

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(C) 1494/2017**

Date of decision: 21st August, 2017

SURENDER SINGH Petitioner
Through: Mr.Rajsingh Bhagat, Adv.

versus

UNION OF INDIA & ORS. Respondents
Through: Mr.P.C.Yadav, Adv. For R-1 to 3

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

SANJIV KHANNA, J. (Oral)

The petitioner, Surender Singh by this writ petition seeks quashing of order dated 16th February, 2015 and the unit service order Part-II No.325/2013 dated 19th September, 2013. The petitioner has also prayed for direction to the respondents to restore pay fixation of the petitioner vide unit service order no.721/2011 dated 29th October, 2011.

2. The petitioner was appointed as Sub-Inspector in the Central Industrial Security Force (CISF for short) on 2nd August, 1991.

3. On completion of 12 years of service, the petitioner was granted financial up gradation under Assured Career Progression Scheme (ACPS for short) vide order dated 17th – 18th October, 2003

issued by the Airport Security Grade (ASG), Ahmadabad (Gujarat). Subsequently, the petitioner was promoted to the Grade of Inspector in March, 2006.

4. After completion of 20 years of regular service, the petitioner was granted second financial up gradation under the Modified Assured Career Progression Scheme (MACP for short) on 29th October, 2011.

5. The petitioner in completion of approximately 22 years of service, made an application seeking voluntary retirement on 16th July, 2013.

6. The respondents while processing the application for voluntary retirement came to the conclusion that the petitioner should not have been given benefit of exercise of option under Fundamental Rule 22 (1)(a) (i) and accordingly, directions were issued to deduct an amount of Rs.50,672/- from the gratuity, vide office order dated 15th November, 2013. This also had the effect of reducing the pension payable to the petitioner from Rs.12230/- to Rs.11,990/-. The petitioner is aggrieved by reduction of pension from Rs.12,230/- to Rs.11,990/- as also the recovery of Rs.50,672/-.

7. The stand of the respondents in the counter affidavit is somewhat ambiguous. They have stated that as per the Fundamental Rule 22, all fixations are done after obtaining option from the individual and once the option is exercised, the same cannot be changed at a later date. The petitioner was wrongly

permitted to shift the date of increment from 3rd August, 2003 to 1st January, 2004 vide amendment order dated 29th October, 2011. This change was not in accordance with law i.e. Fundamental Rule 22 and, therefore, was bad and contrary to law.

8. The respondents have also accepted that they had scrutinized the records to find out whether any option form or request for option was given by the petitioner at the time when he was granted financial up gradation under the ACP Scheme with effect from 3rd August, 2003. No option form could be located.

9. As per Office Memorandum no.13/2/97 Estt. dated 12th December, 1997 such option should have been incorporated in the promotion order or the order granting financial up gradation. The said position was reiterated in the OM dated 10th August, 2007.

10. In these circumstances, we do not think the respondents were justified and correct in reducing pension of the petitioner from Rs.12230/- to Rs.11990/- and issuing the direction to recover Rs. Rs.50,672/- from the gratuity payable to the petitioner.

11. Resultantly, the writ petition succeeds and the respondents are directed to refund payment of Rs.50,672/-, which recovery, in our opinion, was not in consonance with the mandate of the judgment of the Supreme Court in *State of Punjab vs. Rafiq Masih (White Washer) etc.*, AIR 2015 SC 696. The petitioner as noticed above had sought voluntary retirement vide application dated 16th

July, 2013. We also hold that the pension payable to the petitioner should not be reduced from Rs.12230/- to Rs.11990/-

12. Compliance of the aforesaid directions would be made by the respondents within three months from the date a copy of this order is received. In case compliance is not made within the said period, the respondents would be liable to pay interest @8% per annum on the aforesaid amount of Rs.50,672/- and also the arrears towards pension from the date of this order till payment is made.

The writ petition is accordingly disposed of, with no order as to costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 16, 2017
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