

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

% *Date of Decision : March 02, 2015*

+ **W.P.(C) 1853/2015**

LALIT KUMAR CHOUDHARYPetitioner
Represented by: Mr.Ankur Chhibber, Advocate

versus

UNION OF INDIA & ORS.Respondents
Represented by: Mr.Sanjeev Narula, CGSC with
Mr.Sunil Dalal Advocate for UOI

W.P.(C) 1854/2015

ABHISHEK YADAVPetitioner
Represented by: Mr.Ankur Chhibber, Advocate

versus

UNION OF INDIA & ORS.Respondents
Represented by: Mr.Sanjeev Narula, CGSC with
Mr.Sunil Dalal Advocate for UOI

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. The two above captioned writ petitions came up for preliminary hearing on February 27, 2015 and were adjourned for today to enable learned counsel for the respondents to obtain instructions whether any statement of fact pleaded in the writ petition needed a rebuttal, for if no statement of fact made in the writ petition needed a rebuttal, the only

question which arose for consideration was one of law, and the legal stand of the respondents is reflected in the impugned order dated January 20, 2015, passed by the respondents, re-fixing the basic pay of the petitioners at ₹8,670/- with effect from January 01, 2006 (the date wherefrom the recommendations of the 6th Central Pay Commission, as accepted by the Central Government were implemented). The petitioners seek a direction that their basic pay be fixed at ₹9,910/- with effect from January 01, 2006. The basis of the claim is that this is the entry level pay to be fixed for directly recruited Head Constables as per the CCS (Revised Pay) Rules, 2008.

2. We note that this is the second round of litigation as regards the petitioners, who had approached this court earlier by and under WP(C) No. 2494/2014 and WP(C) No. 2488/2014 which were disposed of with a direction that the respondents would pass a speaking order concerning basic pay fixation of the petitioners in the rank of Head Constable (Min.) as of January 01, 2006.

3. Briefly noted, the facts germane for adjudication of the present petitions are that pursuant to a recruitment drive held in the year 2003, the petitioners were appointed in CRPF to rank of Head Constable (Min.), and upon joining the force the petitioners were placed in the pay scale ₹3200-85-4900 and accordingly, the basic pay of the petitioners upon joining the force was fixed at ₹3,200/-. Pursuant to the annual increments earned, the petitioners Lalit Kumar Choudhary and Abhishek Yadav, as on July 01, 2005, were being paid salary and emoluments in the basic pay of ₹3,370/- and ₹3,455/- per month respectively.

4. Pursuant to the recommendations of the 6th Central Pay Commission notified vide Gazette Notification No.F.1/1/2008-IC dated July 21, 2009, various pay scales were placed in the pay band ₹5200-

20200, with different grade pays commencing from ₹1,800/- to ₹2,800/-. A formula for conversion was given in the CCS (Revised Pay) Rules, 2008.

5. The pay of the petitioners was re-fixed by the concerned Group Centre and audited by IAP-III at ₹7,510/- with Grade Pay of ₹2,400/- thereby amounting to a sum of ₹9,910/- (total ₹7,510+2,400/-) with effect from January 01, 2006.

6. Petitioner Lalit Kumar Choudhary was promoted to the rank of ASI (Min.) on September 26, 2009, and petitioner AbhishekYadav was promoted to the said rank a little earlier, on June 16, 2008.

7. Consequent to re-fixing of the pay and further in consequence to the increments earned by the petitioners and their promotion to the rank of ASI (Min.), both of them had their pay fixed at ₹13,410 (₹10,610 + 2,800) with effect from July 01, 2013.

8. Then the problem began.

9. Suddenly, without issuing any show cause notice, the Inspector General (Coms.), CRPF passed an order dated January 09, 2014, recording therein that the petitioners had been erroneously granted annual increments with effect from July 01, 2006, which was not in order. Accordingly, the pay of the petitioners were revised as detailed in the order itself and fixed at ₹8,670/- with effect from January 01, 2006. Further compounding the issue, once again without issuing any show cause notice to the petitioner, the respondents made deductions from the pay of petitioners apparently in accordance with the revised pay structure detailed in the said order.

10. Both the petitioners approached this court and challenged the order dated January 09, 2014 by filing WP(C) No. 2494/2014 and WP(C) No.

2488/2014 respectively, both of which were allowed vide separate orders, dated May 20, 2014, and the operative portion whereof reads as under:

“10. The primary question for consideration in the present case is: Whether the pay of the petitioner having been re-fixed pursuant to the recommendations made by the 6th Central Pay Commission could have been revised by the respondents to the detriment of the petitioner without even issuance of a show cause notice to the petitioner. The other question which requires consideration is: Whether the excess amount (if any) paid to the petitioner, not having been paid on account of any mis-representation or fraud on the part of the petitioner, but on account of mis-calculation of the pay of the petitioner, which was subsequently found to be erroneous, whether the respondents can recover the said amount unilaterally and even without issuance of show cause notice to the petitioner.

11. The answers to the aforesaid questions, in our considered opinion must be in the negative on both counts. The action of the respondents impugned in the present writ petition, in our view, cannot stand scrutiny and smacks of arbitrariness.

12. In the result, we allow the writ petition quashing the impugned order dated 9th January, 2014 with a direction to the respondents that the petitioner would continue to draw pay and allowances in Pay Band-I in the pay scale of ₹5200-20200/- with Grade Pay of ₹2,400/- thereby amounting to a sum of ₹9,910/-, with effect from January 01, 2006.

13. Needless to state that if the respondents intend to take any action to re-fix the pay of the petitioner to the detriment of the petitioner, a show cause notice would be issued containing the reasons therefor and a decision would be taken thereon after giving an opportunity to the petitioner to be heard. No recoveries shall be effected from the petitioner till then.

14. Writ Petition is allowed in the above terms.”

11. Pursuant to the order dated May 20, 2014, both petitioners were served with a fresh show cause notice dated 30.09.2014, stating that the pay of the petitioners had to be re-fixed since the same had been stepped up at par with that of HC (Min.) Shailendra Bhanwrela, and said person

had joined the force only on January 21, 2006 and therefore was not entitled for annual increment on July 01, 2006. The pay of the petitioners had been fixed at par with him and therefore, was erroneous, and in light of the same called upon the petitioners to show cause as to why recoveries ought not to be made from them.

12. Both petitioners submitted replies dated October 28, 2014 to the above mentioned show cause notice, but the same was to no avail and vide impugned order dated January 20, 2015 the respondents have rejected the reply and consequently have directed that the pay of the petitioners be re-fixed as per the schedule specified in the order itself and recoveries be made of the excess amount already paid to them.

13. It is the order dated January 20, 2015 that forms the basis of challenge in the captioned writ petitions.

14. Learned counsel for the petitioners contends that the pay of the petitioners could not be fixed at less than ₹9,910/- on account of the fact that pursuant to the recommendations of the 6th Central Pay Commission and as reflected in the CCS (Revised Pay) Rules, 2008, the Entry Pay in the revised pay structure for direct recruits appointed on or after January 01, 2006 in Pay Band-1 (₹5200-20200/-) is to be fixed at ₹7,510/- with Grade Pay of ₹2,400/- totalling to a sum of ₹9,910/-.

15. Our attention is also drawn to the fact that the premise of the order dated January 20, 2015, i.e. that in certain conditions employees appointed in service prior to direct recruits were promoted earlier and were now drawing lesser pay than direct recruits appointed on January 01, 2006 could not be allowed to step up their pay has already been considered by the National Anomaly Committee in its meeting held on July 17, 2012 whereby it has been clarified under Sl. 8.3 that wherever there is a provision of Direct Recruitment in the Recruitment Rules, pay

on promotion would be fixed at the prescribed minimum of the entry pay as provided for in the Direct entrants in the revised pay rules irrespective of the fact that the Direct Recruitment has actually taken place or not.

16. It is also highlighted that that no request was ever made by the petitioners seeking re-fixation of pay nor was there any misrepresentation on their part at the time of the fixation of pay. On the aspect that recovery has generally been prohibited by Courts where there is no misrepresentation or fraud on the part of the employee and excess payment has been made by applying a wrong principle in calculating the pay/allowance or on the basis of a particular interpretation of a rule/order, which is subsequently found to be erroneous, reliance was placed by learned counsel for the petitioner upon the decisions of the Apex Court reported as (2009) 3 SCC 475 Syed Abdul Qadir & Others vs. State of Bihar & Others; and (2006) 11 SCC 709 Col. B.J.Akkara (Retd.) vs. Government of India & Others.

17. We would also proceed to note two more recent decisions of this court on the issue concerning us in the present petitions, i.e. the implementation after interpretation of the CCS (Revised Pay) Rules, 2008 which came into effect retrospectively from January 01, 2006.

18. In the case of other similarly situated persons holding the rank of Head Constable in CISF in WP(C) No. 7673/2012 tiled Kichlu R. Money & Others vs Union of India & Others, vide order dated September 18, 2014, this court had observed that the petitioners were entitled to the PB-I Basic Pay Scale of ₹7,510/- and Grade Pay of ₹2,400/- in accordance with the recommendations of the 6th CPC in view of the instructions by the respondents themselves as conveyed by the Government counsel, and accordingly directed the respondents to grant the said benefit to the petitioners.

19. In another decision penned by us on January 27, 2015 in WP(C) No. 727/2015 titled Dashrath & Anr. vs. Union of India & Ors., the issue for consideration was if Direct Recruits to the post of Constable/Tradesmen were entitled to the minimum pay of ₹6,460/- with Grade Pay of ₹2,000/- totaling to ₹8,460/-, then would the petitioners, who were promoted before the Rules came into vogue, be entitled to the same or would their pay be fixed by multiplying the existing basic pay by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10. In view of the fact that the department had already taken a view in the case of Head Constable/Tradesmen that a promote would be entitled to the basic pay to which a directly recruited Head Constable would be entitled to, as well as the decision in Kichlu R. Money (supra), the petition was allowed in favour of the petitioners.

20. We note that the anomalous situation has resulted because in the First Schedule, Section II of the CCS Revised Pay Rules, 2008, '**Entry Pay in the Revised Pay Structure for Direct Recruits appointed on or after 1.1.2006**' has been specified for various posts in various pay bands and grade pays. For the posts in PB-1 having scale ₹5200-20200 with grade pay ₹2,400/- the entry level pay in the pay band is ₹7,510/- and with the grade pay of ₹2,400/- the pay would be ₹9,910/-.

21. As per the revised pay rules, the salary of Head Constables directly recruited in PB-1 would thus be ₹9,910/-. But as regards promotees, the Rule envisages the pay to be fixed with reference to the previous basic pay multiplied by 1.8 and rounded off to the nearest 10. It results in an anomaly because the basic pay of direct recruits who joined later, and hence would be junior, to the promotees is more.

22. Taking analogy from the principle of stepping up of pay of a senior if the junior receives more pay, in the decision in Dashrath's case supra it

was decided by this Court that wherever such anomalous situation exists, the basic pay of the promotees with effect from January 01, 2006 has to be at the minimum prescribed for direct recruitment to the post in question.

23. The writ petitions are accordingly allowed. Impugned orders are quashed. Recoveries if any made are directed to be restored. Pay of the petitioners as of January 01, 2006 when the petitioners were holding the rank of a Head Constable (Min.) would be fixed at the minimum prescribed in the CCS Revised Pay Rules i.e. basic pay ₹7,510/- and grade pay ₹2,400/-.

24. No costs.

CM No.3322/2015 in W.P.(C) No.1853/2015
CM No.3324/2015 in W.P.(C) No.1854/2015

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

MARCH 02, 2015
mamta