

2019 SCC OnLine Del 6797 : (2019) 174 DRJ 98

In the High Court of Delhi at New Delhi  
(BEFORE S. MURALIDHAR AND SANJEEV NARULA, JJ.)

W.P. (C) 1951/2012

Dev Sharma ... Petitioner;

*Versus*

Indo Tibetan Border Police and Another ...  
Respondents.

With

W.P. (C) 389/2013

Ranbir Singh Saini and Another ... Petitioners;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 480/2013

Ranjit Singh Dalpatia ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 1119/2013

Sunil Kumar ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 3478/2013

Raghuvir Singh Raghava ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 4859/2013

Rajendra Prasad and Others ... Petitioners;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 6771/2013

Yash Pal Singh ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 8076/2013

Ramesh Chand Rana ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 3524/2014

Bhupinder Kumar Malik ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 6092/2015

B.S. Martolia ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 7204/2015

Dinesh Chandra Sharma ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 11227/2015

Trilooki Nath Pandita ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 11228/2015

Mohan Singh Chilwal ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 11233/2015

Ram Byas Rai ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 5222/2016

Nandan Singh Bisht ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 8336/2016

Jai Bhagwan ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 12593/2018

N. Ramakutty ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

With

W.P. (C) 12691/2018

Tilak Ram ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

And

W.P. (C) 12692/2018

B.L. Naik ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

W.P. (C) 1951/2012, W.P. (C) 389/2013, W.P. (C) 480/2013, W.P. (C) 1119/2013, W.P. (C) 3478/2013, W.P. (C) 4859/2013, W.P. (C) 6771/2013, W.P. (C) 8076/2013, W.P. (C) 3524/2014, W.P. (C) 6092/2015, W.P. (C) 7204/2015, W.P. (C) 11227/2015, W.P. (C) 11228/2015, W.P. (C) 11233/2015, W.P. (C) 5222/2016, W.P. (C) 8336/2016, W.P. (C) 12593/2018, W.P. (C) 12691/2018 and W.P. (C) 12692/2018

Decided on January 31, 2019, [Reserved on : 19<sup>th</sup> November, 2018]

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The Judgment of the Court was delivered by

S. MURALIDHAR, J.:— The present batch of petitions concerns the age of retirement of members of three of the Central and Allied Police Forces (CAPFs) up to the rank of Commandant which is at present fixed at 57 years. The prayer in the present petitions is that the retirement age should be enhanced to 60 years to be at par with the officers above the rank of Commandant. The three CAPFs in question are the Indo-Tibetan Border Police ('ITBP'), the Central Reserve Police Force (CRPF) and the Border Security Force (BSF).

2. There are 19 petitions in the present batch. 8 petitions pertain to members of the CRPF, 10 to members of the ITBP and 1 in the BSF. The details of the retirement of each of them both in terms of their present age of retirement i.e. 57 years and if it were at 60 years is presented in a tabular form as under:

S. No.	WP No.	Name of Petitioner	Date of Retirement (at 57 years)	Date of Retirement (if 60 years)
1.	1951/2012	Dev Sharma (ITBP)	31.07.2011	31.07.2014
2.	389/2013	1. Ranbir Singh (ITBP) 2. Rattan Chand (ITBP)	31.01.2013 31.01.2013	31.01.2016 31.01.2016
3.	480/2013	Ranjit Singh Dalpatia (ITBP)	30.01.2013	30.01.2016
4.	1119/2013	Sunil Kumar (ITBP)	28.02.2013	28.02.2016
5.	3478/2013	Raghuvir Singh Raghav (CRPF)	31.05.2013	31.05.2016
6.	4859/2013	1. Rajendra Prasad (CRPF)	31.05.2015 31.05.2018 28.02.2015	31.05.2018 31.05.2021 28.02.2018

		2. S.C. Chandel (CRPF)	30.04.2014 31.10.2014 31.02.2014	30.04.2017 31.10.2017 31.02.2017
		3. Mohinder Singh (CRPF)	28.02.2014 31.05.2016 31.07.2019	28.02.2017 31.05.2019 31.07.2022
		4. R.K. Sharma (CRPF)	31.10.2014	31.10.2017
		5. Rabindra Pathak (CRPF)		
		6. U.S. Mishra (CRPF)		
		7. Ratan Kumar Dey (CRPF)		
		8. Devender Sing Panwar (CRPF)		
		9. Raj Kumar (CRPF)		
		10. S.S. Kathuria (CRPF)		
7.	6771/2013	Yash Pal Singh (ITBP)	1.10.2013	31.10.2016
8.	8076/2013	Ramesh Chand Rana (ITBP)	31.12.2013	31.12.2016
9.	3524/2014	Bhupinder Kumar Malik (ITBP)	31.05.2014	31.05.2017
10.	6092/2015	BS Martolia (ITBP)	30.06.2015	30.06.2018
11.	7204/2015	Dinesh Chandra	31.07.2015	31.07.2018

		Sharma (ITBP)		
12.	11227/2015	Trilooki Nath Pandita (CRPF)	31.12.2015	31.12.2018
13.	11228/2015	Mohan Singh Chilwal (CRPF)	31.12.2015	31.12.2015
14.	11233/2015	Ram Byas Rai (CRPF)	31.12.2015	31.12.2018
15.	5222/2016	Nandan Singh Bisht (ITBP)	31.05.2016	31.05.2019
16.	8336/2016	Jai Bhagwan (CRPF)	30.09.2016	30.09.2019
17.	12593/2018	N. Ramakutty (CRPF)	30.11.2018	30.11.2021
18.	12691/2018	Tilak Ram (CRPF)	30.11.2018	30.11.2021
19.	12692/2018	BL Naik (BSF)	31.12.2018	31.12.2021

3. The main prayer in each of these petitions is the same, viz., for a mandamus to the Respondents to consider enhancing the age of superannuation of each of the Petitioners to 60 years. The Petitioners are not of the same rank although each of them is of the rank of Commandant and below. In terms of their present retirement age, each of them (barring Petitioner No. 9 in 4859/2013) has already retired. Further, some of them have even crossed 60 years as of date. Nevertheless, since the Petitioners have raised an important question and it affects a larger number of persons similarly situated, who are still serving, the Court considers it appropriate to dispose of all these petitions by a common judgment.

*Facts in W.P. (C) No. 1951 of 2012 (Dev Sharma)*

4. As far as the petitions pertaining to the ITBP are concerned, illustratively the facts of the first petition in this batch i.e. WP (C) No. 1951/2012 filed by Dev Sharma is being referred to.

5. Dev Sharma is a qualified professional Automobile Engineer. By an appointment letter dated 6<sup>th</sup> August, 1980 he was employed as

Platoon Commander (Motor Mechanic) in Gazette Group (B) in the ITBP. He joined duties on 23<sup>rd</sup> August, 1980, after resigning from his previous job with the Rajasthan State Road Transport Corporation. His services were confirmed on 28<sup>th</sup> August, 1982.

6. With effect from 1<sup>st</sup> September, 1992 the Indo-Tibetan Border Police Act, 1992 ('ITBP Act') came into force. Section 157(2) of the ITBP Act stated that all members of the ITBP in existence as of that date were deemed to have been appointed/enrolled under the ITBP Act. From that date the provisions of the Central Reserve Police Force Act, 1949 ('CRPF Act') and the Rules made there under ceased to apply to members of the ITBP. All members of the ITBP from the rank of Constable to Commandant were to superannuate on completing 57 years whereas those above the rank of Commandant would superannuate at the age of 60 years, irrespective of the cadre they belong to.

7. On the enactment of the ITBP Act, the post of Platoon Commandant (Motor Mechanic) was re-designated as Joint Assistant Commandant in terms of Explanation (1) to Section 153(4) of the ITBP Act. Then, on 12<sup>th</sup> December, 2001 the post of Joint Assistant Commandant (MM) was upgraded to Company Commander (MM) in Group A. This was with retrospective effect and resulted in upgradation of the pay scale as well. On 18<sup>th</sup> December, 2002 the post of Company Commander (MM) was redesignated as Assistant Commandant (Transport) (AC) (Transport) in terms of the ITBP Force, Deputy Commandant (Transport) and Assistant Commandant (Transport) Recruitment Rules, 2002 made under Section 156(2) of the ITBP Act.

8. On 21<sup>st</sup> October, 2006 Dev Sharma was promoted to the post of Deputy Commandant (Transport) (DC) in terms of the 2002 rules. There was an upgradation of his pay scale as well.

9. The Union of India through the Ministry of Home Affairs ('MHA') (Respondent No. 2) in the WP(C) No. 1957/2012 and Respondent No. 1 in many of the other petitions (implemented the report of the 5<sup>th</sup> Central Pay Commission ('CPC') by way of an Office Memorandum ('OM') dated 18<sup>th</sup> December, 1998). This brought into force the amended Fundamental Rules ('FR') 56(a) which stipulated that "every Government servant shall retire from service on the afternoon of the last day the preceding month in which he attains the age of 60 years".

10. When Dev Sharma learnt that the ITBP (Respondent No. 1) was going to superannuate him on the attaining of 57 years of age he submitted a representation dated 1<sup>st</sup> February, 2010 in which he stated that retirement of Non-combatants in the ITBP like himself at the age of 57 years instead of 60 years was violative of Articles 14 and 16 of the Constitution of India. He contended that Non-Combatants in ITBP

deserved to be treated at par with similarly placed members of the Central Industrial Security Force ('CISF'), Assam Rifles ('AR'), Delhi Police ('DP'), Intelligence Bureau ('IB'), Research and Analysis Wing ('RAW') and the Central Public Works Department ('CPWD'). His representation was forwarded by the ITBP to its Directorate General.

11. On 11<sup>th</sup> June, 2010 the ITBP issued a letter notifying the retirement date of Dev Sharma as 31<sup>st</sup> July, 2011 and required him to submit his pension documents eight months prior thereto. Dev Sharma sent a final reminder to Respondent No. 2 by a letter dated 13<sup>th</sup> October, 2010 but no action followed. He then filed WP(C) No. 7238/2010 in this Court. It was dismissed as withdrawn with liberty to file a better petition. Meanwhile, Dev Sharma retired on the appointed date i.e. 31<sup>st</sup> July, 2011.

12. On 5<sup>th</sup> December, 2011 a meeting of the Quarterly Co-ordination Committee chaired by the Directorate General ('DG') of ITBP was held. At this meeting a recommendation was made to the Central Government that the age of superannuation of the officers of Force Personnel of ITBP should be increased from 57 to 60 years. Another similar proposal was sent after the meeting of the Quarterly Coordination Committee held on 16<sup>th</sup> January, 2012.

13. When no action was taken even pursuant thereto Dev Sharma filed WP (C) No. 1951/2012 in which notice was first issued on 9<sup>th</sup> April, 2012. In response to the notice issued in the petition, a counter affidavit was filed by the Respondents on 9<sup>th</sup> August, 2012. Reference was made by Respondents first to the fact that Dev Sharma had accepted the offer of appointment and joined service. His services were governed by the ITBP Act and the ITBP Rules, 1994 (which became operational with effect from 30<sup>th</sup> May, 1994). In terms of the above Act and Rules, since there was no provision for superannuation, Rule 43 of the CRPF Rules would apply. It provided for the age of superannuation.

14. The Respondents point out that the Transport Cadre is also a Combatant Cadre. According to the ITBP though the GD Cadre personnel are the main fighting arms of the ITBP, officers and men of other small Cadres are also combatants, and participate in the operations along with the GD Cadre personnel. It is pointed out that the standard of the Annual Firing and Battle Physical Efficiency Test as well as the Medical fitness is the same for the GD Cadre and all other small cadres since all of them are combatant personnel. It is pointed out that even those whose jobs are of a technical nature are to be considered as belonging to the Combatant Cadre. It is also pointed that the Telecom Cadre personnel are part of 'O' group and provide immediate communication to the Commanders and remain with them during the operations working as a chain between the various foundations. The Telecom Cadres participate in operations with the GD Cadre Personnel.



The Engineer Cadre Personnel lay or remove mines and they sometimes, even have to move ahead of GD Cadre during operations. The Motor Transport Fleet is involved in transportation of troops, arms, ammunition, equipments and rations. Even these Cadres are issued personal weapons and they are trained in use of arms, ammunition and warfare tactics etc. to enable them to participate in operations. For creating better avenues of promotion for these Cadres they have been merged in the GD Cadre and recruitment rules have been framed and notified on 5<sup>th</sup> October, 2010.

15. It is not disputed by the Respondents that in acceptance of the recommendations of the 5<sup>th</sup> Central Pay Commission (CPC), the MHA issued an OM dated 13<sup>th</sup> May, 1998 conveying its decision to enhance the age of retirement of the personnel of the Armed Forces and Central Para Military Forces by two years. Consequent thereto, by a notification dated 25<sup>th</sup> May 1998, Rule 43 of the CRPF Rules was amended. As a result, the age of superannuation of the ranks of Commandant and below in the ITBP was enhanced from 55 to 57 years. It is pointed out that even in the other CAPFs like the BSF, CRPF, Shasstra Seema Bal (SSB) the age of superannuation up to the rank of Commandant is 57 years. It is pointed out that even the BSF and SSB, which were initially governed by the provisions of the CRPF Act and Rules, are at present on the aspect of age of retirement, governed by Rule 43 of the CRPF Rules which states 57 years as the age of superannuation of Commandant and below. It is submitted that Dev Sharma accepted the offer or appointment and, therefore, agreed to be governed by the CRPF Act and Rules as amended from time to time. It is submitted that now after 30 years of employment, Dev Sharma is estopped from questioning the decision of the ITBP to retire him at the age of 57 years.

16. In the rejoinder it was submitted by Dev Sharma that FR 56(a) is not applicable to the organization/service which have separate and specific Rules on one or other service conditions. The ITBP and CRPF Acts and Rules were made with the approval of the Parliament so as to govern the service conditions of its personnel. The other provisions of the CCS (Pension) Rules the FRs, the Supplementary Rules (SRs) were also reproduced in the CRPF Rules to cover the other service/retirement aspects. When the Central Government subsequently enhanced the retirement age of Central Government employees from 55 to 58 years no corresponding change was made to the CRPF Rules.

17. This was noticed by the 5<sup>th</sup> CPC which recommended a retirement age of 60 years across the board. Thereafter, the Central Government enhanced the retirement age to 60 years by amending FR 56. However, the retirement age of members of the CRPF was increased from 55 to 57 years. Therefore, every corresponding change in the retirement age of the Central Government was not incorporated into the

CRPF Rules and this resulted in a grave anomaly.

*Orders of this Court*

18. On 11<sup>th</sup> October, 2012 this Court passed the following order:

"The petitioner has raised the grievance with regard to the retirement age in the rank up to the commandant in the ITBP at 57 years, even though similarly placed personnel in other services retire at the age of 60 or above. We are informed by Ms. Jyoti Singh, learned senior counsel appearing for the petitioner that the matter is pending consideration before the Ministry of Home Affairs. However, a decision has not been taken for the reason that the issue has been raised in the present writ petition which is pending.

In view of the above, we clarify that the pendency of this writ petition should not interdict or come in the way of a considered decision to be taken by the Ministry of Home Affairs on the issues which are the subject matter of the present writ petition. The respondents shall place the consideration before this Court on the next date.

List before the Regular Bench on 07.01.2013."

19. Subsequently on 7<sup>th</sup> January, 2013, the following order was passed by this Court:

- "1. In the present writ petition, the petitioner has raised a grievance with regard to the retirement age at 57 years of the ranks up to Commandant in the ITBP, CRPF and BSF, even though the similarly placed officers in the Assam Rifles and the CISF retire at the age of 60 years or above.
2. On the last date of hearing, we had been informed that this Issue was pending consideration before the Ministry of Home Affairs and a decision has not been taken on the ground that the same issue has been agitated by the petitioner in the present writ petition. Consequently, we had clarified that the pendency of this writ petition should not interdict or come in the way of a considered decision to be taken by the Ministry of Home Affairs on the issues which are the subject matter of the present writ petition. The matter was adjourned to today to enable the respondents to place the consideration before us.
3. Today, a note dated 9<sup>th</sup> November 2012 issued under the signatures of the Under Secretary, through the Government of India, Ministry of Home Affairs (PERS-II) has been placed before us, wherein it is stated as follows:

"2. The proposal to enhance the retirement age upto the rank of Commandant from the existing 57 years to 60 years in ITBP, CRPF & BSF has been considered in this Ministry in the light of recommendations made by the 6<sup>th</sup> Central Pay

Commission and it has been observed that the Forces did not appear to have raised this issue before the 6<sup>th</sup> CPC. The Forces are therefore advised to place this demand before next Central Pay Commission."

4. The note further states that this has been issued with the approval of Special Secretary (Internal Security).
5. The above note will show that the respondents have completely misdirected themselves. They have not even considered, let alone taken a decision on the grievance of the petitioner. The consideration that the respondents were required to accord would mean that the submissions and grounds raised by the petitioner in their representations to the respondents were considered and a view taken after application of mind to the various grounds. We may note that non-consideration of the issue would be breeding dejection, demoralization and discouragement in the several ranks of ITBP, CRPF as well as BSF and the matter deserves urgent consideration by the authorities concerned.
6. In this background, a direction is issued to the respondents to consider appropriately the grievance of the petitioner, taking into account the several grounds in the representations made by the petitioner. The respondents may examine the grounds urged in the writ petition for this purpose. The consideration shall be effected at the highest level and shall be placed on record before the next date of hearing.
7. The respondents shall also take into consideration the recommendations made by the Director General of the ITBP, CRPF as well as BSF in this regard which are relied upon by the petitioner and are not disputed by the respondents.
8. List on 2<sup>nd</sup> April 2013 when the consideration of the respondents shall be positively placed before us. In case, the consideration is not placed before us, the Special Secretary (Internal Security), Ministry of Home Affairs shall remain positively present before us on the next date of hearing.
9. A copy of this order be sent by special messenger to the Secretary, Ministry of Home Affairs to ensure compliance. A copy of this order also be given dasti to learned counsel for both the parties."

*OM dated 1<sup>st</sup> April 2013*

20. On 1<sup>st</sup> April, 2013 an OM was issued by the MHA in which it was noted that after taking into account the facts relating to *Dev Sharma's* case and also other relevant facts relating to personnel/officers of BSF, CRPF, SSB and ITBP the following points had emerged:

- "i) The rationale behind different superannuation age is that the

Force personnel up to the rank of Commandant have operational/combat roles in the field, which demand higher physical fitness and efficiency and there is no doubt that with growing age these decrease gradually.

- ii) The higher ranks of DIG and above are more administrative/supervisory in nature, which do not require the physical fitness & efficiency of the level of that is required in field units. Therefore, in these ranks the superannuation age is 60 years, same as in other Central Government Services.
- iii) Some posts of DIG level and above are filled on deputation by re-employment of Army Officers and deputation of IPS cadre officers. The age of superannuation for IPS cadre officers is 60 years and for Army officers varies according to the rank. The IPS officers do not work in the level of Commandant or below. Keeping 57 years as superannuation age for DIG and above ranks, which are senior supervisory level posts, will be counterproductive as otherwise no cadre officer will be able to reach higher levels. Also, at higher levels the requirement is less physical and more intellectual.
- iv) Thus stipulating a lower age of superannuation up to the rank of Commandant is a well thought and conscious decision of the Government based on ground realities and as per the administrative and operational requirement of the Forces."

21. In the said OM of the MHA, the further recommendations of the 5<sup>th</sup> CPC were noted. It was noted that in para 6.2.4 of the report of the 6<sup>th</sup> CPC it was recommended that "the current age of superannuation should be maintained". It was pointed out that since there was no specific/separate provision for superannuation that the ITBP Act and Rules, Rule 43 of the CRPF Rules continued to be applicable. It was also pointed out that in the Central Allied Police Force (CAPFs):

"Only in medical cadre the age of superannuation of Doctors is 60 years irrespective of their ranks. In all other cadres and for all other personnel in medical cadre also, the age of superannuation is 57 years up to the rank of Commandant. The Medical Cadres of CAPFs have been structured on the pattern of Central Health Service of Ministry of Health & Family Welfare, Government of India. Further, the entry age in Medical Cadre is much higher than other Cadres/Wings of the Forces due to the longer time taken to complete the requisite educational qualification and experience in obtaining MBBS or MD/MS qualifications. The upper age entry limit for medical officers and Specialists is 30 years and 40 years respectively, higher than other cadres."

22. As far as the AR is concerned, it is pointed out that:

"In Assam Rifles the age of retirement up to the rank of Commandant is 60 years. Assam Rifles is officered by the Army, and

the retirement age of the level of Colonel is not 60 years but 57 years. ITBP is under administrative as well operational control of MHA. The officer rank posts in Assam Rifles are cadre posts of the Army whereas those of ITBP are filled by promotion from the cadres officers or on deputation from IPS cadre. Further, ITBP is primarily deployed in high altitude terrain along Indo-china border in extreme climatic conditions. Such conditions adversely affect the health of the person deployed there for prolonged periods."

23. According to the Respondents, even the comparison with the CISF is not proper:

"As per rule 65 of CISF Rules 1969 "the rules relating to superannuation person, provident fund and gratuity of supervisory officers and members of the Force shall be the same as those applicable to the Central Government servants". Moreover, nature of duties in CISF is different from other CAPFs. CISF is mostly used for security-not for operations. They are deployed inside premises of various Units and not in fields."

24. It is stated in the OM that:

"On the other hand, the duties of personnel in BSF, SSB & ITBP involve physical robustness due to their exposure at international borders and inhospitable terrains. Similarly, CRPF also have heavy movement and need to conduct operations in different terrain. Further, CISF personnel are given only one month earned leave per year (like other central Govt. servants) while the Force personnel of other CAPFs are given two months Earned Leave (EL). If the retirement age and other condition of CISF are made at par with the other CAPFs, CISF personnel may also be given two months EL at par and thus, strength of CISF personnel are bound to be increased about 8% and this will be a major financial burden on the PSUs. The age of retirement in certain other CPOs such as IB, CRB & CBI is also 60 years. This age has been kept as 60 years due to role differences between the various CAPFs. CAPFs like ITBP, BSF are posted on border/high altitude/difficult terrain security and CRPF is generally in internal security duties and CL operations, hence their functional profile is more akin to Army justifying younger age of the Force. Thus, 57 years in other CAPFs and 60 years in CISF is commensurate with different roles assigned to them."

25. It is further contended that if the superannuation of the age of lakhs of personnel/officers up to the rank of Commandant in ITBP, BSF, CRPF and SSB is enhanced to 60 years the promotional avenues of the officers/personnel below Commandant level in these forces "will be deferred/affected adversely and significantly for a period of minimum of three years." Thus, "the cadre management in young age profile of the

post will be disturbed." According to the MHA:

"Recently, while sending their comments on a proposal on lateral transfer of Personnel Below Officer Rank (PBOR) of the Army to CAPFs, the Forces have not accepted such a proposal. The Forces have cited requirement of maintaining a younger age profile in the Force as one of the grounds, given the nature duties and the responsibility assigned to these Forces. The other points raised by the Forces were seniority and promotional aspect related problems which will arise on lateral transfer of PBOR. The same problem will also arise if the superannuation age is increased to 60 years."

26. According to the MHA:

"It is also wrong on the part of the petitioner to contend that CRPF did not follow the recommendations of the 3<sup>rd</sup> CPC to enhance the age of superannuation of his personnel to 58 years, by mistake or oversight or inaction. Rather, it was a well thought decision of the, Government in view of the high physical fitness required from the personnel/officers up to the Commandant rank in discharge of duties in the Armed Forces, as already discussed in preceding paras. Even in Army there are varied ages of superannuation, which increases in accordance to the rank."

27. Therefore, the decision not to enhance the retirement age of members of the ITBP up to the rank of Commandant is sought to be justified by the MHA. It must be noted that with the permission of this Court, the writ petition has been amended to include a challenge to the OM dated 1<sup>st</sup> April, 2013 issued by the MHA rejecting the prayer for enhancement of retirement age.

28. The averments in the other petitions concerning the CRPF and the ITBP are more or less similar as is the response to those petitions by the Respondents. The sole petition pertaining to the BSF was filed in 2018 and tagged along the present batch since the questions raised were identical. No petition as such has been filed by anyone belonging to the SSB.

29. This Court has heard the submissions of Mr. Ankur Chhibber, learned counsel appearing for the Petitioners and Mr. Manish Mohan, CGSC, Mr. Anuj Aggarwal, ASC learned counsel appearing for the Respondents.

*The position in the CRPF Rules*

30. The age of superannuation in the CAPFs has been a bone of contention for many years now. At the time of independence, a decision was taken to retain what was known as the Crown Representatives Police Force as the Central Reserve Police Force ('CRPF'). Consequently, a decision was taken to replace the Crowned Representatives Police Force Law, 1939 with the Central Reserve Police Force Act, 1949 it was



to provide for the "organisation, control and regulation" of the CRPF by the Central Government. However, the CRPF Act itself did not contain any provision concerning superannuation. This was provided under Rule 43 which in turn had to be read with Rules 5 and 6 of the CRPF Rules.

31. Rule 5, Part A specifies the composition of the Battalion, other than the Signal Battalion (which is dealt with in Part B). It is constituted broadly of "Superior Officers" i.e. Company Commander (Officer), Quarter Master (Assistant Commandant) (Adjutant), (AC) Assistant Commandant (Second-in-Command) and Commandant. It also comprises, other than Superior Officers, 'rank in five for a Battalion of four companies.' This includes Constables, Lance Naiks, Naiks, Head Constables (HCs) (including two radio mechanics and one Radio Fitter), Sub Inspector (SI) (including one motor Mechanic) and Subedar (Inspector). Within the above establishment, the Commandant can make appointments of HCs, Constables enrolled followers like Cooks, Bhisties, Sweepers, Barbers, Dhobies, Cart Drivers.

32. Part B of Rule 5 describes the composition of the Signal Battalion. It comprises Superior Officers i.e. Commandant, Assistant Commandant, Company Commandant. It also comprises the 'rank and file' which includes Subedar, Subedar Technical, Sub-Inspector Operators, Sub Inspector Technical, Sub Inspector Quarter Master Technical, HCs Naik Operators, Naik Instructors, Naik Quarter Master, Pay Naiks, Constables and Followers.

33. Rule 6 of the CRPF Rules stated that all the Officers mentioned in Rule 5 shall be deemed to be the members of the CRPF. Rule 43(a), prior to the change in May 1998, read as under:

"Retirement of a member of the Force shall take effect from the afternoon of the last day of the month in which such member attains the age of 55 years. In case the date of birth of a member of the Force falls on the first day of month preceding the month in which the member of Force attains the age of 55 years."

34. At this stage it is important to refer to a notification dated 15<sup>th</sup> December, 1962 issued by the MHA enhancing the retirement age of Central Government servants from 55 to 58 years. For some reason however, despite stating that the requisite amendment should be made in the CRPF Rules as well, this amendment was not carried out. Rule 43 continued to remain as such. This led to the failure to revise the retirement age in the CPOs in terms of the recommendation of the 3<sup>rd</sup> CPC from 55 to 58 years, which was granted to Central Government servants. This anomaly continued through the 3<sup>rd</sup> and 4<sup>th</sup> CPCs.

35. When the 5<sup>th</sup> CPC made a recommendation for enhancement of the retirement age of the Central Government servants by two years i.e. 58 to 60 years the corresponding enhancement recommended for the members of the CPOs was from 55 to 57 years.

36. In terms of the recommendations of the 5<sup>th</sup> CPC, an OM dated 13<sup>th</sup> May, 1988 was issued by the DoPT which increased the retirement age of Central Government employees from 58 to 60 years. Simultaneously, by an OM dated 14<sup>th</sup> May 1998, the age of retirement of members of the CRPF was enhanced i.e. from 55 to 57 years. Rule 43 of the CRPF Rules, 1955 was amended to read as under:

"43. Superannuation : (a) Retirement of member of the Force shall take effect from the afternoon of the last day of the month in which such member attains the age of 57 years."

37. It requires to be noted here that the expression 'Force', in terms of Rules 4 and 5 read with Rule 6 of the CRPF Rules 1955, connotes the rank of Commandant and below. It must also be noted that for each of the forces there exists a separate set of rules. The CRPF Rules have already been noticed. There are separate sets of rules at present for the BSF and ITBP.

38. In the BSF, CRPF, ITBP, and even the SSB, two classes were introduced. For officers above the rank of Commandant, the retirement age in the CRPF, ITBP and BSF was fixed at 60 years. This change as far as the ITBP was concerned, was brought about by the notification dated 8<sup>th</sup> April, 2013 of the MHA, the ITBP General Duty in Group 'A' Posts (Amendment) Rules, 2013 introduced Rule 8(a) which stipulated that officers holding the rank of Deputy Inspector General (General Duty) (DIG), Inspector General Duty and Inspector General Duty shall retire when they attained the age of 60 years. For officers holding the rank of AC, DC, Second-in-command and Commandant the age of retirement continued as 57 years.

39. Likewise in Rule 12 of the BSF (General Duty Officers) Recruitment Rules, 2001 it was stipulated that officers of the BSF holding post higher than the rank of Commandant shall retire when they attained the age of 60 years and officers of other ranks will retire from service when they attained the age of 57 years. For the CRPF, Rule 14 of the CRPF (Group A) General Duty Officers Recruitment Rules provided that officers holding rank higher than that of Commandant shall retire at the age of 60 years whereas officers of other ranks shall retire on the age of 57 years.

#### *Position in the CISF*

40. Now we turn to the CISF. There is a CISF Act of 1968 and the CISF Rules of 2001. Prior to 1988, the position in the CISF was governed by Rule 65 of the CISF Rules, 1969, which provided for superannuation. It read as under:

"Rule 65, CISF Rules, 1969-Superannuation etc.- The rules relating to superannuation pension, provident fund and gratuity of supervisory officers and members of the Force shall be the same as



those applicable to the Central Government servants."

41. This underwent no change in the subsequent CISF Rules, 2001. The retirement age has been uniformly 60 years.

*Position in the AR*

42. As far as the AR is concerned, its members were governed by the CCS (Pension) Rules, 1972. In terms of an AR letter dated 25<sup>th</sup> January, 1978 it was stated that the superannuation of members of the AR was 55 years. In terms of an order dated 31<sup>st</sup> August, 1988 this superannuation age of ARs was made 58 years with the pension being regulated by the CCS (Pension) Rules, 1972. The retirement age for all ranks was increased to 60 years by the letter dated 28<sup>th</sup> July, 1999. A separate set of Rules for the AR was made only for the first time in 2010 after the Assam Rifles Act was passed in 2006. It stated that upon superannuation pension shall be granted to a Government servant retiring at the age of 60 years and this would be available to all AR personnel. Therefore, both in the CISF and the AR which are also part of the CAPFs, the uniform retirement age for all ranks is 60 years.

*Comparative analysis*

43. What emerges from the above discussion is that among the CAPFs a differential treatment is given to those belonging to the AR, CISF, where all members in all ranks retire at the age of 60 years. Whereas, in the BSF, CRPF and ITBP two classes have been created where officers above the rank of Commandant retire at the age of 60 and all other ranks retire at the age of 57. It is this two-level discrimination i.e. discrimination between members of the BSF, CRPF and ITBP on the one hand and AR and CISF on the other at one level and then at the second level within the three concerned CAPF i.e. BSF, CRPF and ITBP between two sets of officers.

*Must the Court adopt a hands-off approach?*

44. The response of the Respondents, as set out in their replies in the writ petitions and further crystallised in the OM dated 1<sup>st</sup> April 2013, has been on predictable lines. The first is to contend that this entire issue of retirement age is a policy decision of the executive and the Court has to adopt a hands-off approach. In support of this proposition, reliance is placed on the decisions in *State of UP v. Johri Mal* (2004) 4 SCC 714 : AIR 2004 SC 3800, *Union of India v. Dinesh Engineering Corporation*, (2001) 8 SCC 491 : AIR 2001 SC 3887, *Bishun Narain Mishra v. State of Uttar Pradesh*, AIR 1965 SC 1567, *Life Insurance Corporation v. S.S. Srivastava* 1988 Supp SCC 1 : AIR 1987 SC 1527, *Ram Lal Wadhwa v. The State of Haryana*, (1972) 2 SCC 275 : (1973) 1 SCR 608 and *Centre for Public Interest Litigation v. Union of India* (2016) 6 SCC 408 : AIR 2016 SC 1777.

45. It is further contended that the relief of seeking writ of

mandamus directing the Respondents to change Rule 43 of the CRPF Rules to provide for higher retirement age falls within the realm of seeking mandamus to make delegate legislation. This has been held to be outside the purview of the Courts and reliance was placed on the decision in *Manuelsons Hotels Pvt. Limited v. State of Kerala* (2016) 6 SCC 766.

46. On the side of the Petitioners, reliance is placed on the decisions in *Union of India v. Atul Shukla* (2014) 10 SCC 432, *State of UP v. Dayanand Chakrawarty* (2013) 7 SCC 595, *Kamlakar v. Union of India* (1999) 4 SCC 756 and *Union of India v. Dineshan K.K.* (2008) 1 SCC 586.

47. Having examined the said decisions, it appears to the Court that it is not entirely correct that the Supreme Court has adopted a hands-off approach in relation to questions concerning differential treatment to those working in the same post and rank in the matter of retirement age. In *Bishun Narain Mishra v. State of Uttar Pradesh* (supra) it was held that the power of the Government to increase or reduce the age of superannuation cannot be taken away and the retirement of a Government servant on account of reduction in the age of superannuation cannot be said to be termination of his service.

48. In *LIC v. S.S. Srivastava* (supra) it was held that the decision taken by the LIC and Central Government "as regards the ages of retirement of different classes of employees" of the LIC was not unreasonable. It was further held that "since the classification of the employees for the purpose of age of retirement into two categories is reasonable and not arbitrary and is reasonable nexus between the classification and the object to be attained, thereby, it is not possible to hold that Regulation 19(2) is violative of Articles 14 and 16 of the Constitution." In *Union of India v. Dinesh Engineering Corporation* (supra) the Supreme Court held that Courts "are normally not equipped to question the correctness of a policy decision" when it is based on the views of experts and knowledgeable persons.

49. In *Central for Public Interest Litigation v. Union of India* (supra) was a case dealing with the disposal by the Government of a valuable resource. In that context, the Supreme Court observed:

"Minimal interference is called for by the Courts, in exercise of judicial review of a Government policy when the said policy is the outcome of deliberations of the technical experts in the fields inasmuch as Courts are not well-equipped to fathom into such domain which is left to the discretion of the executive".

50. But there is no absolute bar to interference by the Court in policy decisions. If the policy is plainly discriminatory, the Courts will not hesitate to interfere. This was explained in *Re : Special Reference No. 1 of 2012* (2012) 10 SCC 1, where the question was whether the disposal

of a public resource by the State has to be only by way of a public auction? The Constitution Bench answered the question in the negative. In that process, it also addressed the question of the extent of interference by the Courts with policy decisions, and summarised the legal position thus:

"146. To summarize in the context of the present Reference, it needs to be emphasized that this Court cannot conduct a comparative study of the various methods of distribution of natural resources and suggest the most efficacious mode, if there is one universal efficacious method in the first place. It respects the mandate and wisdom of the executive for such matters. The methodology pertaining to disposal of natural resources is clearly an economic policy. It entails intricate economic choices and the Court lacks the necessary expertise to make them. As has been repeatedly said, it cannot, and shall not, be the endeavour of this Court to evaluate the efficacy of auction vis-à-vis other methods of disposal of natural resources. The Court cannot mandate one method to be followed in all facts and circumstances. Therefore, auction, an economic choice of disposal of natural resources, is not a constitutional mandate. We may, however, hasten to add that the Court can test the legality and constitutionality of these methods. When questioned, the Courts are entitled to analyse the legal validity of different means of distribution and give a constitutional answer as to which methods are ultra vires and intra vires the provisions of the Constitution. Nevertheless, it cannot and will not compare which policy is fairer than the other, but, if a policy or law is patently unfair to the extent that it falls foul of the fairness requirement of Article 14 of the Constitution, the Court would not hesitate in striking it down."

(emphasis supplied)

51. In the present case it is not as if this Court straightaway started examining the matter of discrimination within the ITBP, CRPF and BSF as regards the differential ages of retirement of officers of the rank above that of Commandant and those below. The Court engaged the Respondents in considering the issue time and again. From 2012 when first petition was filed till now, that exercise continued. The orders of this Court dated 11<sup>th</sup> October 2012 and 7<sup>th</sup> January 2013, which have been quoted in full hereinbefore, bear testimony to this. The MHA was repeatedly urged to examine the issue. However, as can be seen from the OM dated 1<sup>st</sup> April 2013 and thereafter, the Respondents have stuck to their position and declined to change it despite the concerned CAPFs themselves voicing the demand for change.

52. It is only after the MHA declined to reconsider its earlier decision, that it has become necessary to decide the issue raised by the

Petitioners. In other words, in these matters, the Court in the initial phase adopted a hands-off approach viewing it as essentially a policy matter exclusively within the domain of execution to decide what the retirement age of the members of three of the CAPFs i.e. BSF, CRPF and ITBP should be. From time to time, orders were passed for the Respondents to inform the Court of their position on a consideration of the concerns expressed by the Petitioners. It is in the above context that the Court is now called upon to examine the issue, which at a fundamental level, is one of discrimination. The differential treatment in the matter of age of retirement accorded to persons in the CRPF, BSF, and ITBP of the rank of Commandant and below has been made explicit by amending the respective Rules governing the members of those CAPFs. The Court is, therefore, called upon to answer whether these changes can be said to be violative of Articles 14 and 16 of the Constitution?

*Analysis of case law*

53. It is not as if these issues have not engaged to the Courts earlier. In *State of UP v. Dayanand Chakrawarty* (supra) the issue before the Supreme Court, in the appeal filed by the State of UP against the judgment dated 29<sup>th</sup> July, 2010 of the High Court of Allahabad, Lucknow Bench, concerned employees of the UP Jal Nigam and their retirement age. Under Regulation 31 of the UP Jal Nigam Services of Engineers (Public Health Branch) Regulations, 1978 ('the 1978 Regulations') those directly recruited by the Nigam and those employees transferred and merged into the Nigam from the erstwhile Local Self Government Engineering Department ('LSGED') were both governed by the 1978 Regulations. In terms of the said Regulations, the stipulated age of retirement was 58 years which was consistent with Rule 56(a) of the UP Fundamental Rules ('UPFR') which applied to employees of the State Government.

54. By a notification dated 27<sup>th</sup> June, 2002 Rule 56(a) of the UPFRs was amended and the age of superannuation of the State Government employees was enhanced from 58 to 60 years. However, this benefit was not given to the employees of the Nigam. Writ petitions were then preferred by the employees of the Nigam.

55. In *Harwindra Kumar v. Chief Engineer Karmik* (2005) 13 SCC 300 the Supreme Court granted the benefit of the Notification dated 27<sup>th</sup> June, 2002 to the Appellants and directed the Nigam to continue such of those in service till they attained 60 years and the orders directing retirement at the age of 58 years was set aside. It was noted that Regulation 31 specifically stated that Rules governing the service conditions of government servants shall equally apply to the employees of the Nigam. In the circumstances, it was not possible for the Nigam to take an administrative decision, acting under Section 15(1) of the

U.P. Water Supply and Sewerage Act, 1975 pursuant to the directions of the State Government in the matter of a policy issue under Section 89 of the Act and direct that enhanced age of superannuation of 60 years applicable to the government servants shall not apply to employees of Nigam. It could have been done by amending Regulation 31. However, that not having been done, it was not possible for the State Government to take a policy decision inconsistent with Regulation 31, which was framed by the Nigam in exercise of the powers conferred under Section 97(2)(c) of the Act.

56. After the decision in *Harwindra Kumar* (supra), the Nigam in exercise of the power conferred under Section 97(2)(c) of the 1975 Act framed the U.P. Jal Nigam Employees (Retirement on Attaining the Age of Superannuation) Regulations, 2005 ('the 2005 Regulations'). Under Regulation 3 of the 2005 Regulations, the retirement age was fixed as 60 years. However, for the employees of the erstwhile LSGED transferred to the Nigam, the age of superannuation remained at 58 years as prescribed under Regulation 4. In other words, under Regulation 3 the transferred employees from the LSGED were to retire at 60 years and for others it was 58 years.

57. The Allahabad High Court upheld the challenge to Regulation 4 and held that to the extent it provided for superannuation age of 58 years for those employees directly recruited in the Nigam, Regulation 4 was arbitrary. The Petitioners were allowed to continue in service till 60 years. The Nigam's further appeal was dismissed by a Division Bench of the Allahabad High Court.

58. Aggrieved by that order, the U.P. Jal Nigam approached the Supreme Court. Taking note of the earlier decisions in *Harwindra Kumar* (supra) and *UP Jal Nigam v. Jaswant Singh* (2006) 11 SCC 464 the Supreme Court in *UP Jal Nigam v. Radhey Shyam Gautam* (2007) 11 SCC 507 dismissed the Nigam's appeal.

59. Meanwhile, a large number of employees of the Nigam who had been compelled to retire on attaining 58 years sought the same benefit given by the Supreme Court in *Harwindra Kumar* (supra) and when they did not succeed, moved the Supreme Court in *UP Jal Nigam v. Jaswant Singh* (supra). The Supreme Court noted that in this case at this belated stage if similar relief was granted to those persons who had not approached the Court earlier, it would unnecessarily overburden the Nigam. The Nigam would completely collapse with the liability of payment to those persons of two years' salary and increase in pension and other consequential benefits. Therefore, the benefit was confined to those who had filed writ petitions while they were in service and those who had obtained an interim order prior to retirement.

60. In view of the subsequent decision, the Nigam by a resolution dated 13<sup>th</sup> April, 2008 resolved to enhance the age of superannuation of

employees, irrespective of the source of entry, to 60 years. However, the State Government provided a uniform age of superannuation as 58 years for all employees working in Government Companies and Government corporations by the order dated 29<sup>th</sup> June, 2009. Therefore, by its order dated 3<sup>rd</sup> July, 2009 the State Government refused to accord approval to the recommendations dated 13<sup>th</sup> April, 2008 of the Nigam.

61. This led to a further round of litigation and the Division Bench of the Allahabad High Court, Lucknow Bench by its common judgment dated 29<sup>th</sup> July, 2010 declared the 2005 Regulations unconstitutional as it created two classes of employees in determining two separate retirement ages. This was challenged by the State of UP before the Supreme Court. In *State of UP v. Dayanand Chakrawarty* (supra), the Supreme Court dismissed the appeal of the State of UP.

62. During the pendency of the appeals in the Supreme Court, the Government of Uttar Pradesh by a letter dated 23<sup>rd</sup> December, 2011 informed the Chairman of the Nigam of its approval to increase the superannuation of full-time regular officers/employees of the Nigam from 58 to 60 years. Consequently, the Supreme Court was of the view that the judgment of the High Court did not call for interference.

63. The Supreme Court then addressed the question whether corresponding benefit should be accorded to the Respondents and other employees who had not moved before any Court of law. The High Court had said that the benefit of continue till 60 years would not be given to employees who never came before the Court. There were other classes of employees who came before the Court but could not get interim order by the writ petition was admitted. The Court directed that on the basis of no pay no work they would not be entitled to arrears. However, their back wages would be restricted at 20% of the basic salary in terms of the ratio laid down in *G. Vallikumari v. Andhra Education Society* (2010) 2 SCC 497. It was further clarified that the extending service would be counted for all the purposes to the above employees.

64. The Supreme Court in *State of UP v. Dayanand Chakrawarty* (supra) noted that in *Harwindra Kumar*, the Court had observed that employees who had not been allowed to continue after completing of 58 years by virtue of the erroneous decision taken by the Nigam for no fault of theirs would be entitled to payment of salary for the remaining period upto 60 years. It ordered that those who have been permitted to continue till 60 years will not suffer any recovery either. In *UP Jal Nigam v. Radhey Shyam Gautam* (supra) the Supreme Court had held that employees of the Nigam would be entitled to full salary for the remaining period up to 60 years. However, in *UP Jal Nigam v. Jaswant Singh* (supra) the benefit of arrears was given only to those employees who had filed writ petitions. In *State of UP v. Dayanand Chakrawarty*



(supra) the Supreme Court observed that if an employee was prevented by the employer from performing his duties the principle of 'no pay no work' should not be applicable.

65. It was accordingly ordered that employees including the Respondents who had approached the Court of law irrespective of whether interim order was passed would be entitled to full salary up to the age of 60 years. The arrears of salary would be paid after adjusting the amount paid, if any. Those who never moved any court of law and retired on attaining the age of superannuation would not be entitled for arrears of salary. They would however be deemed to have continued in service up to 60 years. The Appellants would treat the age of superannuation of 60 years and fix the pay accordingly and re-fix the retirement benefits like pension, gratuity. On such calculation they would be entitled to the arrears of retirement benefits after adjusting the amount already paid. The arrears and arrears of retirement benefits were asked to be paid within four months from the date of receipt of the judgment.

66. What emerges from the reading of *State of UP v. Dayanand Chakrawarty* (supra) is that the Court with not simply defer to a policy decision when it is plainly discriminatory. This accords with the observations of the Supreme Court in *Re : Special Reference No. 1 of 2012* (supra).

67. The decision that requires to be discussed next is *Union of India v. Atul Shukla* (supra). Here the question was considering the following classification introduced among the officers holding the same rank of Group Captain:

- (i) Those who became group captains by time scale upon completion of 26 years of service and
- (ii) Others who got there by promotion on the basis of merit.

68. For the time-scale promoted Group Captains, the retirement age was retained at 52 years in the case of the Flying Branch and 54 years in the case of those serving in the Ground Duty (GD) Branch. For Group Captains (Select) they could serve upto 54 years in the Flying Branch and 57 years in the GD Education and Met branches.

69. The Armed Forces Tribunal (AFT) upheld the challenge to the different ages of retirement in the same rank of Group Captain. The appeal of the Union of India against the judgment of the AFT was dismissed by the Supreme Court by the said decision in *Union of India v. Atul Shukla* (supra).

70. The Supreme Court reiterated the certain legal position that "Article 14 prohibits class legislation and not reasonable classification." It was held that from the decisions starting with *State of West Bengal v. Anwar Ali Sarkar*, (1952) 1 SCC 1 : AIR 1952 SC 75 till *Subramanian*

*Swamy v. CBI* (2014) 8 SCC 682 the settled legal position was that:

"a classification passes the test of Article 14 only if (i) there is an intelligible differentia between those grouped together and others who are kept out of the group; and (ii) there exists a nexus between the differentia and the object of the legislation."

71. Explaining the decision in *Subramanian Swamy v. CBI* (supra) where the Supreme Court examined whether Section 6-A(1) of the Prevention of Corruption Act, 1988 was constitutionally valid inasmuch as it required approval of the Central Government for conduct of an inquiry or investigation into an offence alleged to have been committed under the PC Act by employees of the Central Government of the level of Joint Secretary and above and officers appointed by the Central Government corporations established by or under the Central Act, Government Companies, Societies etc. The Court held as under:

"Can it be said that the classification is based on intelligible differentia when one set of bureaucrats of Joint Secretary level and above who are working with the Central Government are offered protection under Section 6-A while the same level of officers who are working in the States do not get protection though both classes of these officers are accused of an offence under PC Act, 1988 and inquiry/investigation into such allegations is to be carried out. Our answer is in the negative. The provision in Section 6-A, thus, impedes tracking down the corrupt senior bureaucrats as without previous approval of the Central Government, the CBI cannot even hold preliminary inquiry much less an investigation into the allegations. The protection in Section 6-A has propensity of shielding the corrupt. The object of Section 6-A, that senior public servants of the level of Joint Secretary and above who take policy decision must not be put to any harassment, side-tracks the fundamental objective of the PC Act, 1988 to deal with corruption and act against senior public servants. The CBI is not able to proceed even to collect the material to unearth prima facie substance into the merits of allegations. Thus, the object of Section 6-A itself is discriminatory. That being the position, the discrimination cannot be justified on the ground that there is a reasonable classification because it has rational relation to the object sought to be achieved."

72. In *Union of India v. Atul Shukla* (supra) the Supreme Court applied the above principles to the facts of the case and pointed out as under:

"18. In the case at hand, Group Captains constitute one rank and cadre. The distinction between a Group Captain (Select) and Group Captain (Time Scale) is indicative only of the route by which they have risen to that rank. Both are promotees. One reaches the rank earlier because of merit than the other who takes a longer time to do



so because he failed to make it in the three chances admissible to them. The select officers may in that sense be on a relative basis more meritorious than time scale officers. But that is bound to happen in every cadre irrespective of whether the cadre comprises only directly recruited officers or only promotees or a mix of both. Inter se merit will always be different, with one officer placed above the other. But just because one is more meritorious than the other would not by itself justify a different treatment much less in the matter of age of superannuation."

73. It was further held that:

"while better inter se merit would earn to an officer accelerated promotion to the Group Captain's rank and resultant seniority over Time Scale Officers who take a much longer period to reach that position, but once Time Scale Officers do so they are equal in all respects and cannot be dealt with differently in the matter of service conditions or benefits. All told the submission of the Time Scale Officers that because of their long years of service and experience, they make up in an abundant measure, for a relatively lower merit cannot be lightly brushed aside. That Group Captains (Time Scale) wear the same rank, are paid the same salary and allowances and all other service benefits admissible to Group Captains (Select) supports that assertion for otherwise there is no reason why they should have been equated in matters like pay, allowances and all other benefits including the rank they wear if they were not truly equal. Once it is conceded that the two are equal in all other respects as indeed they are, there is no real or reasonable basis for treating them to be different for purposes of age of retirement."

74. It was further explained:

"It is trite that birthmark of an officer who is a part of the cadre of Group Captains cannot provide an intelligible differentia for the classification to be held valid on the touchstone of Articles 14 and 16 of the Constitution."

75. In *Union of India v. Atul Shukla* (supra), the Supreme Court referred to the decision in *Col. A.S. Iyer v. V. Balasubramanyam* (1980) 1 SCC 634 where the Supreme Court observed as under:

"Let us eye the issue from the egalitarian angle of Articles 14 and 16. It is trite law that equals shall be treated as equals and, in its application to public service, this simply means that once several persons have become members of one service they stand as equals and cannot, thereafter, be invidiously differentiated for purposes of salary, seniority, promotion or otherwise, based on the source of recruitment or other adventitious factor. *Birth-marks of public servants are obliterated on entry into a common pool and our country does not believe in official casteism or blue blood as assuring*

*preferential treatment in the future career.* The basic assumption for the application of this principle is that the various members or groups of recruits have fused into or integrated as one common service. Merely because the sources of recruitment are different, there cannot be apartheidisation within the common service."

76. Reference was also made to the decision in *Air India v. Nergesh Meerza* (1981) 4 SCC 335 where one of the issues that was examined was the rationality behind fixing the age of superannuation of Air Hostesses. It was held that if the factors taken into consideration for fixing the age of superannuation were "inherently irrational or illogical", then the decision fixing such age would be flawed.

77. The Supreme Court in *Union of India v. Atul Shukla* (supra) referred to the report of the AVS Committee which had been asked to examine the "ways and means that would help ensure a younger age profile for commanding officers in the Indian Armed Forces, which had suggested introduction of a time scale rank for the army. It was observed:

"So long as Group Captains (Select) are senior to Time Scale Officers and so long as the former are younger in age as they are bound to be, the objective of having a younger age profile of commanding officers is achieved even if the Time Scale Officers are permitted to retire at the same age as Group Captains (Select). The second test applicable viz. existence of a nexus between the object sought to be achieved and the classification made by the Government also fails rendering the classification bad."

78. The Court then examined the nature of duties performed by Group Captains (Select) and Group Captain (Time Scale). It was pointed out that the stand of the Union of India showed that it had not indicated how the work, duties and functions performed by the Group Captain (Time Scale) were different from those discharge from Group Captain (Select). It was pointed out that lesser or higher rank of duties will not trivialise the duty of the Wing Commander to the rank of Group Captain which progression must be treated to be a promotion for all intents and purposes. On the other hand, it was asserted by the Respondents in the case that both Group Captains, Time Scale and Select perform 'the same functions and duties which are higher than the duties and functions performed by the Wing Commanders, they wear the same uniform and rank which is higher than the Wing Commanders apart from drawing the same pay scale as Group Captains, which too is higher than the one admissible to Wing Commanders.'

79. The argument that the parity in the retirement age would reduce the combat effectiveness of the Force is also not accepted. Accordingly,

it was concluded that the basis for classification in question for the purposes of age of superannuation was "much too tenuous to be accepted as a valid base for giving to the time-scale Officers a treatment different from the one given to the Select Officers". The concerns arising from a parity in the retirement age of the two sets of officers were "more perceptual than real" and remained to be "substantiated on the basis of empirical data." It was accordingly concluded 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."

80. The above decision in *Union of India v. Atul Shukla* (supra) is a further underscoring of the extent of the scope of the powers of judicial review in such matters. The Court before which the challenge is laid would examine the basis for the justification provided by the Government for a differential treatment in the matter of retirement age in the same rank or ranks. The Court would examine if such justification is rational or has a nexus to the object sought to be achieved.

81. The decisions in *Kamlakar v. Union of India* (supra) and *Union of India v. Dineshan K.K.* are on the aspects of equality of pay scale and, therefore, will not *ipso facto* apply on all fours to the issue on hand. Nevertheless, what is interesting as far as the latter decision in *Union of India v. Dineshan K.K.* is concerned is the equating of the pay of Radio Mechanic in AR with other CAPFs. In that case, the Respondents had clearly admitted that:

"(i) all the paramilitary forces, including Assam Rifles are at par with each other and (ii) there was apparent "disparity" in the pay scales of the personnel of Assam Rifles with their counterparts in other central paramilitary forces. In order to rectify this disparity, Director General Assam Rifles, petitioner No. 2 herein, vide his letter dated 18<sup>th</sup> February, 1998 had, in fact, taken up the grievance of the respondent with the Ministry of Home Affairs, inter alia, recommending re-designation of Havildar (RM) Gd.-I and II of Assam Rifles as Warrant Officer and for replacement of pay scale of Rs. 4000-100-6000 to bring them at par with their counterparts in other central police organization."

82. Therefore, the equating of persons in different ranks in the different CAPFs in the matter of pay and allowances is accepted by the Respondents themselves. Consequently, the plea of the Respondents in the present cases that in matters of fixation of the age of superannuation the Court can, in no circumstance, interfere is not an acceptable legal proposition.

#### *Examination of the issue on merits*

83. The Court now turns to examining the justification provided by

the Respondents in sticking to the stand of not enhancing the retirement age of the members of the ITBP of the rank of Commandant and below.

84. The justification provided by the MHA for the differential treatment to the officers up to the rank of Commandant of the CISF and AR on the one hand, and the ITBP, BSF, SSB and CRPF on the other may be recalled:

- "a) Ministry of Home Affairs is of considered view that the age of superannuation cannot be enhanced from existing 57 years to 60 years for all ranks of CRPF, BSF, SSB and ITBP. Force personnel up to the rank of Commandant have operational/combat roles in the field, which require higher physical fitness and efficiency. The higher ranks of DIG and above in these for CAPFs are more supervisory and administrative in nature, which do not require physical fitness of the level required in field units. Therefore, in the ranks of DIG and above in the four CAPFs, the age of retirement is 60 years, while for ranks till the level of Commandant, the retirement age is 57 years.
- b) Stipulating a lower age of superannuation up to the rank of Commandant in these four CAPFs is a well thought and conscious decision of the government based on ground realities and as per the administrative and operational requirement of the forces. Even in the Army, there are different ages for retirement, which increase in accordance with rank.
- c) It is not correct to say that in Assam Rifles the age of retirement upto the rank of Commandant is 60 years. Assam Rifles is officered by the Army, and the retirement age at the level of Colonel is not 60 years but 57 years.
- d) CAPFs like ITBP, BSF are posted on border/high altitude/difficult terrain duties and CRPF is generally deployed for internal security duties and CI operations. Hence their functional profile is more akin to Army, justifying younger age of the Force. Thus, 57 years in other CAPFs and 60 years in CISF is commensurate with the different roles assigned to them.

Further, this demand has arisen because of equity issues as some forces have 60 years of retirement age. So, for such forces also similar retirement structure is recommended."

85. It must be noted here that the CAPFs themselves have been recommending the removal of the above disparity. The 7<sup>th</sup> CPC which had an occasion to examine the issue was not unanimous in its conclusions. Two of the members were in favour of the enhancement of the retirement age while one member was against it. The relevant portion of the report reads thus:

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

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

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

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

- a. Ministry of Home Affairs is of the considered view that the age of superannuation cannot be enhanced from existing 57 years to 60 years for all ranks of CRPF, BSF, SSB and ITBP. Force personnel up to the rank of Commandant have operational/combat roles in the field, which require higher physical fitness and efficiency. The higher ranks of DIG and above in these four CAPFs are more supervisory and administrative in nature, which do not require physical fitness of the level required in field units. Therefore, in the ranks of DIG and above in the four CAPFs, the age of retirement is 60 years, while for ranks till the level of Commandant, the retirement age is 57 years.
- b. Stipulating a lower age of superannuation up to the rank of Commandant in these four CAPFs is a well thought and conscious decision of the government based on ground realities and as per the administrative and operational requirement of the forces. Even in the Army, there are different ages for retirement, which increase in accordance with rank.
- c. MHA has further observed that it is not correct to say that in Assam Rifles the age of retirement up to the rank of Commandant is 60 years. Assam Rifles is officered by the Army, and the retirement age at the level of Colonel is not 60 years but 57 years.

d. CAPFs like ITBP, BSF are posted on order/high altitude/difficult terrain duties and CRPF is generally deployed for internal security duties and CI operations. Hence their functional profile is more akin to Army, justifying younger age of the Force. Thus, 57 years in other CAPFs and 60 years in CISF is commensurate with the different roles assigned to them."

86. The Ministry of Finance after perusing the report dated 19<sup>th</sup> November, 2015 of the 7<sup>th</sup> CPC in para 14 of a Resolution dated 25<sup>th</sup> July, 2016 stated:

"14. Recommendations not relating to pay, pension and allowances and other administrative issues specific to Departments/Cadres/Posts will be examined by the Ministries/Departments concerned as per the Allocation of Business Rules or Transaction of Business Rules. Until a decision is taken by the Government on administrative issues pertaining to (i) Non Functional Upgradation (NFU) presently admissible to the Indian Police Service/Indian Forest Service and Organised Group 'A' Services, (ii) two years' edge to Indian Administrative Service officers vis-a-vis other All India Services/Organised Group 'A' Services in empanelment under Central Staffing Scheme, (iii) grant of two additional increments at Senior Time Scale, Junior Administrative Grade and Selection Grade to Indian Police Service and Indian Forest Service at par with Indian Administrative Service and Indian Foreign Service (iv) a uniform retirement age for all ranks in Central Armed Police Forces, where the Commission could not arrive at a consensus, status quo shall be maintained."

87. It is strange that by merely stating that there was no consensus between the members of the 7<sup>th</sup> CPC. "No action needed be taken for enhancement of the age" was perhaps not the correct response particularly since the majority view of the CPC was for enhancement. The CPC was the expert body and the views of the majority of its members did deserve consideration at the hands of the Ministry of Finance. The view that there was "no consensus between the members of the CPC on the issue" and therefore status-quo had to be maintained is, to say the least, unfortunate. The decision of the 7<sup>th</sup> CPC was by majority of 2 : 1. In a multi-member body the view of the majority would normally have to prevail. The insistence that the decision should be unanimous and that the failure to arrive at a unanimous decision would amount to their being "no consensus" would be both incorrect and misleading. It is this stand that got reflected in the OM dated 20<sup>th</sup> March, 2017 of the MHA where they simply reiterated the note given by them to the 7<sup>th</sup> CPC.

88. Consequently, the position that emerges is that the expert body that was required to examine the matter and make its

recommendations, i.e. the CPC, by a majority of 2 : 1 in fact favoured enhancement of the retirement age.

89. As already noted, even within the forces, the stand has been to support the demand of the Petitioners. The heads of the three forces i.e. ITBP, CRPF and BSF have always recommended age enhancement to be at par with AR and CISF. A reference may be first made to a detailed letter written by the Inspector General (IG) (Pers) (ITBP) in the form of a Memorandum No. 135 dated 14<sup>th</sup> February, 2012. The history of the issue was traced and it was noted as under:

"4. CRPF being an older force in all CAPFs, all other forces like ITBP and BSF have adopted the provisions of age of superannuation from CRPF. All other forces like CISF, Assam Rifles, and Delhi Police are maintaining the age of superannuation at 60 years as per the provisions of FR-56(a). Personnel of ITBP up to the rank of Commandant are retiring on superannuation on attaining the age of 57 years, but no benefit is applicable to them in lieu of premature retirement by three years. As per available records, no specific orders of Govt. in this regard are available."

90. It was also pointed out that:

"All Central Civil Service Rules including New Pension Scheme are equally applicable in ITBP, but due to lower retirement age by three years, our personnel will face the following problems which may in the time to come lead to numerous litigations."

91. The IG of the ITBP stated that the matter required to be reconsidered in the overall interest of all of the force personnel and that it would also be advantageous to the Government. He pointed out that it would make a huge saving to a Government exchequer by "retaining trained and experienced personnel for next three years and above all, it will bring equality in the age of superannuation under FR 56(a) at par with other Civil Central Government Servants."

92. Then we have the letter from the DG, CRPF dated 6<sup>th</sup> July, 2012 where it was pointed out that this difference in retirement age has no rationale, this has a "negative impact on the morale of CRPF personnel of the affected ranks and they serve three years less than in their counterparts in CISF and Assam Rifles". It was further pointed out as under:

"If Assam Rifles & CISF officers can serve upto 60 years at the rank of Commandant, so can a CRPF or for that matter, BSF officer, if he retains SHAPE-I. So also the other ranks below. We, in CRPF, feel that this disparity in the age of retirement should be set-right.

We, therefore, request you to kindly consider enhancing the age of retirement in respect of CRPF personnel to 60 years. The CRPF Rules may please be got amended towards this end."



93. A meeting was held at the CISF headquarters on 29<sup>th</sup> August, 2013 which was attended by the DGs of five forces. Their opinion as regards removal of disparity in the retirement age, personnel of CAPFs was expressed thus:

“Removal of disparity in retirement age among the personnel of CAPFs.

The personnel of Central Armed Police Forces (CAPF) i.e. BSF, CRPF, CISF, ITBP, Assam Rifles & SSB are governed by CCS (Pension) Rules - 1972 for the purpose of pension and other benefits. Further as per FR-56, the age of retirement in respect of all Central Government employees is specified as 60 years irrespective of their rank/designation. However, superannuation of personnel upto the rank of Commandant in CAPFs is different.

All the DGs were of the view that the retirement age should be 60 years in all the CAPFs.”

*Reasons put forth by Respondents not convincing*

94. Now, let us examine each of the reasons given by the Respondents. The first is that the ranks of DIG and above do not have combat/operational role, do not visit BOPs and the level of fitness required is not the same. The factual position is that all ranks from the combatants to ADG need to be in SHAPE-I as stipulated in para 6 of the Recruitment Rules of the ITBP Force General Duty Cadre (Group A post) Recruitment Rules, 2010. Further the medical manual shows the same tests for the age group of 55 to 60 years. As regards BOPs, SO-07/2012 shows that all Frontier IGs/DIGs and Sector DIGs have to visit BOPs.

95. The next contention of the Respondents is that posts of DIG and above are filled by deputation from Army and IPS officers and thus it justifies a higher retirement age of 60 years for them. In their short reply filed on 6<sup>th</sup> July, 2014 in WP(C) 1951/2012 the Respondents admit that “at present, one Colonel is on deputation to the post of Additional JAG (Commandant) from Army.” There is at present “no army officers, on deputation in the Army, ITBP cadre.”

96. It is then pointed out by the Respondents that the 5<sup>th</sup> CPC had examined this issue. As rightly pointed out by the Petitioners, the 5<sup>th</sup> CPC did not take note of the fact that all the members of AR and CISF retired at 60 years. In any event, the recommendation of the 5<sup>th</sup> CPC that the benefit of three added years of service for pensionary benefit must be granted was not implemented.

97. It is then pointed out by the Respondents that FR 56(a) is not applicable to the CPOs. In response, it is pointed out by the Petitioners that FR(2) provides that FRs shall apply to all Government servants whose pay is debitable to ‘Civil Estimates.’ It is pointed out that the pay of all ITBP and CRPF personnel is debitable to the civil and not to



the Defence Estimates. Moreover most of the provisions of the FR and SR apply such as increments, allowances, stepping up etc. Indeed the stand of the Respondents in this regard does not appear to be factually correct.

98. It is then contended by the Respondents that the age of retirement up to Commandant is not 60 years across the board. In the Army the retirement age of a Colonel is 57 years. It is pointed out by the Petitioners that in fact the Assam Rifles Act does not stipulate any retirement age. Para 3(a) of the Assam Rifles Hand Book on Pension stipulates a superannuation pension on attaining 60 years of age. A reference is also made to the judgment of the Guwahati High Court dated 22<sup>nd</sup> February, 2006 in *PP Singh Rajput v. Union of India*, which acknowledges that the retirement age of members of the Assam Rifles is 60 years.

99. It is then contended by the Respondents that the comparison with CISF was not warranted since the nature of duties in the CISF was essentially that of security and not 'operations'. The Petitioners have placed before the Court the job profiles of the various ranks in the CISF which shows that while they do involve internal security duties, they have other roles as well. They have 'VIP Security duties'. There was also the requirement of intimate knowledge of the working of the undertaking in which they deployed and this technical knowledge was necessary to enable CISF personnel to:

"to identify the critical areas, as well as, machinery in the plant, components and process which may be especially vulnerable to espionage and sabotage, expensive and critical material which may be targets for theft and attack etc. It was only by acquiring these specialised knowledge and skills that security personnel could discharge their duties intelligently and efficiently."

100. The Respondents contend that the CISF is governed by the Rule 65 of the CISF Rules which applies to the Central Government Rules relating to superannuation. This is precisely the reason why the Petitioners had come before the Court. They seek the re-casting of Rule 43 of the CRPF and question its validity in so far as it discriminates against them in the matter of the retirement age.

101. The discrimination in the retirement age is a disincentive to candidates who opt for CRPF/BSF/SSB and ITBP as compared to other CAPFs like the CISF and AR. The following statistics have been put forth by the Petitioners which have not been able to be disputed by the Respondents:

"CPF-AC (Assistant Commandant) EXAM 2010

Allotted	-	426
Reported/Joined	-	347

Not	-	79
reported/joined		

CPF-AC (Assistant Commandant) EXAM 2011

Allotted	-	212
Reported/Joined	-	163
Not	-	49
reported/joined		

DETAILS OF SI (GD) SELECTED AND REPORTED - 2013

Selected	-	205
Reported/Joined	-	143
Not	-	62
reported/joined		

DETAILS OF CONSTABLE (GD) SELECTED & REPORTED - 2012

Selected	-	15,135
Reported/Joined	-	14,000
Not	-	1,135"
reported/joined		

102. This Court is of the view that the Petitioners have made out a case of discrimination, that is violative of Articles 14 and 16 of the Constitution, based on empirical data that the fixing of the age of superannuation of members of the ranks of Commandant and below in the ITBP, CRPF, BSF and SSB different from those in the ranks above that of the Commandant is not based on a rational criteria and that such differentiation has no nexus to the object sought to be achieved. Also, the expert body that was required to examine the matter and make its recommendations, i.e. the CPC, by a majority of 2 : 1 favoured the enhancement of the retirement age. The concerned CAPFs themselves i.e. the BSF, CRPF, ITBP and SSB have also favoured the removal of the discrimination. The following test laid down by the Supreme Court in *Air India v. Nergesh Meerza* (supra) stands fully satisfied in the present case:

"There can be no cut and dried formula for fixing age of retirement. It is to be decided by the authorities concerned after taking into consideration various factors such as the nature of the work, the prevailing conditions, the practice prevalent in other establishments and the like. But the factors to be considered must be relevant and should bear a close nexus to the nature of the organisation and the duties of the employees. So where the authority concerned takes into account factors or

circumstances which are inherently irrational or illogical or tainted, the decision fixing the age of retirement is open to serious scrutiny."

(emphasis supplied)

103. There appears to be no justification whatsoever put forth by the Respondents in discriminating amongst the CAPFs particularly when the retirement age of all members of the CISF and AR is 60 years and whereas the retirement age of those of the rank of Commandant and below in BSF, CRPF, SSB and ITBP is 57 years. The above classification has no rational nexus to the object sought to be achieved, which is keeping high the morale of the CAPFs, who are performing yeoman service and supplementing the efforts of the armed forces and the police throughout the country. The CAPFs have become an indispensable part of the security apparatus in the country. It is difficult to think that the Government whether at the Centre or at the States would be able to combat the serious challenges of safety and security and of its people without the participation and the sacrifices made by members of the CAPFs. Their morale definitely needs to be preserved. Discrimination in the matter of the age of retirement amongst members of two wings of the CAPFs will contribute to lowering the morale rather than bolstering it. Accordingly, it is held that Rule 43 (a) of the CRPF Rules which presently states that "Retirement of member of the Force shall take effect from the afternoon of the last day of the month in which such member attains the age of 57 years" is held to be discriminatory and violative of Article 14 of the Constitution vis-à-vis members of the CRPF of the rank of Commandant and below. The OM dated 1<sup>st</sup> April 2013 issued by the MHA rejecting the plea of the Petitioners is hereby quashed.

104. In the present petitions, while the primary challenge is to Rule 43(a) of the CRPF Rules, the corresponding challenge is in effect to separate rules applicable to each of the three CAPFs in question i.e. the CRPF, the BSF, and the ITBP. To recapitulate, Rule 14 of the CRPF Group (A) General Duty Officers Recruitment Rules, 2001 stipulates that officers holding post higher than the rank of Commandants shall retire from service "on the afternoon of the day of the month in which they attained the age of 60 years and officers of other ranks shall retire from the service on the afternoon of the last day of the month in which they attained the age of 57 years." Rule 8(a) of the ITBP General Duty in Group 'A' Posts Rules stipulates that officers holding the rank of Deputy Inspector General (General Duty) (DIG), Inspector General Duty and Inspector General Duty shall retire when they attained the age of 60 years. For officers holding the rank of AC, DC, Second-in-command and Commandant the age of retirement is 57 years. Likewise Rule 12 of the BSF (General Duty Officers) Recruitment Rules, 2001

stipulates that officers of the BSF holding post higher than the rank of Commandant shall retire when they attained the age of 60 years and officers of other ranks will retire from service when they attained the age of 57 years.

105. In view of the above conclusion of this Court that Rule 43(a) of the CRPF Rules, 1955 as it presently stands is unconstitutional and liable to be struck down, correspondingly Rule 14 of the CRPF Group (A) General Duty Officers Recruitment Rules, 2001, Rule 8(a) of the ITBP General Duty in Group 'A' Posts Rules and Rule 12 of the BSF (General Duty Officers) Recruitment Rules, 2001 to that extent are also held to be unconstitutional and liable to be struck down.

*Scope of power to issue consequential directions*

106. The question that next arises is whether this Court can issue a mandamus to the Respondents to re-cast Rule 43(a) of the CRPF Rules and the other corresponding Rules referred to so as to substitute the figure '57' occurring therein with the figure '60'? The Respondents contend that this Court cannot and place reliance on the decision in *Manuelsons Hotels Private Limited v. State of Kerala* (supra).

107. One possible method that a constitutional Court may adopt in order to avoid striking down a statutory provision as unconstitutional is to 'read it down' in a manner that removes the element of discrimination or arbitrariness. The technique of reading down a provision to save its constitutionality has been adopted by the constitutional Courts in several instances. Illustratively, in *D.S. Nakara v. Union of India* (1983) 1 SCC 305 a Constitution Bench of the Supreme Court explained the practice of reading down statutes as an application of the doctrine of severability while answering in affirmative the question whether differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attracts Article 14 of the Constitution. Some of the observations made in that judgment are extracted below:

"66. If from the impugned memoranda the event of being in service and retiring subsequent to specified date is severed, all pensioners would be governed by the liberalised pension scheme. The pension will have to be recomputed in accordance with the provisions of the liberalised pension scheme as salaries were required to be recomputed in accordance with the recommendation of the Third Pay Commission but becoming operative from the specified date. It does therefore appear that the reading down of impugned memoranda by severing the objectionable portion would not render the liberalised pension scheme vague, unenforceable or unworkable.

67. In reading down the memoranda, is this Court legislating? Of

course 'not' When we delete basis of classification as violative of Article 14, we merely set at naught the unconstitutional portion retaining the constitutional portion.

68. We may now deal with the last submission of the learned Attorney General on the point. Said the learned Attorney-General that principle of severability cannot be applied to augment the class and to adopt his words 'severance always cuts down the scope, never enlarges it'. We are not sure whether there is any principle which inhibits the Court from striking down an unconstitutional part of a legislative action which may have the tendency to enlarge the width and coverage of the measure. Whenever classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of classification, by striking down words of limitation, the resultant effect may be of enlarging the class. In such a situation, the Court can strike down the words of limitation in an enactment. That is what is called reading down the measure. We know of no principle that 'severance' limits the scope of legislation and can never enlarge it."

108. However, in the present case, the technique of 'reading down' may not be possible to be adopted. This is because the discriminatory portion of Rule 43(a) viz., the words '57 years' is not capable of being severed as such severance would render the provision meaningless. Unless the words '57 years' are read as '60 years' the provision would not make sense. That would not be 'reading down' but 'reading into' or more accurately 'substituting' the words '57 years' with '60 years'. The decisions in *State of J&K v. A.R. Zakki* 1992 Supp (1) SCC 548 and *State of U.P. v. Mahindra and Mahindra Ltd.* (2011) 13 SCC 77 hold that a writ of mandamus cannot be issued to the executive to frame rules or regulations in the nature of subordinate legislation. This was reiterated in *Manuelsons Hotels Private Limited v. State of Kerala* (supra) where the Supreme Court explained that "This is for the reason that a court would then trespass into forbidden territory, as our Constitution recognises a broad division of powers between legislative and judicial activity." Clearly, therefore, this Court is precluded from issuing a mandamus to the Respondents to re-cast the Rules.

109. What therefore this means is that with the striking down by this Court of Rule 43(a) of the CRPF Rules and the other corresponding Rules as mentioned in para 62 above, the Respondents will have to, by way of implementation of this judgment, take consequential steps.

#### *Directions*

110. Now to the concluding part where directions are to be issued to the Respondents. It must be recalled that even during the pendency of these petitions directions were issued to the Respondents to reconsider the issue raised regarding the differential ages of retirement of

members of the concerned CAPFs and by OM dated 1<sup>st</sup> April 2013 (which has been struck down hereinabove), the MHA declined to do so.

111. The Court has in this judgment held the decision of the Respondents to prescribe a retirement age of 57 years for members of the three CAPFs i.e. the ITBP, the BSF and the CRPF of the rank of Commandant and below in terms of Rule 43(a) of the CRPF Rules, and the corresponding Rules applicable to the said three CAPFs, as against 60 years for Officers in those very CAPFs of the rank above that of Commandant to be discriminatory, violative of Articles 14 and 16 of the Constitution. Rule 43(a) of the CRPF Rules, 1955, and correspondingly Rule 14 of the CRPF Group (A) General Duty Officers Recruitment Rules, 2001, Rule 8(a) of the ITBP General Duty in Group 'A' Posts Rules and Rule 12 of the BSF (General Duty Officers) Recruitment Rules, 2001 to the extent they too prescribe a retirement age of 57 years for members of those CAPFs of rank of Commandant and below have also been struck down.

112. The Court has noted that the 7<sup>th</sup> CPC by a majority of 2 : 1, and each of the CAPFs concerned themselves, had already opined that the above element of discrimination in the matter of retirement age must be done away with. Therefore, no further directions are required in that regard.

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 be 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.

116. The petitions are disposed of in the above terms. The pending applications if any are also disposed of. No order as to costs.

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