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

\+ W.P.(C) 5215/2016

XAVIER. P.J. & ORS ..... Petitioner

Through Mr. Subhash Mohanty, Adv.

versus

UNION OF INDIA & ORS ..... Respondents

Through Mr. Vivekanand Mishra, Sr. Panel Counsel.

O R D E R

% 01.05.2017

Xavier P.J and 39 others were appointed Constable (General Duty) on different dates between 16.2.2002 to 21.4.2002 in S-5 scale of pay of Rs.3050-4590 (Pre-revised) in the Central Industrial Security Force (CISF, for short).

2. On implementation of the 6th Pay Commission, vide the Central Civil Services (Revised Pay) Rules, 2008 (Rules, for short) notified on 29.8.2008 with retrospective effect from 1.1.2006, the pay of the petitioners was fixed under Rule 7 (1)(A)(i) of the Rules applying a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

3. However, in the case of direct recruits appointed as Constable (General Duty) on or after 1.8.2006, their pay was fixed under Rule 7 (1)(A)(ii) at the minimum of revised pay band/pay scale as per Section II of para A of the First Schedule of the Rules.

4. As a result of the aforesaid fixation, pay of the petitioners with effect from 1.1.2006 under Rule 7 (1)(A)(i) was lower than the minimum basic pay of the direct recruits under Rule 7(1)(A)(ii) of the Rules.

5. The respondents do not dispute or contest the said position.

6. The respondents rely on the Rule position i.e. Rule 7 read with Note 2A and illustration 4A of the aforesaid Rules.

7. The petitioners, on the other hand, rely on Note 7 read with Note 10 of the aforesaid Rules.

8. We need not examine the controversy in detail and afresh, as issue is covered by the decision of this Court in WP(C) No.727/2015 Dasrath & Ors. vs. Union of India & Anr. decided on 27.1.2015, WP(C) No.6844/2015 Mohd. Naseemuddin & Ors. vs. Union of India & Ors. decided on 26.7.2016 and WP(C) No.8058/2015 Union of India & Ors. vs. Malbika Deb Gupta decided on 4.11.2016. In the last judgment it has been held as under:-

> "4. The issue raised in these writ petitions filed by the Union of India pertains to interpretation of Rule 7A of the CCS (Revised Pay) Rules, 2008 ('the 2008 Rules' for short) and the Note-2A. For the sake of convenience, we would reproduce Rule 7A and Note-2A as under:
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> > "7. Fixation of initial pay in the revised pay structure: The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of rule 6 to be governed by the revised pay structure on and from the 1st day of January, 2006, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a lien or would have held a lien if it had not been suspended, and in respect of his pay in the following post held by him, in the following manner, namely:-

(A) in the case of all employees:-

(i) the pay in the pay band / pay scale will be determined by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10;

(ii) If the minimum of the revised pay band / pay scale is more than the amount arrived at as per (i) above, the pay shall be fixed at the minimum of the revised pay band / pay scale: xxx

Note2A:Where a post has been upgraded as a result of the recommendations of the Sixth CPC as indicated in Part B of Part C of the First Schedule to these Rules, the fixation of pay in the applicable pay band will be done in the manner prescribed in accordance with Clause (A) (i) and (ii) of Rule 7 by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 and rounding the resultant figure in the next multiple of ten. The grade pay corresponding to the upgraded scale as indicated in Column 6 of Part B or C will be payable in addition. Illustration 4A in this regard is in the explanatory Memorandum in these Rules."

5. In the case of the petitioners – Northern Railways, the applicable Rules are known as Railway Service Revised Rules, 2008. It is, however, accepted by the parties that the Rule 7 and Note 2A of the said rules are identical.

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 1 st 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."

9. The writ petition is accordingly allowed in the aforesaid

terms. The respondents would implement the said order within six weeks of the date of receipt of copy of this order. In case of delay beyond six weeks, the respondents would be liable to pay interest @ 8% p.a. from the date of receipt of copy of the order, till the payment is made.

10. There would be no order as to costs.

SANJIV KHANNA, J

ANIL KUMAR CHAWLA, J

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