

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.11299 of 2012(O&M)

Date of decision: February 9, 2015

Damodar Singh and others

----Petitioners

Versus

Union of India and others

----Respondents

Coram: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Mr. R.S. Dadwal, Advocate
for the petitioners.

Mr. G.S. Bal, Sr. Advocate with
Mr. A.D.S. Bal, Advocate
for the respondents.

HARINDER SINGH SIDHU, J.

This writ petition has been filed praying for quashing the letters dated 10.09.2009 (Annexure P-5) and 15.06.2011 (Annexure P-7), whereby the claim of the petitioners for stepping up of their pay at par with their juniors has been rejected.

Petitioners No.1 to 4 and 7 to 11 were appointed in the Railway Protection Force in the year 1975 as Rakshak (Constables). Petitioners No.5 and 6 were appointed as Rakshak on 15.10.1979 and 02.03.1983 respectively. In the year 1985, the Railway Protection Force became an Armed Force of the Union and the designation of Rakshak and Senior Rakshak came to be changed as Constable and Naik respectively.

On 01.01.1986, based on the report of the Fourth Central Pay Commission, Constables were granted the replacement pay scale of Rs.825-1200 and Naiks were granted the pay scale of Rs.950-1500/-. Also on the recommendations of the Fourth Pay Commission, the benefit of two advance increments was granted to the Constables, whose basic pay was fixed below the scale of Rs.855/-. Consequently, the Constables whose basic pay was Rs.830/- or Rs. 850/-, their pay was also fixed in the scale of Rs.855/-. Senior Constables like the petitioners whose pay was already more than Rs.855/- were not granted the two advance increments.

Petitioners No.1 to 4 and 7 to 11 were promoted as Naiks in the year 1988 and 1989 and placed in the pay scale of Rs.950-1500/-.

The Fifth Central Pay Commission Report was accepted w.e.f. 01.01.1996. On 01.01.1996, the pay scale of the Constables was Rs.2750-4400/- plus two advance increments and that of Naik was Rs.3050-4590/-. This was revised to Rs.3050-4590/- for Constables and Rs.3200-4900 for Naiks. The Railway Board, subsequently introduced the Assured Career Progression Scheme for its employees.

As per report of the Fifth Central Pay Commission, the post of Naik was abolished and the Naiks including the petitioners were re-designated as Head Constables w.e.f. 10.10.1997.

As a result of grant of two advance increments to the

Constables whose basic pay was fixed below Rs.855/- on the recommendations of the Fourth Pay Commission, some juniors of the petitioners while still on the post of Constables came to receive higher pay than the petitioners.

Keeping in view the lack in the promotional avenues in the Railway Protection Force, the Constables who could not be promoted during the year 1988-89 were upgraded to the post of Head Constables in the year 2000.

In 2001, the Railway Board issued a letter dated 15.03.2001, directing that the pay of all the Constables, who were promoted as Head Constables after 01.01.1996 be fixed after adjustment of two advance increments granted to them. This benefit was not given to the petitioners who were promoted as Naiks during the year 1988-89 and were later on re-designated as Head Constables w.e.f. 10.10.1997. Consequently, their pay became lower than their juniors, who were promoted as Head Constables after 01.01.1996 as the latter were granted two advance increments.

Petitioners No.5 and 6 who were promoted to the post of Head Constables w.e.f. 08.12.1994 were also getting lesser pay than their juniors promoted as Head Constables much later.

The petitioners repeatedly represented to the respondents to remove the anomaly in the pay scales by stepping up their pay at par with their juniors by granting them two advance increments, but to no avail.

Some Head Constables, similarly situated as the

petitioners, moved the Kerala High Court raising a grievance with regard to anomaly which had crept in as a result of the grant of two advance increments to their juniors. By its judgment and order dated 10.12.2008 passed in WP(C) No.15010 of 2004(J) titled as **'P.D. Devassia Vs. Union of India and others'**, the claim of the petitioners therein was found genuine and the respondents were directed to re-examine the matter and pass a fresh order.

In compliance with the aforesaid direction, the matter was re-examined by the Railway Board and it was decided that the pay of Constables promoted to the post of Head Constable prior to 01.01.1996 may be stepped up at par with those Constables, who were promoted after 01.01.1996 and got the benefit of adjustment of advance increment in the Fifth Central Pay Commission Scale in terms of Railway Board letter dated 15.03.2001. A copy of this decision dated 04.02.2010 is Annexure P-6. Despite the aforesaid decision, the petitioners were not granted the said benefit of two advance increments on the ground that the letter dated 04.02.2010, is not applicable to the petitioners as they were working on the posts of Naiks and not on the posts of Head Constables as on 01.01.1996. It is this rejection of the claim of the petitioners vide letter dated 15.06.2011 (Annexure P-7), which has been challenged in the present writ petition.

The result of the aforesaid is that the juniors of the petitioners, who were promoted to the post of Head Constables in the year 2001-2004 are getting more pay than the petitioners, who were

promoted to the post of Naik during the year 1988-89, which post was later re-designated as Head Constable in the year 1997. Petitioners No.1 to 6 have also been promoted to the post of Assistant Sub Inspector in the year 2011 but still they are drawing lesser pay than their juniors, who are still working on the posts of Head Constables. The petitioners claim that this is contrary to the settled law that a senior officer in the same cadre cannot be paid less than his junior.

In the written statement filed on behalf of the respondents, the factual aspects have not been disputed. The only claim is that the decision dated 04.02.2010 is not applicable to the petitioners as they were holding the post of Naik as on 01.01.1996, whereas, letter is applicable only to such persons, who were posted as Head Constable on 01.01.1996.

Learned counsel for the petitioners states that as a result of the grant of two advance increments to the juniors of the petitioners an anomaly has occurred, whereby, juniors to the petitioners are getting more pay than them. This, he claims, is liable to be rectified and their pay is required to be stepped up at par with their juniors. He relies various decisions namely; **Gurcharan Singh Grewal and another vs. Punjab State Electricity Board and others (2009) 3 SCC 94; Chief General Manager, Bharat Sanchar Nigam Limited and other vs. Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others, 2011(1) SLR 162.**

In ***Gurcharan Singh Grewal's case***, the Hon'ble

Supreme Court observed:

“17. Something may be said with regard to Mr. Chhabra’s submissions about the difference in increment in the scales in which Appellant 1 and Shri Shori are placed, but the same is still contrary to the settled principle of law that a senior cannot be paid a lesser salary than his junior. In such circumstances, even if there was a difference in the incremental benefits in the scale given to Appellant 1 and the scale given to Shri Shori, such anomaly should not have been allowed to continue and ought to have been rectified so that the pay of Appellant 1 was also stepped up to that of Shri Shori, as appears to have been done in the case of Appellant 2.”

In **Bharat Sanchar Nigam Limited's case** (supra), a Division Bench of this Court affirmed the same view by holding as under:

“2. It has remained undisputed that on regularisation as Junior Telecom Officer (JTO) in Punjab Circle the pay of the original applicant-respondent No. 2 was fixed in the pay scale of ' 6500-200-10500 w.e.f. 1.1.1996 and he was further promoted from the post of JTO to Sub Divisional Engineer (SDE) on 20.10.2004 in the IDA pay scale of ' 11875-300-17275. He approached the Tribunal with the grievance that although he was regularly appointed as JTO in 1994 and his pay was fixed as such with effect from 1.1.1996 and thereafter he was regularised as SDE from 2005, yet from the month of October 2005 person junior to him i.e. respondent No. 3, who was recruited in 1992, was drawing salary of Rs. 13,075/- whereas the original applicant-respondent No. 2 despite being senior was drawing only Rs. 12,775/-, which is less than Rs. 300/- than that of respondent No.

3. He sought removal of anomaly by stepping up his pay at par with his junior.

3. The claim made by the original applicant-respondent No.2 has been found meritorious and the Tribunal has placed reliance on the judgment of Hon'ble the Supreme Court in the case of **Gurcharan Singh Grewal v. Punjab State Electricity Board, (2009) 3 SCC 94**, wherein it has been held that senior officer in the same cadre cannot be paid less than his junior even if anomaly in the pay of the senior is due to difference of incremental benefits. Accordingly, directions were issued by their Lordships' of Hon'ble the Supreme Court in Gurcharan Singh Grewal's case (supra) to step up the pay of such an officer with reference to the higher pay of the junior officer. The operative part of para 7 of the order passed by the Tribunal reads thus:-

"7. We have given deep consideration to the issues involved and perused the record placed before us. Admittedly, applicant is senior to Respondent No. 4 and he had no occasion to exercise option to opt for revised pay scales under pay rules of 1997 and because of non-exercise of the options, he has been paid lesser salary than his juniors (Respd No. 4). The respondents have not provided any evidence to prove whether the circular inviting exercise of option was ever got noted by the applicant. Therefore, applicant's having not done so, cannot be held as a disqualification to deprive him of his entitlement for all times to come. The Apex Court in the case of Gurcharan Singh (supra) has held that in case of anomaly as is the fact in the instant case, seniors cannot be paid less than their juniors even if anomalies in the seniors' pay scales is due to difference of incremental benefits. Therefore, respondents are directed to step up the pay of the applicant with reference to the higher pay of his junior i.e. Respondent No. 4 and pay him all the consequential benefits within a period of two months from the date of receipt of a copy of this order."

Learned counsel for the respondents has not been able to dispute this legal position.

As regard petitioners No.5 and 6, who were promoted as Head Constables w.e.f. 18.12.1994, their case is, anyway, covered by the decision of the Railway Board (Annexure P-6) as they were Head Constables as on 1.1.1996 and they are entitled to the benefit in terms of the decision dated 4.2.2010 (Annexure P-6).

The other petitioners who had been promoted to the post of Naik in the year 1988-1989, which post was later re-designated as Head Constable in 1997 are liable to be given similar treatment as those Head Constables who had been promoted as such before 1.1.1996. In the light of the afore-mentioned decisions, they are entitled to stepping up of their pay at par with the Constables, junior to them, who were promoted as Head Constables after 1.1.1996.

Accordingly, this petition is allowed. The respondents are directed to step up the pay of the petitioners at par with their junior Constables who in terms of the Board's letter dated 15.3.2001 got the benefit of adjustment of advance increments in the Fifth Central Pay Commission scale and got promoted after 1.1.1996.

February 9 , 2015
Atul

(HARINDER SINGH SIDHU)
JUDGE