

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ **W.P. (C.) No. 1759/2008 & CM No. 3396/2008**  
% **Date of Decision: 20.10.2009**

PURAN SINGH .... Petitioner

Through: Mr. U. Srivastava, Advocate.

Versus

UNION OF INDIA .... Respondent

Through: Mr. Rohit Madan, Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE ANIL KUMAR**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**

- |    |                                                                       |     |
|----|-----------------------------------------------------------------------|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not?                                | No  |
| 3. | Whether the judgment should be reported in the Digest?                | No  |

**ANIL KUMAR, J.**

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The petitioner has impugned the order dated 27.09.2007 passed in O.A. No. 224/2007 in case titled as Puran Singh Vs. Union of India holding that the pay of the petitioner has been fixed as per the provisions of FR 22(I)(A)(I) and that the pay of the juniors of the petitioner has been re-fixed which is not more than the pay of the petitioner.

The petitioner Puran Singh was inducted in BSF on 11.12.1974 and thereafter he came on deputation to Delhi Police on 13.04.1988 and was absorbed on 09.10.1992. The petitioner sought re-fixation of his basic salary from the date of his promotion and he also sought payment of arrears on account of difference. The respondents did not re-fix his basic salary and therefore the petitioner filed a petition under Section 19 of the Administrative Tribunals Act 1985 seeking re-fixation of his basic salary from the date of his promotion and also prayed for arrears on account of difference in his salary.

The petitioner grievance was that on promotion to the post of Head Constable he was being paid salary less than his juniors. He also contended that he had submitted an application for stepping up his pay at par with his juniors namely Head Constable Hem Chand, PIS No. 28750843 149/SW and Om Prakash, No. 3558/PCR/359/N and to re-fix the pay in accordance with relevant rules.

The petition was contested by the respondent contending, inter alia, that the petitioner had been granted financial up-gradation to the next higher pay scale of Rs. 4000-100-6000 under assured career progression scheme w.e.f. 9<sup>th</sup> August, 1999 in the light of DOP&Ts

memorandum being O.M. No. 35034/01/97/Estt.-I dated 9<sup>th</sup> August, 1999. The respondents also disclosed the details of fixation of the pay of the petitioner during different period. It was contended that before the petitioner came on deputation to Delhi Police he was drawing pay in the pay scale of Rs. 210-4-250-EB-5-270, which was revised w.e.f. 01.01.1986 to 825-15-900-EB-20-1200. While on deputation, the petitioner had elected to draw pay of his parent scale i.e. Rs. 825-15-900-EB-20-1200 with deputation allowance at 10%. The respondents also gave the details of the pay fixed in Delhi Police on his permanent absorption w.e.f. 9<sup>th</sup> October, 1992 in accordance with the instructions laid down in Government of India's order no. 11 i.e. FR.22 and thus contended that the pay of the petitioner has been fixed keeping in view the fact that he had elected to draw pay in the scale of Delhi Police i.e. Rs. 950-1400/- from the initial date of his deputation by giving protection of deputation allowance as his personal pay. The respondent also disclosed that the petitioner was promoted to the rank of officiating Head Constable (Ex.) w.e.f. 24<sup>th</sup> September, 1999 in the pay scale of 975-25-1150-EB- 30-1660 and was granted pro-forma promotion for the period 24<sup>th</sup> September, 1994 to 12<sup>th</sup> March 2001. The details of the pay fixed as Head Constable from the substantive date of increment in the rank of the Constable under provisional FR 22 (I) was also detailed and the details of financial up-gradation granted to the petitioner was also disclosed by the respondent.

Regarding stepping up of the pay at par with his juniors, it was asserted that though the petitioner was senior to Sh. Hem Chand but he was junior to Head Constable Om Prakash. It was also asserted that the pay fixation of the said junior Head Constable Hem Chand was not correct and not based on rules and consequentially a decision was taken to re-fix his pay.

The Tribunal after hearing the pleas and contentions of the parties held that the plea of the petitioner for stepping up the pay at par with his juniors cannot be accepted, as the fixation of pay in case of persons junior to applicant was wrongly done and a decision to re-fix the pay has already been taken. In any case, on account of a mistake committed by the respondent in fixation of pay of other Head Constables, the petitioner cannot claim parity and claim the same pay. The pay of others fixed contrary to rules cannot be the ground to re-fix the pay of the petitioner also contrary to rules. Consequentially, the decision of the Tribunal on this ground cannot be faulted, nor the petitioner shall be entitled for re-fixation of his pay on the ground that his juniors pay is more than his pay and he should be paid salary at par with his juniors.

Regarding the other contention of the petitioner that his pay has not been fixed as per the provisions of FR 22 (1) (a) (1), the Tribunal has held that the pay of the petitioner has been fixed as per the said

provision without giving any reasons and dealing with the pleas and contentions of the parties. The petitioner has contended that as to how his pay is not in consonance with the said rule and has given details in the petition before the Tribunal as well as in the petition filed before this court which have been extensively replied by the respondents. However, none of these pleas and contentions has been considered by the Tribunal.

Therefore, the order of the Tribunal dated 27.09.2007 holding that the pay of the petitioner has been fixed in accordance with the provision of FR 22 is set aside and the matter is remanded to the Tribunal to re-consider the matter in view of the pleas and contentions of the parties and decide the same by giving reasons. With these directions the writ petition is disposed off.

The parties are directed to appear before the Tribunal on 09.11.2009. In the meantime the interim order passed in favor of the petitioner staying recovery from the petitioner shall continue till the matter is finally decided by the Tribunal. The Tribunal shall also consider the plea of the petitioner that, in any event, no recovery could have been made by the respondent from the petitioner without giving reasonable opportunity to him.

Writ petition is disposed of accordingly and parties are left to bear their own costs.

**ANIL KUMAR, J.**

**OCTOBER 20<sup>th</sup>, 2009**  
'dp'

**VIPIN SANGHI, J.**