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Uoi vs V.P.Sharma

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Court : Delhi

Decided On : Mar-23-2026

Judge : Hon'Ble Mr. Justice Amit Mahajan,Hon'Ble Mr. Justice Anil Kshetarpal

Appeal No. : W.P.(C)/1786/2004

Appellant : UOI

Respondent : V.P.Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment reserved on: 16.02.2026

Judgment pronounced on: 23.03.2026

Judgment uploaded on: 23.03.2026

+ W.P. (C) 980/2004 and W.P. (C) 981-982/2004 UOI & ORS. .....Petitioners Through: Ms. Pratima N Lakra, CGSC along with Mr. Shailendra Kumar Mishra and Mr. Abhishek Sharma, Advs.

versus

B.N. CHAUBEY & ORS. .....Respondents Through: Mr. Nikhil Palli and Ms. Niyati Razdan, Advs. for R-2. + W.P. (C) 17658/2004 and W.P.(C) 17659-17660/2004 THE UOI & ORS. .....Petitioners Through: Ms. Anjana Gosain and Ms. Shreya Manjari, Advs.

versus

BADRI PRASAD PRAJAPATI .....Respondent Through: Mr. Nikhil Palli & Ms. Niyati Razdan, Advs. + W.P. (C) 1786/2004 UOI .....Petitioner Through: Ms. Arunima Dwivedi, CGSC along with Ms. Himanshi Singh & Ms. Monalisha Pradhan Advs.

versus

V.P. SHARMA .....Respondent Through: Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE AMIT MAHAJAN

JUDGMENT

ANIL KSHETARPAL, J.:

1. The present batch of three petitions assail the correctness of

> judgments and orders passed by the Central Administrative Tribunal, Principal Bench, New Delhi [hereinafter referred to as Tribunal] whereby the lis concerning the age of superannuation of the Respondents was adjudicated. The controversy centres around their retirement at the age of 57 years instead of 60 years upon their re- employment in the Air Wing of the Border Security Force [hereinafter referred to as AW-BSF], on the

premise that the posts held by them were civil/non-combatised in nature.

2. Since all the petitions arise from the same lis and turn upon

overlapping issues; they are with the consent of learned counsel for the respective parties, being disposed of by this consolidated judgment. However, for the sake of convenience, the W.P.(C) decision in all three petitions. FACTUAL BACKGROUND:

3. In order to appreciate the controversy involved in the present petition, it would be apposite to briefly notice the relevant factual background.

4. The Respondent, Sh. Badri Prasad Prajapati, was re-employed Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters Page 2 of 24

on Direct Entry as Sub-Inspector Junior Aircraft Mechanic (SI-JAM) in AW-BSF on 13.12.1991 against the pay scale of Rs. 1400-2300/-, following his discharge from the Air Force on 31.08.1990. Subsequently, the Petitioner issued an order, thereby highlighting that the Respondent would stand superannuated from the post of JAM w.e.f. 31.07.2003, upon attaining the age of 57 years. Aggrieved by the aforesaid decision of the Petitioner, the Respondent filed an Original Application (OA), contending inter alia, that the post held by him was civil in nature, therefore, the applicable age of superannuation was 60 years and not 57 years.

CONTENTIONS OF THE PARTIES BEFORE THE TRIBUNAL:

5. The Respondent herein sought setting aside the order of

discharge at the age of 57 years on the following two grounds. Firstly, in accordance with the provisions of Border Security Force (Air Wing, non-combatised Group C and D posts) Recruitment Rules, 1996 [hereinafter referred to as Rules of 1996], the personnel re-employed from the Armed Forces against such civilian posts are entitled to continue in service up to

the age of superannuation applicable to civilian employees, i.e., 60 years. Secondly, the offer of appointment indicates that the post of JAM is non-combatised, and in the absence of any Presidential sanction converting it into a combatised post, the Petitioners cannot treat it otherwise. Thirdly, reliance was placed on the previous decisions of the Tribunal in O.A. 946/2003 captioned AV Balachandran v UOI, OA No. 837/2003 captioned BN Chaubey v UOI and OA No. 611/2003 captioned VP Sharma v UOI, to argue

that these decisions squarely cover the matter at hand, since, in the aforementioned cases, the Tribunal against the similar factual matrix

held that the incumbents holding non-combatised posts are to be

treated as civilian employees and are entitled to superannuate at the age of 60 years.

6. Whereas, the Petitioner herein, at the outset challenged the

jurisdiction of the Tribunal, on the ground that the Respondent is a member of the BSF and the post held by the Respondent is combatised in nature, therefore the Tribunal lacks the jurisdiction to adjudicate the same. On merits of the case, it was argued that the Respondent, having availed the benefits attendant to a combatised post, including higher pay, promotional prospects, and ancillary allowances such as ration money, uniform, and washing allowances, cannot subsequently disclaim the corresponding service conditions, including the prescribed age of superannuation of 57 years. Pithily put, it was the case of the Petitioner that a government servant cannot be permitted to approbate and reprobate by selectively claiming the advantages of both combatised and non-combatised streams. Controverting the reliance placed on OA 946/2003 (Supra) by the Respondent, it was argued that the said decision already stands challenged before this Court and is pending

adjudication.

FINDINGS OF THE TRIBUNAL:

7. With respect to objection pertaining to the jurisdiction of the Tribunal, the same was summarily rejected by placing reliance on the Tribunals order dated 23.01.2003 in OA No. 946/2003 (Supra), Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters Page 4 of 24

wherein, on analogous facts, the Tribunal categorically held that it possesses jurisdiction to adjudicate disputes of this nature involving re-employed Armed Forces personnel in the Border Security Force (BSF).

8. With regard to the contention that the employee cannot

simultaneously claim the benefits of both combatised and non-combatised cadres, the Tribunal held that such an assertion could not be accepted in the absence of support from the governing Recruitment Rules. Upon examining the applicable rules, the Tribunal found that the Rules unequivocally provide that re-employed Armed Forces personnel in the BSF shall continue in service up to the age of superannuation with reference to civil posts.

9. Further, it was also held that the Rules stipulate that personnel

on deputation would continue under deputation terms until their release from the Armed Forces and thereafter remain on re- employment up to the age of superannuation applicable to civilian posts. In view of the aforesaid discussion and relying upon its earlier decisions on the subject, the Tribunal by way of Order dated 12.05.2004 [hereinafter referred to as Impugned Order/IO] allowed the OA filed by the Respondent, thereby directing the Petitioner to permit him to continue service until the age of superannuation applicable to civilian posts, i.e., 60 years. It is this interplay between form and substance, designation and reality, which this Court is sought to resolve.

10. Before this Court proceeds to engage with the rival contentions Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters Page 5 of 24

urged at the Bar, it would be appropriate to first advert to the relevant extracts of the Rules and the communications issued by the Government from time to time, together with the appointment letter of the Respondent, which collectively form the bedrock of the submissions advanced by the parties. The same are reproduced hereunder:

Reserve and Auxiliary Air Force Act, 1952 25. Liability to be called up for service. Every member of an Air Force Reserve or the Auxiliary Air Force shall, during the period of his service, be liable to be called up-

(a) for training for such period as may be prescribed and for medical examination,

(b) for service in aid of the civil power,

(c) for Air Force service in India or abroad.

BSF (Seniority, Promotion and Superannuation of Officers) Rules 1978 12. Superannuation- The officer holding posts higher than that of a rank Commandants shall retire from service on the afternoon of the last day of the month in which they attain the age of sixty years; and officers of other ranks shall retire from service on the afternoon of the last day of the month in which they attain the age of fifty-seven years; Provided that an officer whose date of birth is the first of a month shall retire from service till the afternoon of the last day of the preceding month on attaining the age of sixty years or fifty seven years, as the case may be.

Letter dated 19.09.1989 issued by Ministry of Home Affairs: I am directed to convey the sanction of the President to the combatisation of ministerial and other civilian posts in the headquarters of the Dte. General Border Security Force (including Pay and Accounts Division, (illegible) Centre, Airwing and other wings/cells) and BSF Hospitals under BSF ACT, 1968

and BSF Rules, 1969 with immediate effect subject to the following terms and conditions :-

xxxxx xxxxx xxxxx xxxxx xxxxx

(c) All future appointment/recruitments to the vacancies in the various

categories of posts combatised by this sanction shall be in the combatised ranks as per the recruitment rules. xxxxx xxxxx xxxxx xxxxx xxxxx STATEMENT INDICATING THE EXISTING POSTS IN BSF HQRS AND BSF HOSPITALS AND THE EQUIVALENT RANK ASSIGNED TO THEM ON COMBATISAD COMBATISATION Designation of existing Equivalent Rank on posts combatisation (Scale of pay) (Scale of pay) BSF HQRS AIRWING xxxxx xxxxx xxxxx xxxxx xxxxx

25. Sr. Aircraft Mechanic Sub-Inspector (Mech) (Rs. 1400-2300) (Rs. 1400-2300) xxxxx xxxxx xxxxx xxxxx xxxxx

27. Jr. Mechanic ASI (Mech) (Rs. 1320-2040) (Rs. 1320-2040)

Appointment letter of the Respondent dated 21.10.1991 I am directed to convey that you have been approved for appointment to the post of Junior Aircraft Mechanic, in the pay scale of Rs. 1400-2300. Schedule to Recruitment Rules, 1996 JUNIOR AIRCRAFT MECHANIC

1. Name of the post :: Junior Aircraft Mechanic

2. Nos of Posts :: 03* (Three)(1996) (*Subject to variation dependent on workload)

3. Classification :: Genral Central Service Group C, Non-Gazetted Non- Ministerial.

4. Scale of Pay :: Rs. 1320-30-1560-40-EB- 2040/- xxxxx xxxxx xxxxx xxxxx xxxxx

For Ex-Servicemen:- Transfer on deputation/re-employment. The Armed Force personnel due to retire or who are to be transferred to reserve within a period of one year and having requisite experience and qualification specified shall also be considered. Such persons shall be given deputation terms upto the date on which they are due for release from the Armed Forces, thereafter, they may be continued on re-employment upto age of superannuation with reference to the civil posts.

Schedule to Recruitment Rules, 1997

1. Name of the post :: Junior Aircraft Mechanic (Sub Inspector)

2. Nos of Posts :: 25* (Twenty five)(1997) (*Subject to variation dependent on workload)

3. Classification :: General Centra Service Group C, Non-Gazetted Non-Ministerial.

4. Scale of Pay :: Rs. 4500-125-7000 xxxxx xxxxx xxxxx xxxxx xxxxx

12. In case of recruitment by Promotion:

promotion/deputation/transfer Assistant Aircraft Mechanic grades from which with eight years regular promotion/deputation/transfer to services in the grade. be made Transfer on deputation/transfer: Officials below 35 years age Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters Page 8 of 24

under Central Government/ State Government/Public Undertaking holding analogous posts or in the grade of Rs.4000-100-6000 with 5 years service in the grade and possessing qualifications prescribed under column 8. (Period of deputation including period of deputation in another ex-cadre post held immediately preceding this appointment in same or some other organisation department shall ordinarily not exceed three years). (The departmental officers who are in the direct line of promotion shall not be eligible for consideration for appointment on

deputation, similarly deputationists shall not be eligible for consideration for appointment by promotion). Re-employment :- The Armed force personnel due to retire or who are to be transferred to reserve within a perios of one year and possessing qualification prescribed under column 8 shall be considered to transfer on deputation. Such persons shall be given deputation term upto the date of which they are due for release from the Armed Forces, thereafter they may be continued on re-employment (Re-employment upto the age of superannuation with reference to civil posts)

Circular dated 22.01.1999 issued by the Ministry of Home Affairs Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters Page 9 of 24

Consequent upon enhancement of retirement age of the Members of Para Military Forces by the Central Government, the Defence personnel re-employed in BSF will retire on attaining the superannuation age as under except in the case of Defence personnel re-employed in BSF Law cadre, Medical cadre and veterinarians in whose case the retirement age would be 60 years irrespective of rank they are holding in respective cadres:- S No. Rank Revised superannuation age

01. Upto the rank of COMDT 57 years

02. ADIG and above 60 years CONTENTION OF THE PARTIES BEFORE THIS COURT:

11. Learned Counsel for the Petitioner, while controverting the observations made by the Tribunal, has made the following submissions-

11.1 It has been reiterated that the benefits and conditions attached to combatised posts are materially distinct and more advantageous than those applicable to civilian posts. It has been stated that the combatised posts are provided with higher pay scales and additional allowances over their civilian counterparts. To establish the aforestated, it has been stated

that the pay scale for the post of Junior Aircraft Mechanic (JAM) in the civilian cadre is Rs. 1320-2040 (revised to Rs. 4000-6000), whereas the corresponding combatised post commands a higher pay scale of Rs. 1400-2300 (revised to Rs. 5500-9000).

11.2 It has been argued that all the posts in AW-BSF have been duly combatised, with presidential sanction formally conveyed by way of letter dated 19.09.1989 [hereinafter referred to as Sanction of 1989]. Further reliance is also placed on circular dated 29.01.1999 issued by Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters Page 10 of 24 Ministry of Home Affairs, to establish that the retirement age for Defence personnel re-employed in BSF upto the rank of Commandant shall be 57 years.

11.3 The Petitioner has submitted that in the year 1991, the Government sanctioned 200 posts across various categories in the AW-BSF, including posts for JAM. While conveying the presidential sanction for creation of these posts vide Circular dated 18.6.1991 [hereinafter referred to as Sanction of 1991], it was not explicitly stated that these posts were civilian in nature. It has been argued that this omission is consistent with the established practice, whereby the creation of additional posts in combatised cadres does not require a fresh presidential sanction, as it is presumed that all new posts fall within the combatised stream.

11.4 Conversely, the creation or conversion of civilian posts into combatised posts invariably necessitates and receives a separate presidential sanction, as was the case with the order dated 19.09.1989. It is contended that since the post against which the Respondent was appointed was sanctioned subsequent to the Sanction of 1989, it follows that such posts cannot be characterized as civilian posts. Consequently, the Respondent is precluded from claiming the retirement benefits applicable to civilian posts.

11.5 Learned counsel has further placed reliance upon Rule 12 of BSF (Seniority, Promotion and Superannuation of Officers) Rules, 1978 [hereinafter referred to as Rules of 1978] to contend that officers holding ranks other than that of Commandant are required to Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters Page 11 of 24

retire from service upon attaining the age of 57 years. In aid of the said submission, reliance has also been placed upon a circular dated 29.01.1999 issued by the Ministry of Home Affairs, which, according to the Petitioners, clarifies that the age of retirement of re-employed defence personnel up to the rank of Commandant is 57 years.

11.6 Reliance has also been placed on Section 25 of the Reserve and Auxiliary Air Force Act, 1952 to submit that a person enrolled in the Reserve remains liable to be called up for training for a prescribed duration. It has been argued that the very object underlying enrolment in the Reserve is not to rehabilitate, redeploy, or re-employ such personnel in any other service, but rather to maintain their availability for training and service, as and when required. In this backdrop, it has been contended that the Respondents have erroneously conflated the concept of reserve enrolment with that of re-employment, even though the two operate in distinct and independent spheres, and enrolment in the Reserve bears no nexus with re-employment.

11.7 While elucidating the contours of the expression re- employment, it has been urged that, for the purposes of the present case, the concept may broadly be understood in two distinct categories. The first pertains to the re-employment of an ex- serviceman through direct entry in terms of the Ex-Servicemen (Re- employment in Central Civil Services and Posts) Rules, 1979 [hereinafter referred to as Rules of 1979]. The second category concerns cases where personnel, prior to their retirement or enrolment in the Reserve while still in service, are deputed to other posts

in accordance with the applicable Recruitment Rules. It is the categorical

 submission of learned counsel that the present case squarely falls within the ambit of the first category.

11.8 Reliance has been placed on the judgment of this Court in CW argue that the Petitioner therein having availed himself of the enhanced monetary benefits and service conditions of the combatised stream, will be governed by Rule 43 of the Central Reserved Police Force Rules, 1955 as applicable to the BSF and will superannuate at the age of 57 years.

11.9 Further reinforcing the aforesaid stance, a reliance has also been placed on the judgment of Division Bench of the Rajasthan High Court in Civil Special Appeal No.1127/2000, decided on 16.01.2001, wherein it has been held that once an employee has enjoyed all the benefits attendant to service in a combatised post, he cannot, at the fag end of his service, contend that he ought to be treated as a non- combatised employee to claim more favourable terms of retirement.

12. Per contra, learned counsels for the Respondent, while challenging the early retirement order issued by the Petitioner, have opposed the petitions filed before this Court, by submitting that the

order passed by the Tribunal does not call for any interference by this

Court and thus the present petitions deserve to be dismissed.

13. In addition, it is their case that both the Rules of 1996 and the

BSF (Air Wing Non-Gazetted (Combatised) Group C Posts) Recruitment Rules, 1997 [hereinafter referred to as Rules of 1997], expressly provide for continuation of re-employed Armed Forces

connected matters Page 13 of 24 personnel upto the civilian retirement age. As such, since the Respondent was re-employed prior to the Rules of 1996, when the post was non-combatised, the subsequent Rules of 1997, which classified the post as combatised are inapplicable to them. ANALYSIS AND REASONING OF THIS COURT:

14. The present petition brings before this Court not a mere dispute

> about three additional years of service, but a deeper question that goes to the heart of institutional structure and discipline within an armed force of the Union: who is a soldier and who is a civilian within the BSF, and by what legal alchemy may one who has lived and served as the former, at the twilight of his tenure, seek to be treated as the latter.

15. Therefore, as already enumerated the principal question that

arise for our determination is whether the Respondent, who was appointed as JAM in the AW-BSF, was holding a combatised post or a civilian/non-combatised post, and consequently whether the applicable age of superannuation would be 57 years or 60 years.

16. In order to resolve the controversy that lies at the heart of the

> present petition, it becomes necessary to traverse the legal landscape upon which the Tribunal founded its conclusions. In our considered view, the answer must emerge from a careful scrutiny of the Presidential sanction dated 19.09.1989, the true nature of the Respondents appointment and the service conditions that governed his tenure and the statutory framework embodied in the Rules of 1996 and 1997.

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17. It is only by examining these elements in their proper perspective that we may discern the true character of the post in question and determine the age of superannuation that lawfully attaches to it.

18. At the outset, we may highlight that the BSF is not merely a

department of the Government; it is an armed force of the Union constituted and regulated under a special statute, the BSF Act, 1968, with the BSF Rules, 1969 providing a complete code for the discipline, ranks, promotions and superannuation of its combatised members.

19. The Rules of 1978, framed in furtherance of this statutory

> design, draw a clear, normative line that the officers above the rank of Commandant retire at 60 years of age, whereas those of other ranks, including Sub-Inspectors, retire at the age of 57 years. It may be noted that, this clear distinction is not an arbitrary monologue rather it is an attempt to create a legislative balance between the demands of a uniformed service, the imperatives of fitness and deployability and the expectations of tenure.

20. The aforesaid attempt to create a balance, further finds support

> from the Circular dated 22.01.1999 issued by Ministry of Home Affairs (MHA), which echoes and reinforces the aforementioned architecture. It highlights that consequent upon enhancement of retirement age in the Central Para-Military Forces, the Defence personnel re-employed in BSF upto the rank of Commandant shall retire at 57 years, with only Additional Director Generals and above

 retiring at the age of 60 years. The threefold structure: combatant status, rank, and a lower age of retirement, is thus woven consistently through statute, rules and executive instructions.

21. Against this statutory backdrop, the Sanction of 1989 assumed

determinative significance. By the said communication the MHA, conveyed the sanction of the President for the combatisation of ministerial and other civilian posts in the Headquarters of the Directorate General, BSF, including the Air Wing, subject, inter alia, to the term that all future appointment/recruitments to the vacancies in the various categories of posts combatised by this sanction shall be in the combatised ranks as per the recruitment rules.

22. Whereas the schedule appended to the said sanction, spoke with

the clarity of a map, within the AW-BSF, thereby identifying amongst others, the pre-existing post of Senior Aircraft Mechanic and Junior Mechanic, with their scales of pay, as well as assigning to the them the equivalent combatised ranks of Sub-Inspector (Mechanic) and Assistant Sub-Inspector (Mechanic) in the same scales. The unmistakable import of this order is that the functional posts in the Air Wing relating to aircraft maintenance were brought within the fold of the combatised cadre of the BSF.

23. Therefore, once such transformation of the cadre was effected

with Sanction of 1989, the very stream of maintenance posts into which the Respondent have flowed was re-channelled by the President into the combatised regime of the BSF Act and Rules. Accordingly, the legal character of the said posts and of all future appointments, Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters Page 16 of 24 thereto stood altered and were to be treated as appointment to combatised ranks, unless a contrary decision by the Government specifically preserved them as civilian positions. However, no such contrary decision has been brought to the notice of this Court by the Respondent.

24. To highlight briefly, the Tribunal has proceeded to allow the

OA on the premise that since the Sanction of 1991 creating the post did not expressly describe them as combatised, the said posts must be

regarded as civilian post. In the opinion of this Court, this line of reasoning overlooks the administrative logic that governs cadre management. Once a cadre stands combatised by a Presidential decision, the subsequent creation of posts within that cadre does not require a repetitive declaration of combatised status. The combatised character inheres in the cadre itself. The Sanction of 1989 having already accomplished the transformation of the Air Wing posts, the additional posts sanctioned in 1991 must necessarily partake of the same combatised character.

25. It is in this legal landscape that the appointment of the

Respondent must be located. The Respondent was discharged from the Air Force on 31.08.1990, more than a year thereafter, on 21.10.1991, he was issued an offer of appointment for the post of JAM, against the pay scale of Rs. 1400-2300. Subsequently, he joined the AW-BSF as SI-JAM on 13.12.1991. It was brought to the notice of this Court by learned counsel for the Petitioner that in the civilian Air Wing, the post of JAM carried a pay scale of Rs. 1320-2040, later revised to Rs. 4000-6000. Whereas, as opposed to the aforementioned pay structure,

the combatised SI-JAM post, commanded the higher scale of Rs. 1400-2300, later revised to Rs. 5500-9000.

26. Notably, the aforestated is not an accidental detail of

nomenclature, the Respondent did not enter at the lower, civilian scale, nor was he styled merely as a mechanic in a general central service. Rather, he was appointed as SI-JAM, with the rank, the pay scale and allowances associated with a combatised BSF subordinate officer including ration money, uniform and washing allowances, and the promotional prospects of that cadre, as has been contended by the Petitioners, and not denied by the Respondent.

27. Therefore, in substance, the Respondent stood in the shoes of a

combatised BSF officer, he marched the drum of the BSF Act and Rules and did not tread the quieter path of civil establishment. Accordingly, the Respondent cannot be permitted to approbate and reprobate to accept the benefits of a particular service regime while repudiating its burden, since service jurisprudence demands consistency of status, not opportunistic oscillation between cadres.

28. The Tribunal while rendering the IO placed heavy reliance upon

the Rules of 1996, particularly on the clause in column 12 that the Armed Forces personnel, on deputation and thereafter on re- employment, may be continued upto age of superannuation with reference to the civil posts. However, two features of the said Rules are decisive; firstly, by its own title and classification, the Rules are addressed as non-combatised Group C and D posts, the civil cadre of the AW-BSF. The schedule for JAM therein sets out a lower scale

of Rs. 1320-2040 and classified the post as General Central Service Group C, non-gazetted and non-ministerial. Secondly, the very text of column 12 limits the deputation-cum-re-employment clause to Armed Force personnel due to retire or who are to be transferred to reserve within a period of one year, i.e., serving personnel seconded to these civil posts shortly before their release, and then continued as civil re-employed staff.

29. In the present case, the Respondent does not fall within the

class of personnel contemplated under the Rules of 1996. The said Rules envisage a narrow and clearly delineated category, namely,

serving Armed Forces personnel who are either due to retire or liable to be transferred to the reserve within a stipulated period, and who may consequently be considered for appointment on deputation, to be followed by re-employment upon their release from the Armed Forces. However, the Respondent does not answer this description.

30. At the time of his engagement in the AW-BSF, he was not a

serving member of the Armed Forces approaching retirement, but an ex-serviceman who had already been discharged from service. Equally significant is the fact that he was never borne on the civilian pay scale of Rs. 1320-2040, which was the scale attached to the non-combatised post of JAM. On the contrary, he entered service directly against the post carrying the higher pay scale of Rs. 1400-2300, corresponding to the combatised rank of Sub-Inspector (Mech) a position that stood firmly embedded within the combatised framework by virtue of the Sanction of 1989.

31. In these circumstances, the Respondents attempt to invoke the

protective umbrella of the Rules of 1996 is fundamentally misconceived. To apply those Rules to his case would be to superimpose upon his appointment a civilian character which the post never possessed, either in law or in fact. Service jurisprudence cannot be stretched to accommodate such retrospective re-characterisation of a cadre position that was, from its very inception in the Respondents case, part of the combatised establishment of the Force.

32. Equally unavailing is the Respondents reliance upon the Rules

of 1997. The said Rules, as their very title proclaims, were framed for the combatised Group C posts of the AW-BSF. The Schedule appended

thereto describes the post of SI-JAM, prescribing a revised pay scale of Rs. 4500-7000, and although the classification is couched in the familiar terminology of General Central Service Group C, Non-Gazetted, Non-Ministerial, the substance of the Rules unmistakably pertains to the combatised cadre mapped to the rank hierarchy of the BSF.

33. In substance, Column 12 of the said Schedule reiterates, the

deputation-cum-re-employment mechanism that had earlier appeared in the Rules of 1996. It contemplates that Armed Forces personnel who are due to retire or are to be transferred to the reserve within a period of one year may initially be taken on deputation, continue on deputation terms until their formal release from the Armed Forces, and thereafter be continued on re-employment up to the age of superannuation with reference to civil posts.

34. However, the said Rules when read in its proper statutory

context, this clause does not enlarge or alter the rights of those who are already serving as combatised personnel of the BSF under the discipline of the BSF Act and Rules. Its purpose is far more modest: it merely provides an administrative bridge enabling the serving Armed Forces personnel, deputed to the Air Wing at the threshold of retirement, to transition into the organisation and continue thereafter on re-employment terms. It cannot, by any stretch of interpretation, be read as displacing the comprehensive scheme governing the age of superannuation prescribed under the Rules of 1978, which unequivocally mandates that officers below the rank of Commandant shall retire at the age of 57 years.

35. The Tribunal, in allowing the OA, appears to have proceeded

upon two premises; (i) that the post held by the Respondent retained a civilian or non-combatised character, and (ii) that the Rules of 1996 governed the Respondents service conditions. Both these assumptions, overlook the transformative effect of the Sanction of 1989, which brought the relevant posts within the combatised structure of the BSF. They also fail to take adequate account of the actual service conditions enjoyed by the Respondent throughout his tenure, including the higher pay scale, rank equivalence, and attendant allowances characteristic of the combatised cadre.

36. The Tribunals approach, though undoubtedly guided by a

desire to afford relief to the Respondent, does not sufficiently engage with the institutional framework within which the BSF operates. The BSF is not a conventional civil department but a disciplined armed Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters Page 21 of 24

force of the Union, where cadre structure, rank hierarchy, and uniformity of service conditions constitute the very backbone of organisational governance. Therefore, any interpretation of recruitment or service rules must be sensitive to this structural reality. To disregard it would be to dilute the carefully calibrated architecture of the Forces service regime, an outcome which the law neither contemplates nor permits.

37. The Tribunal, in the IO while relying upon its previous decision

in case of A.V. Balachandran (Supra), proceeded as though the absence of an individual order naming each post was proof that no combatisation had occurred, and as though the mere existence of the Rules of 1996 sufficed to clothe every JAM or Aircraft Mechanic with civilian status, regardless of rank, scale or Presidential sanction.

38. This approach overlooks the decisive reality that the Sanction of

1989, read with its schedule, had already drawn within its fold the Air Wing maintenance posts and woven them into the combatised fabric of the Force. It similarly overlooks the fact that the Respondents own appointment letter, pay scale and service conditions consistently placed them in that combatised fabric, not in the civilian fringe.

39. Most importantly, the Tribunal failed to grapple with the

principle articulated in M.S. Malik (Supra), which binds this Court, that one who has taken the benefits of combatised status must also bear its burdens, and cannot, at will, oscillate between the two classifications to secure the most congenial outcome. That principle is rooted as much in fairness as in legal coherence and the Tribunal

 failed to even attempt to distinguish the same.

CONCLUSION:

40. In light of the foregoing discussion, this Court arrives at the following conclusions: i. The Air Wing posts relating to Aircraft Mechanics stood combatised pursuant to the Presidential sanction dated 19.09.1989. ii. The posts created in 1991 formed part of this combatised cadre, and the Respondent was appointed accordingly. iii. Throughout his service the Respondents availed the pay scale, allowance, rank and service privilege attached to combatised posts.

iv. The Rules of 1996 apply only to civilian posts, whereas the combatised cadre is governed by the service framework reflected in the Rules of 1997 and the BSF statutory regime. v. In terms of Rule 12 of the Rules of 1978, the Respondent was liable to retire at the age of 57 years.

41. Therefore, the impugned order directing the continuation of the Respondent upto the age of 60 years cannot be sustained in law.

42. Keeping in view the above position of law, as well as the facts

and circumstances of the present case, the present Petitions are Signing Date:23.03.2026 W.P. (C) 980/2004 & connected matters Page 23 of 24 allowed. The Impugned Orders passed by the Tribunal, which is under challenge herein, is hereby set aside.

43. Accordingly, the present petitions, along with pending applications, stands disposed of.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

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