “Armed Forces of the Union” within the meaning of that expression as occurring in sub-section (2) of Section 197 of the Criminal Procedure Code. The expression “Armed Forces” has been defined in clause (a) of sub-section (3) of Section 132 CrPC as meaning the military, naval and air forces, operating as land forces and as including any other armed forces of the Union so operating. That definition however, is limited in its application, by the express language of that clause itself, to the interpretation of Sections 129 to 132 of the Criminal Procedure Code and the argument, therefore, advanced in support of the impugned judgment that that definition will not govern the interpretation of Section 197 cannot be said to lack plausibility. Nor has it been shown to us that the expression “Armed Forces of the Union” as occurring in sub-section (2) of Section 197 CrPC is governed by a definition occurring elsewhere (either in the Criminal Procedure Code or in any other statute). In this situation it must be given its ordinary meaning which, it appears to us, would certainly not be limited to the inclusion of only the military, naval and air forces of the Union. In this*

*connection a reference to the contents of Entry 2 in List I of the Seventh Schedule to the Constitution of India may be made with advantage. They are: “Naval, military and air forces; any other armed forces of the Union”. The entry clearly envisages armed forces other than the three well known forces of the State, namely the naval, military and air forces. All that remains to be done, therefore, is to find out answers to the following two questions:*

*(a) Is the CRPF a force?*

*(b) If question (a) is answered in the affirmative, whether CRPF is an armed force?*

*In our opinion the answer to both the questions must be given in the affirmative in view of the provisions of sub-section (1) of Section 3 of the CRPF Act which unfortunately do not appear to have been brought to the notice of the learned Single Judge. That sub-section reads thus: “There shall continue to be an armed force maintained by the Central Government and called the Central Reserve Police Force.”*

*11. The sub-section itself declares in no uncertain terms that the CRPF is an armed force of the Central Government which is the same thing as saying that it is a part of the “Armed Forces of the Union”. We may make it clear, however, that even if the provisions just above extracted were not available our answer to the two questions would still be in the affirmative. The reason given by the learned Single Judge for holding a contrary opinion, namely, that the force was “only a reserve force and not a regular force” by which expression he appears to mean that it was not a continually operating force does not command our concurrence. Just because the CRPF is a reserve force it does not follow that it is not a*

*regularly operating force and no provision of the Central Reserve Police Force Act has been pointed out to us such as may lend support to a contrary view.*

*12. We hold that the CRPF squarely falls within the expression “Armed Forces of the Union” as used in sub-section (2) of Section 167 of the CrPC.”*

39. The decision in ***Akhilesh Prasad (Supra)***, clearly shows that CRPF is a part of armed Forces. Also, the Ministry of Home Affairs, Government of India, vide Circular dated 6<sup>th</sup> August, 2004 clarified that the Central Forces under the administrative control of the Ministry of Home Affairs have been declared as Armed Forces of the Union. The Circular dated 6<sup>th</sup> August, 2004 notified as under:-

*“F.NO. 24021/4/2004-PC*

*Government of India*

*Ministry of India*

*New Delhi 6th August 2004*

*To*

*The Chief Secretary of all the States/UTs*

*Subject:-Clarification about Armed Forces of Union  
regarding Central Police Force.*

*Sir,*

*There has been query in the past from State Government regarding clarification about Armed Force of Union regarding Central Police Force. In this regard, I am directed to mention the following Central Force; under the administrative control of the Ministry of Home Affairs have been declared an Armed Force of the Union.*

*1. Border Security Force*

*Vide Section 4 of the Border Security Force Act,  
1968.*

*2. Central Industrial Security Force*

*Vide section 3 of the Central Industrial Security Force Act, 1968 (Amended by Act 14 of 1983).*

*3. Central Reserve Police force*

*Vide Section 3 of the Central Reserve Police Force, Act, 1949*

*4. Indo Tibetan Borden Police*

*Vide Section 4 of the Indo Tibetan Border Police Force Act, 1992.*

*5. National Security Guard*

*Vide Section 4 of the National Security Guard Act, 1986.*

*2. In addition, Assam Rifles and SSB are also two Central Forces under Ministry of Home Affairs which perform under guarding and internal security duties New Acts for governing these forces are under process and the Bill will be introduced in parliament shortly. The status of these forces is also equivalent to that of other Central Force under Ministry of Home Affairs mentioned above. Hence, they may also be allowed similar benefits.*

*Yours faithfully”*

40. Thereafter, the Department of Pension and PW, Government of India issued another Office Memorandum dated 17.02.2020, relevant portion thereof reads as under:-

*“No. 57 /04/2019-P&PW(B)  
Government of India  
Department of Pension and PW*

*Lok Nayak Bhawan, Khan Market  
New Delhi, the 17<sup>th</sup> February, 2020*

**OFFICE MEMORANDUM**

***Subject: Coverage under Central Civil Services  
(Pension) Rules, 1972, in place of National Pension***



***System, of those Central Government employees whose selection for appointment was finalized before 01.01.2004 but who joined Government service on or after 01.01.2004***

*The undersigned is directed to say that consequent on introduction of National Pension System (NPS) vide Ministry of Finance (Department of Economic Affairs) Notification No.5/7/2003-ECB & PR dated 22.12.2003, all Government servants appointed on or after 01.01.2004 to the post in the Central Government service (except armed forces) are mandatorily covered under the scheme. The Central Civil Services (Pension) Rules, 1972 and other connected rules were also amended vide Notification dated 30.12.2003 and, after the said amendment, those rules are not applicable to the Government servants appointed to Government service after 31.12.2003."*

41. A perusal of the afore-noted Notification dated 22.12.2003; Clarification letter dated 06.08.2004 and Office Memorandum dated 17.12.2020 shows that the BSF, CISF, CRPF, ITBP, NSG, Assam Rifles and SSB are part of Central Forces under the Ministry of Home Affairs and Notification dated 22.12.2003 shall not be applicable on personnel of these Forces.

42. At this juncture, we wish to indicate upon another Office Memorandum dated 13.04.2018, issued by the Ministry of Home affairs, Government of India, which is as under:-

***Government of India  
Ministry of Home Affairs  
(Police-II Division)***

***\*\*\*\*\****

***North Block, New Delhi***

***Dated, the 13<sup>th</sup> April, 2018***

**OFFICE MEMORANDUM**

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

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

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

3. Some BSF candidates approached Hon'ble High Court of Delhi with a prayer that issuing appointment letter after 01.01.2004 is the Administrative lapse on the part of CAPFs/BSF, hence, they may be extended the benefits of Old Pension Scheme by way of filing WP(C) No.3834/2013 & WP(C) 2810/2016 before the Hon'ble High Court of Delhi, which was allowed vide order dtd. 12.02.2015 & 27.03.2017 respectively.

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

*left over candidates.*

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

43. The extract of afore-noted Office Memorandum shows that the Ministry of Home Affairs had directed all the CAPFs to extend the benefit of OPS to the petitioners in W.P.(C) 3834/2013, ***Paramnand Yadav (Supra)*** to the petitioners therein as well as other similarly situated personnel. However, respondents in their counter affidavit have taken the stand that pursuant to decision of this Court in W.P.(C) 1358/2017, ***Shyam Kumar Chaudhary (Supra)*** dated 09.04.2019, the DoP& PW noted that there were factual errors in the said decision and so, decided to implement the order of the this Court only to the case of petitioners in the said petitions. Learned counsel for the respondents submitted that the direction to grant OPS to the petitioners therein was *in persona* and *not in rem*. Whereas, the Supreme Court in ***State of U.P. and Ors. Vs. Arvind Kumar Srivastava and Ors.*** 2015 (1) SCC 347 has held that when a set of employees has been given relief by the Court, then all other identically placed persons need to be treated alike by extending the benefit to them. The plea of respondents that there were factual errors in judgment dated 09.04.2019 passed in W.P.(C) No. 1358/2017, is highly unacceptable to this Court, in view of the fact that the said order was upheld by the Supreme Court.

44. It is pertinent to mention here that learned counsel arguing on behalf of the petitioners had laid much emphasis on the contents of Notification dated 22.12.2003 and OM dated 17.02.2020, wherein it has been specifically mentioned that the NPS shall be applicable on the Central Government employees, 'except armed forces'. Learned counsel submitted that in all the earlier decisions rendered by the Courts, the contents of Notification dated 22.12.2003 and OM dated 17.02.2020 have not been dealt with. Thus, the larger issue that the Notification dated 22.10.2003 is applicable only upon Central Government employees and not 'armed forces', has not been dealt at all.

45. To refute submission of petitioners' counsel, learned Standing Counsel submitted that in all the earlier decisions by this Court as well as other High Courts, the Notification dated 22.12.2003 and OM dated 17.02.2020 have been referred and eligible personnel have been given benefit of OPS. Learned Standing Counsel had insisted upon the fact that in the appointment letters issued to the petitioners, it has been mentioned that the *"appointee shall be governed by the new pension scheme introduced by the Government of India vide M.F. (CGA) OM No.1(7) (2) 2003 TA-11 dated 7-1-2004 read with OM No.1(7) (2) (2003) TA 67-74 dated 4-2-2004."*

46. On this aspect we find that the appointment letters have been issued to the petitioners in the year 2004-2005 after conclusion of the selection process, which took extra inordinate long time as the advertisement / notification for appointment was released in the year 2002 & 2003 for different posts in the Forces. It is not misplaced to mention here that the



advertisement [in W.P.(C) No. 12712/2021 i.e. the lead matter] inviting applications for recruitment of Assistant Commandant in BSF/CRPF/ITBP/SSB noted that “ *on joining an organization a candidate shall be governed by the Act and Rules as applicable to that organization and as amended from time to time*”.

47. It is the settled position that appointments have to be strictly made in terms stipulated in the advertisement and any breach would tantamount to vitiation of the selection process.

48. In a recent decision in ***ASI/Pharma Biswa Prakash Jena Vs. Union of India***, (2022) 5 HCC (Del) 319 : 2022 SCC OnLine Del 2544, wherein one of us (Suresh Kumar Kait, J) being member while dealing with a case where the petitioners working as Pharmacist in CRPF had sought parity with Pharmacist in ITBP, which was denied to them by the Union of India on the ground that they were appointed beyond the period of advertisement and selection process, had relied upon decisions in ***Parmanand Yadav (Supra)***, ***Avinash Singh (Supra)*** and ***Rajendra Singh (Supra)*** and held as under:-

*“11. The respondents cannot change the terms and conditions of service which were applicable at the time of advertisement to the prejudice of the petitioners and that too after their recruitment process is long over. It is trite law that terms and conditions of service applicable at the time of notification of the post cannot be altered to the prejudice of the incumbents to the post after the selection process is completed, as in the instant case.*

XXXXX



*15. In the case on hand before us, admittedly, the advertisement was issued much prior to the alleged cut-off date i.e. 29-3-2004 and the recruitment process of the aforesaid petitioners already stood concluded on 26-2-2004 prior thereto. Further the petitioners cannot be penalised for the delay in their appointment after the alleged cut-off date. Furthermore, the petitioners will not and in fact should not lose their seniority because of the lethargy of the respondents when they cannot be blamed for it and therefore the respondents cannot take benefit of their own wrong.*

*16. Accordingly, we hold that the denial of the extension of the benefits by the respondents to the petitioners is discriminatory and arbitrary and thus violative of Articles 14 and 16 of the Constitution of India.”*

49. Also, a Coordinate Division Bench of this Court in W.P.(C) No. 10028/2009, titled as **Amarendra Kumar Vs. Union of India & Ors.**, decided on 02.08.2010 on the similar issue of grant of OPS observed and held as under:-

*“23. There is an additional ground which persuades us to hold that the respondents have not been fair to the petitioner. It is an admitted position also that the Defined Benefit Pension System of the respondents came to an end on 31st December, 2003.*

*24. The new Defined Contribution Pension Scheme which came into effect from 1st April, 2004 requires a monthly contribution from the salary equivalent to 10% of the salary and*

*dearness allowance.*

25. *The impact of issuance of the appointment letter with effect from 27th April, 2004 would be that the petitioner would be deprived of the benefit of the earlier scheme which came to an end on 31st December 2003. He would therefore be required to make a monthly contribution from his salary in accordance with the new scheme. Compared against the earlier scheme, this could certainly work tremendous financial loss to the petitioner.*

26. *The justification of the respondents to the effect that the delay occurred because the matter was pending for correspondence with higher authorities is also not supported by the record. There is no warrant at all for shuttling the petitioner between the Group Centre and Staff Selection Committee and back when the medical facility for undertaking the X-ray was available at the Group Centre. In addition, it is not as if the respondents were continuously in correspondence over a period of four and a half months since the issuance of the provisional appointment letter.*

27. *We may also note that the provisional letter of appointment dated 24th November, 2003 does state that the appointment is provisional. However the only consequence thereof is that upon the completion of the stated formalities, issuance of the formal appointment letter would follow. The appointment obviously has to relate back to the date of his original appointment.*

28. *In view of above discussion, it has to be held that the petitioner is deemed to have been regularly appointed with effect from 22nd December, 2003. The petitioner would also be entitled to the benefit of the Defined Pension Scheme which was valid till 31st December, 2003. The respondents are required to ensure that all*

*benefits which are admissible to the petitioner pursuant to the appointment with effect from 22nd December, 2003 including seniority, etc. are made available to him.”*

50. The afore-noted decisions in **ASI/Pharma Biswa Prakash Jena** and **Amarendra Kumar (Supra)**, make it clear that the terms which governed at the time of issuance of advertisement for appointment, shall hold the field for the applicants.

51. There is no dispute to the position that at the time of publication of the advertisements, the OPS was in force. Also, when the advertisement itself states that the selected candidates shall be governed by the Act and Rules in force and thereafter, the Notification dated 22.12.2003 and OM dated 17.02.2020 specifically mention that the all the Central Government employees “except the armed forces”, shall be governed by the NPS, therefore, we do not find any reason for respondents to issue the appointment letters to the personnel of armed forces mentioning that *“the appointee shall be governed by the new pension scheme introduced by the Government of India”*. When vide Circular dated 6<sup>th</sup> August, 2004 issued by the Ministry of Home Affairs, Government of India has itself declared that the Central Forces under the administrative control of Ministry of Home Affairs are armed Forces of Union, the position cannot be disputed that the Armed Forces shall remain excluded from coverage under Notification dated 22.12.2003. We find that despite the fact that ‘armed forces’ are exception to Notification dated 22.12.2003, , however, without application of mind, have mentioned in the appointment letters of the candidates that the recruits shall be governed by NPS. Apparently, Article

246 read with List 1 Entry 2 of the VII Schedule of Constitution of India envisages Armed Forces of the Union of India includes “Naval, Military and Air Forces; any other armed forces of the Union”, so, the personnel of CAPFs deserve to get the benefit of OPS, as has been granted vide Notification dated 22.12.2003.

52. The Hon’ble Supreme Court and High Courts in various decisions have appreciated the role of armed forces in safeguarding our country. Having great respect for the personnel of forces, the Courts as well as Government of India, have always ensured that any policy decision should not be detrimental to their interest. The contents of Notification dated 22.12.2003 as well as OM dated 17.02.2020 clearly demonstrate that when policy decision to implement NPS was taken, the armed Forces of the country were kept out of its domain. Accordingly, we are of the considered opinion that the Notification dated 22.12.2003 as well as OM dated 17.02.2020 are required to be implemented in their true essence.

53. In the light of what we have observed above, we find that Notification dated 22.12.2003 as well as OM dated 17.02.2020 create a bar upon the respondents to not implement the Notification dated 22.12.2003, whereby New Contributory Pension Scheme (‘NPS’) has been executed w.e.f. 01.01.2004, upon the personnel of the paramilitary Forces i.e. Central Reserve Police Force (‘CRPF’), Sashtra Seema Bal (‘SSB’), Border Security Force (‘BSF’) and Central Industrial Security Force (‘CISF’) Indo Tibetan Border Police (‘ITBP’) (CAPFs) etc. Consequentially, the impugned Office Memorandums, Signals and Orders, to the extent it deny the benefit of Old Pension Scheme to the

petitioners and similarly situated personnel of the armed forces, are hereby quashed.

54. A mandamus by way of direction is accordingly issued to the respondents to issue an Order to CAPFs mentioned above to implement the Notification dated 22.12.2003 as well as OM dated 17.02.2020 in essence noted above. It is made clear that the Notification dated 22.12.2003 as well as OM dated 17.02.2020 granting the benefit of Old Pension Scheme shall be applicable *in rem*. Meaning thereby, Old Pension Scheme shall not only be applicable in the case of petitioners herein but all the personnel of CAPFs at large. Accordingly, necessary orders be issued within eight weeks.

55. With aforesaid directions, these petitions and pending application, if any, are accordingly disposed of.

(SURESH KUMAR KAIT)  
JUDGE

(NEENA BANSAL KRISHNA)  
JUDGE

**JANUARY 11, 2023**

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