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

+ **W.P.(C) 725/2016**

SUBRATA GHOSE

..... Petitioner

Through: Ms. Garima Sachdeva, Advocate.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Vikas Mahajan, CGSC with
Mr. Amit Kumar Dogra, Mr. S.S. Rai and
Mr. Amit Mehta, Advocates.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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21.03.2016

1. The present petition has been filed by the petitioner praying *inter alia* for quashing the order dated 26.3.2014, passed by the respondents, whereunder he was sanctioned gratuity and medical allowance as is admissible in law on completing 19 years 8 months and 25 days of service as a Head Constable on 16.5.2006. The petitioner also prays that his grade pay may be fixed at Rs.2800/-, on the promotional post of an Assistant Sub Inspector w.e.f. 09.8.1999 and not at Rs.2400/-, as fixed under the impugned order.

2. Learned counsel for the respondents, who appears on advance notice, states that this is the fourth round of litigation initiated by the petitioner. He submits that the petitioner was tried by the Summary Security Force Court (SSFC) for committing an offence under Section 46 of the BSF Act, 1968

and on 9.3.2006, was awarded a sentence of dismissal from service with one year's rigorous imprisonment in civil custody. The said sentence was commuted by the Reviewing Officer to six months' rigorous imprisonment and dismissal from service. In the meantime, the petitioner, through his wife, had filed a writ petition, registered as WP(C)No.8504/2006 in the High Court through his wife for quashing the order dated 9.3.2006, passed by the SSFC, BSF. The said petition was disposed of on 16.5.2006, with directions to the respondents to consider and dispose of the pending appeal filed by the petitioner before the Appellate Authority. By then, the Appellate Authority had already commuted the sentence inflicted on the petitioner, vide order dated 15.5.2006, from one year's rigorous imprisonment to six month's rigorous imprisonment with dismissal from service and the same was promulgated on 16.5.2006.

3. Aggrieved by the aforesaid order, the petitioner had filed a review petition before the High Court, that was dismissed on merits on 2.6.2006. Thereafter, the petitioner had submitted a statutory petition against the sentence awarded by the SSFC, BSF, which was duly considered by the DG, BSF, who had vide order dated 19/21.6.2006, remitted the sentence of imprisonment yet to be undergone by the petitioner, but maintained the sentence of dismissal from service.

4. Yet again, aggrieved by the aforesaid decision, the petitioner had filed another writ petition, registered as WP(C)No.13267/2006. On 20.12.2006, counsel for the respondents had stated before the court that the respondents would be willing to consider and grant the petitioner compassionate allowance and proportionate gratuity and leave encashment in accordance with the rules, despite his dismissal from service. However, the question of

leave encashment was directed to be considered separately by the authorities. The statement of the petitioner, who had appeared in person, was recorded to the effect that the offer made by the other side was acceptable to him and he would not raise any claim against the authorities subsequent thereto.

5. Finally, vide order dated 4.1.2007, counsel for the respondents had stated that the competent authority had decided to convert the punishment of dismissal inflicted on the petitioner into discharge, thus entitling him to receive compassionate allowance and the said benefit would be disbursed to him within three months. In view of the said statement, which was accepted by the petitioner, the captioned petition was disposed of with directions to the respondents to pass appropriate orders disbursing the amounts to the petitioner from the date of passing of the order dated 04.1.2007.

6. Based on the aforesaid decision, the respondents had passed an order dated 12.3.2007, granting 2/3rd compassionate allowance to the petitioner @ Rs.1913/-, w.e.f. 4.1.2007 and besides the above, pensionary benefits were released in his favour, as detailed in the letter dated 12.12.2014, addressed to the petitioner (Annexure P-8).

7. Not satisfied by the aforesaid order, the petitioner had filed a third writ petition, registered as WP(C)No.7834/2013 before the High Court asking for payment of gratuity and medical allowance. In the said petition, the petitioner had claimed that the respondents had failed to grant him gratuity and medical allowance as well as revision of his pay as per the Recommendations of the Sixth Pay Commission. Vide order dated 11.12.2013, the said writ petition was disposed of with directions to the respondents to consider the grievance of the petitioner raised in his

representation dated 10.10.2013 and pass a speaking order within six weeks.

8. Counsel for the respondents states that it was in view of the aforesaid order dated 11.12.2013, that the respondents had passed an order dated 18.12.2014, informing the petitioner that they had sanctioned gratuity and medical allowance as admissible to him and the basis of making the calculation was furnished in para 10 of the said order. Subsequently, an order dated 22.3.2014 (Annexure P-3) was issued by the respondents for correcting a calculation error that had occurred in the order dated 18.12.2013 (Annexure P-2), whereunder the gratuity and medical allowance of the petitioner was recalculated as detailed in para 10 thereof. This was followed by another order dated 26.3.2014 (Annexure P-4) issued by the respondent which had again sought to rectify the extent of gratuity and medical allowance payable to the petitioner, as detailed in para 10.

9. Now the petitioner has filed the present petition which is the fourth petition, praying *inter alia* for quashing the order dated 26.3.2014, on the ground that the respondents have wrongly fixed his grade pay at Rs. 2400/-, instead of granting him grade pay @ Rs.2800/-.

10. Learned counsel for the respondents states that the grievance raised by the petitioner with regard to mis-calculation of grade pay has been dealt with in the detailed reply dated 12.12.2014 (Annexure P-8), issued by the respondents in response to the petitioner's representation dated 30.9.2014. He explains that the petitioner's claim to entitlement of grade pay of Rs.2800/-, on the promotional post of ASI, by way of ACP w.e.f. 9.8.1999, is misconceived for the reason that he had earned one promotion to the rank of Head Constable (RO) on 24.4.1992 and could have been entitled to a second benefit under the ACP only after rendering service for a period of 24

years, which he had not completed since he was dismissed from service and at that time, he had put in 19 years 10 months and 13 days.

11. In view of the fact that the second benefit under the ACP can be granted to an employee only upon completion of 24 years of service, which the petitioner had admittedly not completed, having been dismissed from service on completion of 19 years 10 months and 13 days, we are of the opinion that he would not be entitled to grant of grade pay of Rs.2800/- on the promotional post of an ASI, on extension of the benefit of the second ACP. Accordingly, the present petition is dismissed as being devoid of merits.

HIMA KOHLI, J

SUNIL GAUR, J

MARCH 21, 2016

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