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

*Reserved on: 9 September 2025
Pronounced on: 5 January 2026*

+ W.P.(C) 1049/2020

EX-SERVICEMEN WELFARE UNIONPetitioner

Through: Mr. Raju Ramachandran, Sr.
Advocate with Mr. Vikas Aggarwal,
Advocate

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. Rajesh Gogna, CGSC

CORAM:

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

JUDGMENT
05.01.2026

C. HARI SHANKAR, J.

1. This writ petition raises, before this Court, a very limited issue, for the second time.

2. The *lis*, and prior history of the litigation

2.1 The dispute relates to order dated 16 October 2009 issued by the Cabinet Secretariat. Personnel Below Officer Rank¹ in the Special Frontier Force² were, by the said order, extended retired benefits at par

¹ "PBORs", hereinafter

² "SFF", hereinafter



with Group Y PBORs of the Indian Army. The order was, however, made effective from 1 January 2009. In other words, only PBORs of the SFF who retired on or after 1 January 2009 were, by the said order, granted pensionary benefits at par with the Indian Army.

2.2 The petitioner-Union seeks, by this writ petition, to espouse the cause of PBORs in the SFF who retired prior to 1 January 2009. The precise claim, in the writ petition, is that the fixation of 1 January 2009 as the cut-off date for being extended the benefit of the order dated 16 October 2009 is arbitrary, and that the benefit of the order should also extend to PBORs of the SFF who retired prior to 1 January 2009.

2.3 Espousing the very same cause, the petitioner-Union had earlier approached this Court by way of WP (C) 1335/2012³. An earlier Division Bench of this Court, speaking through none less than S. Ravindra Bhat, J (as his Lordship then was), disposed of the writ petition by judgment dated 29 January 2016⁴. Para 1 of the judgment encapsulates the issue in controversy thus:

“In this petition, the grievance urged is that of cut-off date (of 01.01.2009) envisioned by the order of the Cabinet Secretariat, Central Government dated 16.10.2009 granting pension and pensionary benefits to Special Frontier Force “SFF” personnel “*at par with the Indian Army Group ‘Y’ PBORs*”. They further seek consequential directions that pre 01.01.2009 veterans/retirees of the SFF should be granted service pension in accordance with the said order of 16.10.2009, disregarding the cut-off date. In short, the petitioners’ claim that by imposing the cut-off date for the reimbursement of pensionary and other retirement benefits, the

³ **Ex-Servicemen Welfare Union v. Union of India**

⁴ **228 (2016) DLT 206 (DB)**



Central Government has discriminated against the pre 01.01.2009 retirees.”

The judgment concludes thus⁵:

“39. *This court is of the opinion that the introduction of 01.01.2009 as a cut-off in the light of the above discussion, is impermissible classification. There is no justification why this differentia is introduced, given that both pre and post 2009 SFF retirees performed the same duties and stood to benefit in terms of rank parity with Army personnel, for purposes of pensionary benefits, since 1985. Arguendo some basis for such differentia, absolutely no rationale is shown for such differentiation with the object sought to be achieved, i.e monthly payment of pension. The mere *ipse dixit* that the Union would be burdened with greater monetary liability, rings hollow if seen from the perspective that lump sum payment meant a larger one-time payout, whereas monthly payment spreads liability rather than aggregates it.*

40. *The above declaration that the introduction of the date, i.e 01.01.2009 would, however, not be dispositive of the petition. This court is also conscious that the petitioners derived a one-time benefit-of a single sum payout-and are now seeking parity with pensioners, who would not secure such payouts, but rather be entitled to monthly pension. It is also a fact that the petitioners had the benefit of the lump sum amounts, which had greater value when they received it. In the circumstances, the court is of the opinion that ends of justice would be sub-served if the respondents ensure that like in the case of regular Army personnel, upon completion of the period of commutation (15 years) in the petitioners' case, the amount commuted (i.e 45%) is restored. This would enure to the benefit of all parties, for the reason that instead of directing repayment of amounts received with some rate of interest (which would cause hardship to individuals) on the one hand and directing the Union to make full payments to the petitioners who had received lump sum payments in accordance with the prevailing scheme at rates which were somewhat higher (especially gratuity calculation) than in the case of Army personnel, - an option unforeseen by the Union and which would result in burdening it-payment of the proportion which was made in proportion to the percentage of the commuted value would be the most apt in the circumstances.*

⁵ as reported in SCC OnLine



41. In the light of the above discussion, the writ petition has to succeed; *a direction is accordingly issued to the respondents to issue a Circular to the effect that the commuted value (45% of the commuted equivalent of pension of an Indian Army personnel) would be restored to all pre-01.01.2009 retirees, upon the completion of 15 years from the date of their superannuation. This restoration shall be made effective from the date of the scheme, i.e. 01.01.2009 and given to all those entitled to it, in accordance with the records available with the respondents, within 4 months from today.* The SFF personnel would be entitled to the arrears, however, from 01.12.2011, i.e. proximate to the date of the rejection of the petitioners' representation, leading to filing of the writ petition. This Court is aware that even according to the respondents, approximately 5727 personnel were discharged from the SFF who had rendered more than 15 years of service in SFF since its raising date, as on 31.12.2008. The writ petition is allowed in these terms. No costs.”

(Emphasis supplied)

2.4 SLP (C) 20856/2016, preferred by the Union of India against the above judgment dated 29 January 2016, was dismissed by the Supreme Court on 15 November 2016. Unquestionably, therefore, the judgment dated 29 January 2016 has attained finality.

2.5 Alleging that the judgment dated 29 January 2016 had not been complied with, the petitioner-Union filed Cont Cas (C) 320/2017⁶, seeking initiation of action against the respondents for failing to comply with the judgment of this Court.

2.6 During the pendency of the said Contempt Petition, the Cabinet Secretariat issued two orders, dated 24 November 2017 and 22 February 2018, purportedly by way of compliance with the directions contained in the judgment dated 29 January 2016 *supra* in WP (C) 1335/2012. The two orders were virtually identical, the second having

⁶ **Ex-Servicemen Welfare Union v. Pradeep Kumar Sinha & ors**



been probably issued after obtaining the approval of the Finance Minister to the first order. We, therefore, deem it necessary only to reproduce the relevant paragraphs from the second order dated 22 February 2018, thus:

“No. 1/43/2009-EA1-315
Government of India
Cabinet Secretariat (SR)

Room No. 1001, B-1 Wing, 10th Floor,
Pt. Deen Dayal Antyodaya Bhawan
CGO Complex, Lodi Road,
New Delhi-110003, the

ORDER

22 FEB 2018

Subject:- Implementation of the judgement dated 29.01.2016 of Hon'ble High Court of Delhi in CWP No. 1335 of 2012 in the Ex-Servicemen Welfare Union Vs UOI and others.

In compliance of the order dated 29.01.2016 of the Hon'ble High Court and subsequent dismissal of the SLP and Review Petition filed by Cabinet Secretariat, Govt. of India by the Hon'ble Supreme Court, sanction is hereby accorded to extend the below mentioned benefit to pre 01.01.2009 SFF retirees:

"The commuted value (45% of the commuted equivalent of pension of an Indian Army personnel) would be restored to all pre 01.01.2009 retirees of SFF (PBORs), upon completion of 15 years from the date of their superannuation/retirement. This restoration shall be made effective from the date of scheme, i.e. 01.01.2009 and given to all those entitled to it, in accordance with the records available with SFF. The SFF personnel would be entitled to arrears, however from 01.12.2011, i.e. proximate to the date of the rejection of the petitioner's representation, leading to filling of the writ petition or from the date they complete 15 years from the date of their superannuation/retirement whichever is later."

2. The benefit will be extended to the pre 01.01.2009 retirees of SFF who were recipient of terminal lump sum payment equivalent to the commuted value of 45% of service pension admissible to the Army personnel



3. The pension restored shall be 45% of the equivalent of pension of an Indian Army personnel worked out on the date of retirement of the pensioner.”

Thus, the orders issued by the Cabinet Secretariat, towards compliance with the directions contained in the judgment dated 29 January 2016 of this Court, restored, to pre-1 January 2009 retiree PBORs of the SFF, *45% of the commuted value of the pension available to personnel of the Indian Army*, on completion of 15 years from the date of their superannuation, with arrears from 1 December 2011.

2.7 The case of the petitioner-Union is that the orders dated 24 November 2017 and 22 February 2018 breached the directions contained in the judgment dated 29 January 2016 of this Court in WP (C) 1335/2012. According to the petitioner, pre-1 January 2009 PBOR retirees of the SFF would be entitled, as per the judgment dated 29 January 2016, to 100% of the pension payable to Indian Army personnel. This is the precise controversy before us.

2.8 Cont Cas (C) 320/2017 came up for consideration before this Court on 20 August 2019. It was contended, on behalf of the contemnors, that the orders dated 24 November 2017⁷ and 22 February 2018, had been issued by the Cabinet Secretariat by way of compliance with the judgment dated 29 January 2016. The petitioner-Union contended, per contra, that its members were entitled to be restored 100% of the commuted pension of personnel of the Indian Army. This Court felt it appropriate for the petitioner-Union to agitate

⁷ perhaps wrongly noted, in the order of this Court as "August 22, 2017"



this because by means of a fresh writ petition, and did not deem it necessary to continue the contempt proceedings any further. They were, therefore, closed. The following paragraph, from the order dated 20 August 2019 is, however, significant:

“At this stage, learned counsel appearing for the petitioner submits that the members of the petitioner Union are entitled to restoration of 100% of the commuted equivalent of pension of an Indian Army Personnel. *The said plea of the learned counsel for the petitioner surely does not arise from the order of which non-compliance is alleged.* Appropriate for the petitioner Union is to file a separate writ petition to make such claim.”

(Emphasis supplied)

It appears, therefore, that the Court, hearing the Contempt Petition, was not of the view that right to restoration of 100% of the commuted equivalent of the pension available to personnel of the Indian Army, flowed, from the judgment dated 29 January 2016 in WP (C) 1335/2012, in favour of pre-1 January 2009 PBOR retirees of the SFF,. Of course, this observation, having been made for disposal of a contempt petition, cannot be regarded as binding either on the parties or on this Court in the present case.

2.9 Apparently taking a cue from the suggestion contained in the order dated 20 August 2019 of this Court in Cont Cas (C) 320/2017, the petitioner-Union has instituted the present writ petition, asserting the right of the pre-1 October 2009 PBOR retirees of the SFF to 100% of the commuted value of the pension payable to Indian Army personnel on completion of 15 years after superannuation, instead of 45%.



2.10 Though, ideally, the petitioners ought to have challenged the Orders dated 24 November 2017 and 22 February 2018, which had been issued by the Cabinet Secretariat, we have nonetheless examined the issue of the entitlement of the petitioners to what they seek.

3. We have heard Mr. Raju Ramachandran, learned Senior Counsel for the petitioner-Union and Mr. Rajesh Gogna, learned CGSC for the respondent, at length. Learned Counsel have also tendered written submissions.

4. Issue before us

Quite clearly, we are only required to interpret and understand the judgment dated 29 January 2016 of the Division Bench of this Court in WP (C) 1335/2012. The SLP preferred against the said judgment having been dismissed, we are saved the exercise of examining the issue *de novo*. There is, therefore, no *tabula rasa* before us.

5. A prefatory history

5.1 Before addressing the actual issue in controversy, it is necessary to refer, briefly, to the history of the litigation, though it stands captured in the judgment dated 29 January 2016 of this Court. Nonetheless, we may briefly advert thereto.

5.2 The SFF is a force which was created to deal with the Chinese aggression in 1962. It is initially comprised only of Tibetans. Later,



Nepali Gurkhas were also inducted in the SFF, starting 1965. The SFF was not treated as part of the Indian Army.

5.3 *Vide* Memorandum dated 26 August 1971, the Central Government entitled members of the SFF to gratuity, at the rate of one month's salary for each completed year of service, for those who had served for a minimum of two years. *Vide* a subsequent policy, contained in Cabinet Secretariat letter dated 20 November 1985, the terminal benefits were enhanced to 45% of the commuted value of service pension admissible to Indian Army personnel, to members of the SFF who had completed 20 years of service. This was in addition to the retired benefits introduced by the earlier Memorandum dated 26 August 1971. The lump-sum pensionary benefits payable to members of the SFF who had completed 20 years of service was further enhanced by order dated 23 May 1996 of the Cabinet Secretariat, by including, therein, dearness allowance and interim relief, for calculating the commuted value of pension, apart from disability benefits to persons who had suffered war injuries or injuries attributable to service in the SFF.

5.4 Thus far, there was no controversy.

5.5 The dispute germinates from Cabinet Secretariat order dated 16 October 2009. By this order, PBORs of the SFF, who had completed 20 years of service, were made entitled to pensionary and other benefits as applicable to corresponding ranks of Group Y PBORs in the Indian Army. However, this benefit was made applicable only with



effect from 1 January 2009, so that its reach did not extend to PBORs in the SFF who had retired prior to that date.

6. It is this distinction that the petitioner-Union seeks to call into question.

7. Rival Contentions

7.1 Mr. Ramachandran has emphasized paras 34 to 38 of the judgment dated 29 January 2016, which read as under:

“34. All the decisions of the Supreme Court, right from *Nakara*⁸ emphasize that a distinction between beneficiaries of a new pension scheme and existing pensioners has to be kept in mind. If the benefit introduced is an improvement of an existing scheme, it cannot exclude those who retired earlier. The Supreme Court, in *Krishena Kumar v. Union of India*⁹ emphasized the distinction between pensioners and CPF retirees. However, the formulation in *Nakara* that benefits of an improved or liberalized scheme can be given to earlier retirees, was not disturbed. That was a Constitution bench decision. In *Indian Ex-Servicemen League*¹⁰ - another Constitution Bench decision, the same distinction between a new scheme and a mere improvement was maintained. Yet another Constitution Bench iterated the same enunciation of law when it stated, in *All India Reserve Bank Employees Association*¹¹ that a “*distinction between liberalisation of an existing benefit and introduction of a totally new scheme*” is to be kept in mind, while considering grievances stemming from cut-off dates that deprive pension benefits.

35. Does the impugned order introduce a new scheme, or is it an improvement of an existing scheme, which, but for the cut-off date, would have covered the members of the petitioner association who left employment before 01.01.2009. If one sees the history and chronology of the manner in which pensionary or terminal benefits were introduced, two distinct phases are noticeable. The first phase was between 1971 and 1985. During this period, there

⁸ *D.S. Nakara v. Union of India*, (1983) 1 SCC 305

⁹ (1990) 4 SCC 207

¹⁰ *Indian Ex-Services League v. Union of India*, (1991) 2 SCC 104

¹¹ *All India Reserve Bank Retired Officers Assn v. Union of India*, 1992 Supp (1) SCC 664



was no attempt to grant any but the bare minimum benefits to the class of employees that the petitioner represents. The benefits were only a months' pay for each completed year of service at the end of the period of service. This changed significantly with the distribution of benefits according to the order of 1985. This proclaimed the second phase where not only was a specific reference made to benefits vis-à-vis Indian Army personnel, even rank parity was declared for the purpose. What was granted however, was not pension, but a lump sum amount equivalent to 45% of the commuted value of pension that would be payable to an Army personnel ("commuted value of 45% of service pension admissible to the Army personnel"). Even the head of expenditure is as follows:

"The expenditure involved in payment of the lumpsum amount as per para I above, will be debited to the Major Head "266 - Pension and other retirement benefits commuted value of pension "whereas the expenditure on payment of service gratuity in terms of this Secretariat letter dated 26th August, 1971, will be classified to the same Major Head, i.e., "266 - Pension and other retirement benefits - Gratuities."

36. There was an improvement or enhancement of the benefits, with increase in the rates as a result in the inclusion of certain other components for calculating the lump sum amounts, in 1996. It was in this background that the impugned order granted complete parity between Army personnel and those leaving the service of the Indian Government, but employed in the border from amongst Nepali and Tibetan nationals, after 01.01.2009.

37. It is not disputed-indeed the Union admits it as much - that SFF personnel have made "*outstanding contribution*" to the nation's defense and security²³. Their service and sacrifice is of the same order as Indian nationals who are members of the Indian Army. They do not claim to belong to the Indian Army; what they however demand is that retirement benefits and pension given to members of the SFF who retire after 01.01.2009 too should be given to them. Both these categories clearly form one class, i.e. former SFF personnel. In fact, in all likelihood most of them served together. The fact that the long standing demand of SFF personnel for parity with Indian Army personnel was conceded and given effect later, is what is impeding the parity implicitly acknowledged by the impugned order.

38. The pre-existing scheme of retirement benefits entailed release of amounts *with reference to the commuted value of what was payable to Indian Army personnel*. In essence the earlier order



of 1985 ordained the parity, which had been lacking. What however, distinguished that *regime* from the present one is the *mode of disbursement*. The Union chose one mode, i.e disbursement of a lump sum amount. But significantly, what was guaranteed was with reference to 45% of what the retired Indian Army personnel was entitled to receive as the commuted value of his pension. If the commuted pension value was Rs. 1000, a SFF retiree was entitled to Rs. 450/-. In the Court's opinion, the Union's argument that the impugned scheme introduces a new benefit altogether is without merit. The parity in rank between Army personnel and SFF personnel was brought about in 1985 itself; that parity remains and endures. That parity would ordinarily have meant disbursement of pension at par with what Army personnel were entitled to; however, for its own convenience the Union sought to make onetime payment choosing not to make out any further payouts. The situation improved, when in 1996 various elements apart from the pay alone were included for calculation of the lump sum amounts. However, the status of SFF retirees as those entitled to treatment similar to Army personnel continued. The new scheme is only an improvement, if viewed from this perspective, because it enlarges and extends the benefits - much like the 1996 memorandum and includes a whole series of other monetary elements. Besides, the mode of payout (from lump sum to monthly pension) is changed. However, the essential parity of status and entitlement based on that status, continues. In other words, the introduction of the scheme in 2009 is not a new one, but would really be a liberalized one extending the benefits of the existing one; doing away with lump sum payments on the one hand, and incurring the liability of monthly payouts.”

7.2 Mr. Ramachandran's contention is that the judgment dated 29 January 2016, of this Court, has to be read as a whole. So read, he submits that the order becomes unambiguous. This Court has, in the said judgment, held that (i) there is a distinction between introducing a new pension scheme and improving an existing scheme, (ii) the benefits of an improved or liberalised scheme have also to be extended to persons who retired prior to the cut-off date, (iii) the order dated 16 October 2009 did not introduce a new scheme, but only improved the existing scheme, and (iv) the stipulation of 1 January 2009 as a cut-off date in the said order was, therefore, in the nature of



classification, with no rationale discernible for the differentiation with the object sought to be achieved, which was monthly payment of pension. Following these findings, this Court has, Mr. Ramachandran emphasises, held that the writ petition filed by the petitioner-Union *was required to succeed*. The only sequitur, he submits, can be that PBORs of the SFF who retired prior to 1 January 2009 would be entitled to retirement benefits at par with personnel of the Indian Army, albeit after they completed 15 years post retirement. Restricting the amount payable to them to 45% of the commuted value of the pension payable to personnel in the Indian Army, even after they had completed 15 years post retirement, he submits, would negate, and render otiose and redundant, the judgment dated 29 January 2016, as well as its intent and purpose. If the consequence of that judgment is as the respondents content, Mr. Ramachandran submits that the writ petition which stands decided by the said judgment, i.e. WP (C) 1335/2012, would not succeed, but would fail, which would be contrary to the express findings and decision in the concluding paragraph of the judgment.

7.3 Mr. Gogna contends, per contra, that para 40 of the judgment dated 29 January 2016 is dispositive of the controversy. He submits that the Division Bench, in para 40, struck an equitable balance, keeping in mind the fact that pre-1 January 2009 PBOR retirees of the SFF have already been paid 45% of the commuted value of the pension payable to Indian Army personnel long back, and it would be inequitable to require them to return the amount. It was for this reason that they were treated as entitled to restoration of the said payment of



45%, after completing 15 years post retirement. He submits that any direction to disburse, to pre-1 January 2009 PBOR retirees of the SFF, 100% of the pension payable to the Indian Army personnel after completing 15 years would be in the teeth of para 36 of the judgment of this Court.

8. Analysis and Findings

8.1 Having heard learned Counsel and addressed ourselves to the controversy, we are unable to agree with the submissions of Mr. Ramachandran.

8.2 No detailed legal analysis is necessary, as that exercise is already been undertaken by the coordinate Division Bench while rendering judgment dated 29 January 2016 *supra* in WP (C) 1335/2012.

8.3 The manner in which Mr. Ramachandran would seek to read the said judgment would render, to our mind, para 40 thereof, entirely redundant.

8.4 The Division Bench has, probably in order to obviate such confusion, commenced para 40 with the clarification that the declaration, in para 39, that the fixation of the cut-off date of 1 January 2009, in the order dated 16 October 2009 was impermissible, *was not dispositive of the petition*. The purpose and tenor of para 40 is unmistakable. Grant, to all pre-1 January 2009 PBOR retirees of the SFF, of all pensionary benefits available to Indian Army personnel,



even if after they had completed 15 years post retirement, would result in an inequitable balance between such retirees and those who retired after 1 January 2009. The latter category of retirees would not have had the benefit of the lump sum payment of 45% of the commuted value of the pension payable to parallel ranks in the Indian Army, as had already been earned by those who retired prior to 1 January 2009. Extending, to SFF PBORs retired prior to 1 January 2009, the entire pensionary benefits available to parallel Indian Army personnel, as was extended by the order dated 16 October 2009, would have required such pre-1 January 2009 retirees to be directed, first, to disgorge the lump-sum 45% benefit which they had already earned consequent to the orders dated 20 November 1985 and 23 May 1996 *supra*. The Division Bench felt this to be inequitable and unfair. It was, therefore, to strike an equitable balance between pre-1 January 2009 PBOR retirees of the SFF, who had already been paid 45% of the commuted value of the pension payable to parallel ranks in the Indian Army as a lump sum payment much earlier and would, therefore, also have earned interest on the said amount, and those who would retire after 1 January 2009 and would not, therefore, be the beneficiary of such payment, that the Division Bench directed that pre-1 January 2009 retirees would not have to return the lump-sum payment already received by them under the earlier orders, but would be entitled, on completion of 15 years post-retirement, *to be restored* the payment of 45% of the commuted value of pension payable to parallel ranks in the Indian Army.



8.5 The use of the words “restored” and “restoration”, in para 41 of the judgment dated 29 January 2016, clears all doubts. At the end of 15 years, post retirement, PBORs of the SFF, who retired prior to 1 January 2009, would be entitled only to be restored the benefit of 45% of the commuted value of the pension payable to corresponding ranks in the Indian Army.

8.6 Any direction to the respondent, to pay, to such pre-1 January 2009 retirees, 100% of the pensionary benefits payable to corresponding ranks in the Indian Army, would require us to rewrite paras 40 and 41, particularly para 41, of the judgment dated 29 January 2016. That, quite clearly, we cannot do.

Conclusion

9. We are, therefore, of the clear view that, by operation of the judgment dated 29 January 2016, pre-1 January 2009 PBOR retirees of the SFF would be entitled

- (i) to retain the benefit of 45% of the commuted value of the pension payable to corresponding ranks in the Indian Army, as had become available to them consequent to the earlier orders dated 20 January 1985 and 23 May 1996 of the Cabinet Secretariat,
- (ii) on completion of 15 years from the date of their retirement, to restoration of the said payment, with effect from 1 January 2009, and
- (iii) to arrears with effect from 1 December 2011.



2026:DHC:4-DB



10. The writ petition stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

JANUARY 05, 2026/aky/yg