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

% *Date of Decision : August 04, 2016*

+ **W.P.(C) 6762/2016**

SHRINIWAS & ANR Petitioners

Represented by: Ms.Saahila Lamba, Advocate with
Mr.T.S.Dagar, Advocate

versus

UNION OF INDIA & ORS Respondents

Represented by: Mr.Jagjit Singh, Advocate with
Mr.Preet Singh and Ms.Kiran
Kaushik, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (ORAL)

1. As per the Rules of this Court advance copy of the writ petition was served upon the respondents and counsel as above appears for the respondents.
2. A question of law arises for consideration in the writ petition and thus no counter affidavit is warranted.
3. The petitioners were enrolled as constables in the Railway Protection Force and earned promotion to various ranks. Presently they are working as Sub-Inspectors. Relevant would it be to note that the two petitioners earned promotion to the post of Head Constables and thereafter to the post of Assistant Sub-Inspector.
4. When the recommendations of the 4th Central Pay Commission were accepted, there existed a post of Naik. Constables were granted the

replacement of scale of ₹825-1000. Naiks were granted the replacement pay scale ₹950 - 1000. Further, benefit of two increments were granted to constables whose basic pay was fixed below the minimum of the pay scale recommended by the 4th Central Pay Commission i.e. ₹855.

5. After the recommendations of the 5th Central Pay Commission were accepted constables were placed in the replacement pay scale ₹2750 - 4400 + two advance increments. Naiks were granted pay in the pay scale ₹3050-4590 but later on constables were put in the pay scale ₹3050 - 4590 and Naik in the pay scale ₹3200 - 4900.

6. With effect from October 10, 1997 the post of Naik was abolished and all Naiks were re-designated as Head Constables.

7. Thus, as a result of grant of two advance increments to the constables, who were drawing less basic pay than ₹8500, in terms of the recommendations of the 4th Central Pay Commission they started drawing higher revised pay under the replacement pay scales after the recommendations of the 5th Central Pay Commission were implemented on being promoted viz their seniors.

8. A Head Constable drawing pay lesser than his junior (who were granted two advance increments when they joined as constables) filed WP(C) 15010/2004 P.D.Devassia vs. Union of India & Ors. before the Kerala High Court. The Kerala High Court considered the matter and noting the aforesaid facts directed that the department would pass an appropriate order to remove the anomaly. The anomaly being, juniors receiving pay more than the seniors. In view of the judgment dated December 10, 2008 of the Kerala High Court, the Railway Board issued a circular dated February 04, 2010 prescribing therein that pay of constables promoted to the post of Head Constable prior to January 01, 1996 be stepped up at par with those

constables who got benefit of adjustment of advance increments when the recommendations of the 5th Central Pay Commission were implemented and got promoted as Head Constables after January 01, 1996; subject to the following four conditions:-

- (i) both senior and junior employees belonged to the same cadre and the posts in which they have been promoted should be identical in the same cadre;*
- (ii) the pre-revised and revised scales of pay of the lower and higher posts in which they are entitled to draw pay should be identical;*
- (iii) the senior employee at the time of promotion had been drawing equal or more pay than the junior; and*
- (iv) the anomaly should be directly as a result of the application of the provisions of Rule 1313 (FR22) of IREC-II or order regulating pay fixation on such promotion in the revised scale.*

9. In spite of the aforementioned clear instructions issued by the Railway Board in its circular dated February 04, 2010 the Railway Authorities did not step up the pay. This resulted in one Damodar Singh filing WP(C) 11299/2012 before the Punjab & Haryana High Court, which was allowed on February 09, 2015. Noting the aforesaid facts as also the law declared in the decisions reported as (2009) 3 SCC 94 Gurcharan Singh Grewal & Anr. vs. Punjab State Electricity Board and Ors and 2011 (1) SLR 162 Chief General Manager, Bharat Sanchar Nigam Ltd. & Ors. vs. Central Administrative Tribunal & Ors. it was held that if a junior draws salary more than a senior, the salary of the senior has to be stepped up. The final direction issued was as under:-

“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 Fifty Central Pay Commission scale and got promoted after 1.1.1996."

10. We see no reason why the respondents are insisting that unless the force personnel obtain directions from the Court they would not do the needful. The respondents are bound by the circular dated February 04, 2010.
11. The writ petition is disposed of directing the respondents to step up the pay of the petitioners and bring it at par with their juniors in terms of the Railway Board circular dated February 04, 2010 from the date juniors started drawing higher up.
12. Arrears shall be paid to the petitioners within six weeks from today failing which the same shall bear simple interest @ 9% per annum from today till payment of arrears.
13. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

AUGUST 04, 2016
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