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

\+ **W.P.(C) 4448/2016**

VIJAYAN V V ..... Petitioner

Through: Ms. Saahila Lamba, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Rajesh Gogna, CGSC with Mr.Upendra Sai and Ms. Liu Gangmei, Advocates for R-1 to 3 and Ms. Sushila Narang, GP.

\+ **W.P.(C) 9227/2016**

RENJITH P.K. ..... Petitioner

Through: Ms. Saahila Lamba, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Raghav Kapoor, Advocate for UOI.

\+ **W.P.(C) 9244/2016**

MURALIDHARAN P ..... Petitioner

Through: Ms. Saahila Lamba, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Raghav Kapoor, Advocate for UOI.

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By:AMULYA

\+ **W.P.(C) 9247/2016**

V. BALAKRISHNAN ..... Petitioner

Through: Ms. Saahila Lamba, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr. Raghav Kapoor, Advocate for UOI.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER

% **01.04.2019**

1. In all these petitions, the facts are more or less similar and the reliefs prayed for are also identical. Accordingly, these petitions are being disposed of by this common judgment.

2. For the sake of convenience, the lead matter i.e. W.P.(C) 4448/2016 is discussed in some detail. The facts in other cases would be more or less similar, only the dates would be different.

3. The Petitioner in W.P.(C) 4448/2016 titled ***Vijayan V V v. Union of India*** was appointed as Constable 'GD' (General Duty) in Border Security Force ('BSF') on 5th July 1993. By an order dated 18/19th May 1999, he was promoted as Assistant Sub Inspector ('ASI') (Clerical) (Clk). At this point in time the Petitioner was posted in the 61st Battalion. He was required to be relieved and Join as ASI Clerk in the 153rd Battalion of the BSF. The said

order in Para 2 made it clear that the appointment as ASI (Clk) "will be effect from 14th June 1999 on joining place of appointment."

4. The Respondents, for reasons best known to them, relieved the Petitioner from the 61st Battalion only on 26th July 1999 and within four days thereafter, the Petitioner joined the 153rd Battalion as ASI (Ministerial) on 31st July 1999. On his joining the 153rd Battalion, an order was issued that the pay of the Petitioner in the rank of ASI (Ministerial) would be fixed with effect from 31st July 1999 i.e. the date of his assuming charge as ASI (Ministerial).

5. The Petitioner states that although, for the purposes of fixation of pay as ASI (Clerical), the date shall be taken to be 14th June 1999, because the delay in the Petitioner joining that post was on account of the Respondents. He states that he did not pursue the matter much because monetarily, the difference was not substantial.

6. However, the issue arose when an Office Memorandum ('OM') was issued by the Department of Expenditure, Ministry of Finance on 19th March 2012, which explains that in terms of Rule 10 of the Central Civil Services (Revised Pay) Rules, 2008, there would be a uniform date of annual increment, namely, 1st July of every year upon an employee completing six months and above in the revised pay structure. It was further provided that 'the first increment, after fixation of pay on 1st January 2006, in the revised pay structure will be granted on 1st July 2006 for those employees for whom the date of next increment was between 1st July 2006 to 1st January 2007.

On further consideration of the matter, it had been decided that 'those Central Government employees who were due to get their annual increment February to June 2006, may be granted one increment on 1st January 2006 in the pre revised scale as a onetime measure, and thereafter, the next increment in the revised pay structure on 1st July 2006 as per Rule 10 of CCS (RP) Rule, 2008.

7. This meant that for those who were to get their increment between February and June 2006, one extra increment as a one-time measure was provided. As far as the Petitioner is concerned, if his date of joining as ASI (Clerical) is taken as 14th June 1999, which was within the period February to June 2006, then he would be also entitled to the one extra increment as notified by the OM dated 19th March 2012.

8. Following the above OM, the Petitioner made his first representation on 29th November 2012 praying for the one extra increment. While the BSF supported his plea, it was shot down by the Ministry of Finance on the ground that the request was delayed.

9. This led to the Petitioner filing the present petition in May 2006. The facts in the connected petitions are more or less identical. Only the relevant dates would be different in each case. The basic issue however, remains the same, viz., whether the persons who should have joined as ASI (Clerical) on a date falling between January and June of the relevant year, can claim one extra increment on the ground that the failure on their part to join as ASI (Clerical) during that period was attributable not to themselves but the

Respondents?

10. The stand taken by the Respondents in the counter affidavits is that the Petitioners were not given one additional increment in the pre revised pay structure since the dates when such increment was due did not fall between 1st February and 30th June but on 31st July of the relevant year. It is admitted that this resulted in a substantial variation of the pay as per the revised pay scale in terms of the 7th CPC recommendations. In other words, it is not disputed that vis-a-vis their batch mates/juniors selected and appointed as ASI (Ministerial) with effect from the dates by which they were supposed to join as such, the pay of the Petitioners is substantially lower.

11. As regards the rejection of their representations, it is submitted by the Respondents that the Petitioners were 'fully aware of the consequences of late joining' and that they 'should have represented before the Competent Authority for timely relieving for new place of posting.'

12. The stand taken by the Respondents does not appear to be justified or fair. A Constable in the BSF is not going to be able to choose when he can get relieved for assuming charge of the higher post to which he has been promoted/appointed, if relieving orders are not passed by the superiors in good time. As it transpired, some of the batchmates/juniors of the Petitioners who were relieved in time to join as ASI (Min/Clk) were able to get the one additional increment in terms of the OM dated 19th March 2012 resulting in a difference in the pay scale. According to the Petitioners, in monetary terms, this difference is substantial, particularly, after the pay revision

brought about by the 7th CPC. This fact is not disputed by the Respondents.

13. With the delay in the Petitioners joining as ASI (Ministerial/Clerical) not being attributable to any omission on their part, but on account of the Respondents delaying the issue of their respective reliving orders, it is not fair to deprive the Petitioners of the consequential monetary benefits.

14. Consequently, this Court directs the Respondents to grant each of the Petitioners, the one extra increment to which they are entitled by treating the notional date of their respective joining as ASI (Ministerial/Clerical) to be on or before the last date by which they were to join in terms of the original posting orders and to work out their pay scale accordingly. The resultant arrears will be paid to each Petitioner not later than 8 weeks from today failing which the Respondents would be liable to pay simple interest at 6% per annum on the said sum for the period of delay in terms of this order.

15. The petitions and pending applications are disposed of in the above terms.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 01, 2019
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