

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 7842 of 2011**

- Shyamdas S/o Late Shri Phoolchand, Aged About 57 Years Commandant Of Counter Terrorism And Jungle Warfare College (C.T.J.) Kanker Distt. Kanker (C G)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through - The Secretary Home And Affairs (Police), Mantralaya D.K.S. Bhawan, Raipur, District - Raipur (C G)
2. Director General Of Police, Police Headquarter, Raipur, District - Raipur (C G)
3. Under Secretary, C G Government, Home (Police) Department, D K S Bhawan, Raipur (C G)
4. S.S. Sori S/o Not Known Aged About 53 Years Superintendent Of Police (S.I.B.) Jagdalpur, District - Bastar (C G)
5. T.R. Paikra S/o Not Known Aged About 51 Years Commandant 7th Battalion Bhilai, District - Durg (C G)

---- Respondent

For Petitioner : Shri TK Jha, Advocate.
 For Respondent/State : Shri Bhaskar Payashi, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**C A V Order****Passed on** : 17/11/2015

1. The petitioner has prayed for direction to the respondent authorities to grant him higher pay scale with effect from 1.6.1993 as has been granted to respondents 4 and 5. The petitioner has also prayed for

setting aside the order passed by respondent No.3 on 23.11.2011 whereby the petitioner has been granted selection grade pay scale w.e.f. 1.1.2009 for which the petitioner is in-fact entitled from the year 1997.

2. The petitioner was initially appointed as DySP on 6.12.1986. He was confirmed in service w.e.f. 1991 by an order passed on 7.12.1993. In the gradation list in which the seniority position was mentioned as on 1.4.2010, the petitioner was at S. No.8 whereas respondents 4 & 5 were at S. No.9 & 10 respectively. They have also joined the service on 1.1.1987 i.e. after the petitioner's joining. Respondent No.4 was granted higher grade pay scale from 1.6.1993 whereas respondent No.5 was granted higher grade pay scale from 1.9.1993. On the contrary, the petitioner was granted higher grade pay scale from 1.1.2005. It is also stated in the writ petition that 8 other officers were granted higher grade pay scale with effect from 1.1.2004 and another batch of 20 officers were granted the said pay scale with effect from 1.1.2002.
3. According to the petitioner, 3 departmental enquiries were pending against him, however, in two of them, he has already been exonerated and in the third enquiry, minor punishment of 'censure' was awarded. A proposal was sent by the AIG of Police (Personnel) to the Government for grant of higher grade pay scale to the petitioner vide letter dated 21.11.2003. The petitioner also submitted representations, however, no action has been taken.
4. It is argued by learned counsel for the petitioner that refusal to grant

higher grade pay scale from 1993 and selection grade pay scale from 1997 is illegal, arbitrary and discriminatory.

5. In the earlier writ petition i.e. WPS No.6272/2007, the petitioner had claimed higher pay scale from the year 1997 and thereafter selection grade/higher pay scale from 1.4.2001. The said writ petition was disposed of on 21.6.2011.
6. It is argued by learned State counsel that since the petitioner's performance being not satisfactory and his duly communicated ACR was poor, he was not granted higher pay scale in the year 1993. During consideration in the year 1996, 2 departmental enquiries were constituted against him; first on 16.2.1996 and second on 3.4.1996. Vide order dated 5.9.2003, punishment of 'censure' was awarded to the petitioner in one of the departmental enquiry which was effective for one year i.e. till 6.9.2004, therefore, the petitioner was granted higher pay scale with effect from 1.1.2005 i.e. as soon as the term during which he was suffering penalty was over. Thus, the stand of the State Government is that the petitioner's case was considered in the DPC in the context of granting higher pay scale/senior pay scale but because of ACR and penalty his case was not considered. The petitioner was subsequently granted selection grade pay scale on 1.1.2009.
7. From the pleadings made by the parties and upon perusal of the documents annexed with the writ petition, it would appear that initially the petitioner's probation was impliedly extended after completion of

initial probation period of 2 years. The petitioner being appointed in the year 1986 was confirmed in service in the year 1991 by an order passed in the year 1993. It is stated by the State Counsel in the return that his performance during the probation period was found wanting. It is also to be seen that the petitioner's case was considered in the DPC meeting in the year 1996 and thereafter, as stated in the return, to which no rejoinder has been filed. At that time two charge sheets were pending against the petitioner and ACRs were duly communicated to him. The DPC did not find the petitioner worth granting higher pay scale, therefore, it cannot be said that grant of higher pay scale to the respondents 4 and 5 in the year 1993 amounts to arbitrariness and discrimination. Moreover, the petitioner has admittedly suffered minor penalty of 'censure' against which the petitioner has not preferred any departmental appeal or writ petition. As soon as the period during which minor penalty was effective was over, the petitioner was granted higher pay scale in January, 2005 and thereafter he was granted selection grade pay scale from January, 2009. The petitioner has failed to demonstrate as to how he is entitled for higher pay scale from 1993 or 1997 when his case was duly considered by the DPC, as stated in the return but he was not found fit/suitable. The petitioner has also failed to point out any legal infirmity based on any statutory provision under which he is entitled for higher pay scale despite communication of ACR and pendency of the departmental enquiries.

8. For the foregoing, this Court has no hesitation in holding that the petitioner's case having been considered by the DPC, he has not been discriminated in the matter of grant of higher pay scale or selection grade pay scale which was granted to his juniors much before the petitioner was granted the said pay scale because the petitioner was not fit for such grant.
9. The writ petition being bereft of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve