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

Date of decision:13th September, 2017

W.P.(C) 42/2017

DUSHYANTH SINGH ..... Petitioner
Through: Mr. P. Sureshan, Adv.

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr.Kirtiman Singh, Mr.Waize Ali Noor, Mr.Prateek Dhanda and Mr.Vikramaditya Singh, Advs.

W.P.(C) 58/2017

KASHTRIYA HARIOM SINGH AND ORS ..... Petitioners
Through: Mr. P. Sureshan, Adv.

versus

UNION OF INDIA AND ORS ..... Respondents
Through: Mr.Kirtiman Singh, Mr.Waize Ali Noor, Mr.Prateek Dhanda and Mr.Vikramaditya Singh, Advs

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

With the consent of the learned Counsel for the parties these writ petitions are taken up for hearing and final disposal and as identical issue arise for consideration as they are being disposed of by the common judgment.

2. As issue in question is covered by judgments of this Court, we are not referring to facts in detail. The petitioners herein are Constables in Central Industrial Security Force and were appointed prior to 1.1.2006. After enforcement of the Central Civil Services (Revised Pay) Rules 2008, the petitioners' pay scales were fixed under Rule 7(1) (A) (i) by applying multiplier of 1.86 and rounding of resultant figure to the next multiple of ten.

3. The contention of the petitioners is that the pay fixed under the Revised Pay Rules was lower than the salary payable to a direct recruit appointed as a Constable on or after 01.01.2006 fixed under Rule 7(1)(A)(ii) at the minimum of Revised Pay Band/ Pay Scale as per Section II of Part B of the First Schedule of 2008 Rules.

4. This position or rather anomaly it is accepted is correct by the respondent, who submit that the petitioners' cannot claim parity with the direct recruits and the pay scale applicable to them. The respondents state that the petitioners' would be entitled to stepping up of pay after the direct recruit was appointed. In this case, the direct recruits were first

appointed on 02.02.2006 and accordingly the salary/pay of petitioners' have been upgraded or stepped up to the level of direct recruits from the said date.

5. Identical issue had come up before this Court in W.P(C) No. 8058/2015, ***Union of India and ors v. Malbika Deb Gupta.*** Deciding the issue in favour of the employees vide decision dated 4th November, 2016, it was held as under:

> *"6. Rule 7A clause (i) postulates for computation of the revised pay by multiplication of the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding the resultant figure to the next multiple of ten. Thus the existing pay scales are to be multiplied by a factor of 1.86 and would be rounded off as indicated. However, clause (ii) thereof stipulates that where minimum revised pay scale is more than the amount arrived at as per clause (i), the pay will be fixed at the minimum of the revised basic pay / pay scale. The clause (ii) refers to the pay scale and grade pay as applicable on enforcement of the Revised Pay Rules, 2008. In case the minimum revised pay scale under the Revised Pay Rules,2008 is more than the figure arrived at under clause(i) of Rule 7A, clause (ii) would be applicable.*
>
> *7. The contention of the petitioners is that Rule 7A (ii) will not apply when Note 2A is applicable. We do not agree with the said argument. Note 2A does not contradict the said Rule 7A or carve out an exception overriding the mandate of Rule 7A. The*

note stipulates that for posts upgraded as indicated in Part B and C of the First Schedule of the Rules, the fixation of pay will be done in the manner provided in clauses (i) and (ii) of Rule 7A by multiplication of the pay scale as existing on 01.01.2006 by a factor of 1.86 and rounding of.. Note 2A, in effect, makes reference to clause (i) of Rule 7 Clause A and is identically worded as clause (i) to Rule 7A. This does not mean that clause (ii) to Rule 7A would not be applicable. If this was the intent and purpose of Note 2A, the Note would have been differently worded. In simple and plain words, it would have been stated that clause (ii) would not be applicable till first direct recruits were appointed or first promotions post 1st January, 2006 were made. Reference to clause (ii) of Rule 7A would not have been made in this manner. Rule 7A and Note 2A are to be construed and interpreted harmoniously so as to make them consistent to avoid any conflict.

8. The argument of the petitioner ignores and contradicts the second and third sentence of Note 2A. The second and the third sentence in Note 2A state that the grade pay in the upgraded scale as indicated in Column 6 of Part B or C will be payable in addition and illustration 4A is the applicable illustration. Section II of Part B of the 1st Schedule in Column 6 refers to the corresponding grade pay applicable in the pay band. The earlier columns of the table in section II refer to the present scale, i.e., the pay scale as was applicable prior to 1.1.2006, and the pay scale granted consequent to the merger of the posts, and then states the corresponding or equivalent Pay band and grade pay applicable with *reference to the revised pay scale. 9. Illustration 4A is as under:-*

> *"Illustration 4A: Pay fixation in cases where posts have been upgraded e.g. posts in prerevised pay scale of Rs.3050-75- 3950-80-4590 to Rs.3200-85-4900 scale*
>
> *1. Existing Scale of Pay Rs.3050-4590 (Corresponding Grade Pay Rs.1900)*
>
> *2. Pay Band applicable PB-1 Rs.5200-20200*
>
> *3. Upgraded to the Scale of Pay Rs.3200-4900 (Corresponding Grade Pay Rs.2000)*
>
> *4. Existing basic pay as on 1.1.2006 Rs.3125*
>
> *5. Pay after multiplication by a factor of 1.86 Rs.5813 (Rounded off to Rs.5820)*
>
> *6. Pay in the Pay Band PB-2 Rs.5820*
>
> *7. Pay in the pay band after including benefit of bunching in the pre-revised scale of Rs.3050-4590, if admissible Rs.6060*
>
> *8. Grade Pay attached to the scale of Rs.2000 Rs.3200-4900*
>
> *9. Revised basic pay - total of pay in the pay band and grade pay Rs.8060"*

The illustration refers to the computation of pay under both Rule 7A clause(i) and clause (ii).

10. Even otherwise, the interpretation propounded by the Union of India is incoherent and leads to absurdity. A new direct recruit, when appointed, is to be paid in the pay scale as per the 2008 Rules. He would be entitled the minimum of the pay band plus applicable grade pay. His pay would be computed as *per Rule 7A Clause (ii) of the Rules. However, employees on the same post prior to 1.1.2006 would not get the benefit of clause (ii) to Rule 7A and would have to wait till a junior is appointed to the same post after 1.1.2006. Thus, when the appointments are delayed, or not made, the benefit of the new pay scales under Part B and C would be delayed or even denied. Consequently, the contention of the petitioners that the respondents would be entitled to benefit of Rule 7A Sub Clause (ii) only from the date when the junior is appointed to the said post by way of direct recruitment or by way of promotion is fallacious and has to be rejected. The aforesaid argument is to cover up the anomaly which is being created as a result of their misinterpretation of Rule 7A (ii) and Note 2A.*

11. One cannot accept that the same post can have two different pay scales, one for existing employees performing the same tasks and doing the same work on the ground that they were appointed or have been functioning on the said post prior to 1.1.2006, whereas a person appointed later in point of time would get the higher pay scale. Logically and as sequitor, the argument of the Union of India that where new appointments or promotions were made, the employees working on the posts would immediately get the benefit of pay under Rule 7A Clause (ii) is wrong and fallacious. The principle of upgradation of pay of the senior on the junior getting a higher pay scale is applicable in certain situations. Note 2A does not prescribe and record any such precept.

12. Fixation of pay pursuant to the 2008 Rules is a right. This right cannot be defeated and postponed. It is not subject to the principle of stepping up of pay of the senior when the junior gets a higher pay. The decision of the High Court of Delhi in Dharmendra Yadav v Union of India & Ors., 2016 (5) SLR 644 (Delhi) is well reasoned and detailed. Similarly, the judgment dated 18.07.2016 passed in W.P.(C) No.10071/2015, Ram Niwas v. Union of India. referring to the decision in Dharmendra Yadav (supra) takes an identical view."

6. The aforesaid ratio follows decision of the Delhi High Court in ***Dharmendra Yadav v Union of India & Ors***., 2016 (5) SLR 644 (Delhi) and judgment dated 18.7.2016 passed in W.P (C) no. 10071/2015, ***Ram Niwas v. Union of India and ors***. These judgments were also followed in W.P(C) no. 5215/2016, ***Xavier P.J. v. Union of India and ors***. decided on 01.05.2017.

7. Lastly, we have judgment in the case ***Krishan Kant v. Union of India and ors*** W.P 94/2017 decided on 10.08.2017. The last judgment rejects the argument of the respondents that the employees like the petitioners in fact would be prejudiced and get lower pay scale as they were entitled to first increment with effect from 01.07.2006, observing that once the pay scale was fixed in accordance with the 2008 Rules with effect from 01.01.2006, their next increment with effect from 01.07.2006

would be counted and calculated taking into account the enhanced basic pay.

8. In view of the above position, the present writ petitions are allowed and direction is issued to the respondents to fix the pay scale of the petitioners' under Rule 7 (1)(A)(i) and then compute the minimum pay scale applicable with reference to grade pay applicable to Revised Pay Scale mentioned in Section II of Part B of First Schedule of 2008 Rules. If the resultant computation/figure is higher, the petitioners' would be entitled to the benefit of Sub-Rule (ii) to Rule 7 (1) (A) of 2008 Rules. The aforesaid exercise would be completed and implemented within a period of four months from the date of a copy of this order is received by the respondents. In case there is a delay beyond four months, the respondents would be liable to pay interest @ 8% p.a. from the date of this order.

With the aforesaid directions, writ petitions are disposed of. No costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

SEPTEMBER 13, 2017/vp