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

+ **WRIT PETITION (CIVIL) NO. 909/2015**

Date of decision: 12th July, 2017

SURESH RAM

..... Petitioner

Through Mr. V. Subramoniam T.R. & Mr. Rahat
Bansal, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through Mr. A.K. Gautam, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (ORAL):

Suresh Ram had joined the Central Reserve Police Force at the post of Constable (Cook) on 28th April, 1981.

2. Suresh Ram retired from the same post on 11th January, 2016. During his service tenure, the petitioner did not earn any promotion.

3. The petitioner was granted benefit of first and second financial upgradation under the Assured Career Progression Scheme (ACP Scheme) on 9th August, 1999 and 1st August, 2005. Upon second financial upgradation, the petitioner was placed in the then applicable pay scale of Rs.3050-75-3950-80-4590.

4. Upon implementation of the Central Civil Services (Revised Pay) Rules, 2008 (Revised Pay Rules, 2008), the petitioner was placed and granted fitment in Pay Band-1 Rs.5200-20200 plus Grade Pay of Rs.1900.

5. Constables working as Peons, Cooks, Farashs and Daftries had pleaded and urged against fitment in Grade Pay of Rs.1800 in PB-1 under the Revised Pay Rules, 2008. The submission was that having been

granted combative training, they should be placed in the same grade pay of Rs.2000 in PB-1 as is applicable to other Constables. Constables in the Central Para-Military Forces were placed in the said Grade Pay of Rs.2000 in PB-1. The plea had met with partial success when the respondents granted them Grade Pay of Rs.2000 with effect from 29th October, 2009. However, the benefit was denied from retrospective effect, i.e. 1st January, 2006, when the Revised Pay Rules, 2008 became applicable.

6. Some other similarly situated Constables working as Peons, Cooks, Farashs and Daftries had filed Writ Petition (C) No. 3930/2011, ***Daftry Bhim Singh and Others versus Union of India and Others***. Writ Petition (C) No. 3930/2011 was allowed vide judgment dated 28th September, 2011 with the direction and Mandamus that the respondents would pay Grade Pay @ Rs.2000 with effect from 1st January, 2006. Arrears were to be paid within eight weeks.

7. Pursuant to the said judgment, the respondents passed the sanction order dated 24th June, 2013 in the case of the petitioner granting him Grade Pay of Rs.2000 with effect from 1st January, 2006. He was also granted first, second and third financial upgradations under the Modified Assured Career Progression Scheme (MACP Scheme) with effect from 1st September, 2008, 1st September, 2008 and 28th April 2011, in the Grade Pay of Rs. 2400, Rs. 2800 and Rs. 4200 respectively.

8. However, this office order dated 24th June, 2013 was modified vide subsequent office order dated 21st July, 2014. This office order records that the petitioner was entitled to Grade Pay of Rs.2000 as on 1st July, 2008 and thereafter second financial upgradation under the MACP Scheme with effect from 1st September, 2008 in the Grade Pay of Rs.2400 and third financial upgradation under the said Scheme with effect from 28th April, 2011 in Grade Pay of Rs.2800.

9. For passing the said order, the respondents had relied upon office

memorandum dated 16th November, 2009, which reads as under:-

“Reference is invited to the Department of Personnel and Training (D0PT)'s Office Memorandum of even number dated the 19th May, 2009 regarding the Modified Assured Career Progression Scheme (MACPS). Consequent upon the implementation of Sixth Pay Commissions recommendations, the four pre-revised Group 'D' pay scales viz., Rs.2550- 3200, Rs.2610-3540, Rs.2610-4000 and Rs.2650-4000 have been upgraded and replaced by the revised pay structure of grade pay of Rs.1800 in the pay band PB-1. As per the recommendations of Sixth CPC, Government servants in these four pre-revised Group 'D' scales have been granted the Group 'C' revised pay structure of grade pay of Rs.1800 in the pay band PB-1. It has been decided on the analogy of point-5 of Annexure-I of MACPS dated 19.05.2009 that promotions earned or upgradations granted under ACP Scheme of August,-1999 in the past to the four pay scales mentioned above, which now carry the grade pay of Rs.1800/- shall be ignored for the purpose of MACPS. However, promotions/financial upgradations earned by existing Group 'D' employees to grade pay of Rs.1900 (pre-revised scale of Rs.3050- 75-3590-80-4590) shall be counted for the purpose of MACPS.”

(emphasis supplied)

10. The contention and reasoning is that the petitioner was granted second financial upgradation under the ACP scheme on 1st August, 2005, in the pay scale of Rs.3050-75-3950-80-4590, and granted grade pay of Rs. 1,900 under the Revised Pay Rules, 2008. In these circumstances, the last sentence of the office memorandum dated 16th November, 2009 would be applicable.

11. We have considered the said contention and submission made by the respondents, but do not find any merit in the same. The reason is obvious and clear. The effect of the judgment of this Court in the case of ***Daftry Bhimraj Singh and Others*** (supra) was that the petitioner like other Peons, Cooks, Farashs and Daftries was treated and entitled to the lowest Grade

Pay of Rs.2000 in PB-1 with effect from 1st January, 2006. Grade Pay of Rs.2000 is higher than the Grade Pay of Rs.1900, to which reference is made in the Office Memorandum dated 16th November, 2009 quoted above. The said Office Memorandum would not be applicable to the petitioner as grade pay of Rs. 2000 was applicable to the post of Constable under the Revised Pay Rules, 2008 with effect from 01.01.2006. This being the position, the earlier financial upgradations earned by the petitioner before implementation of the Revised Pay Rules, 2008 were not relevant and to be treated as inconsequential. Accordingly, the petitioner was rightly granted the three financial upgradation on implementation of the MACP Scheme in the Grade Pay of Rs. 2400, Rs. 2800 and Rs.4200 from the dates mentioned. In fact, the petitioner would be entitled to grant of first financial upgradation as on 1st January, 2006 under the ACP Scheme in the Grade Pay of Rs.2400/-.

12. The respondents had correctly applied the MACP Scheme and the Revised Pay Rules, 2008 when read with decision in the case of ***Daftary Bhimraj Singh and Others*** (supra). Constable Barkat Ali, was a water carrier and appointed on 18th October, 1983. He has been granted financial upgradations in the Grade Pay of Rs. 2400, Rs. 2800 and then Rs.4200. This was only possible in case pay scale of Constable Barkat Ali upon implementation of the Revised Pay Rules, 2008 had been fixed in the Grade Pay of Rs.2000 in PB-1.

13. In view of the aforesaid discussion, we allow the present writ petition and set aside the Office Order dated 8th July, 2014. The petitioner would get salary in terms of earlier Office Order dated 24th June, 2013. Arrears, if any, recovered from the petitioner would be paid within a period of six weeks from the date a copy of this order is received. Arrears of pension, if any, payable to the petitioner, would be also paid within six weeks. In case there is delay beyond six weeks, the respondents would pay

interest @ 8% from the date of this order till payment is made. There would be no order as to costs.

SANJIV KHANNA, J.

NAVIN CHAWLA, J.

JULY 12, 2017
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