

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.10671 OF 2018

ORDER:

This Writ Petition is filed seeking writ of mandamus declaring the action of the respondents in not fixing the pay of petitioners as per Railway Services (Revised Pay) Rules, 2008 from 01.01.2006 or from the date of their regular appointment as Constables and not stepping up their pay on par with their juniors whose pay was fixed in terms of Railway Services (Revised Pay) Rules, 2008 from 01.01.2006 as was done in similarly situated persons working in other Railway Zones and rejecting the same benefit to the petitioners vide Order No.X/P.359/Vol.XI, dated 23.02.2017 issued by the Inspector General & Chief Security Commissioner, RPF, S.C.Railway, Secunderabad as illegal and arbitrary and consequently to declare the petitioners are entitled for revision of pay scales no par with their juniors under Note-7 of Rule 7 of Railway Services (Revised Pay) Rules, 2008 as extended to the similarly situated Constables working in other Indian Railways zones.

2. Brief facts which are necessary for disposal of the Writ Petition are as follows:

It is the case of the petitioners that they were provisionally selected for appointment to the post of Constables in South Central Railway after due process of selection in the month of June, 2005 and after selection they were sent for training for a period of nine months. After completion of said training, they were appointed as constables in the month of

May, 2006 and posted in different Divisions in South Central Railways. That based on the recommendations of 6th Central Pay Commission, the Ministry of Railways (Railway Board) issued railway Services (Revised Pay) Rules, 2008 (for short 'Rules of 2008') vide Notification in RBE No.103/2008, dated 04.09.2008 which came into force from 01-01-2006 and the date of appointment of petitioners is much after 01.01.2006. That the Rules of 2008 extended to the juniors who were appointed after 01.01.2006 and the same were not extended to the petitioners and that their pay was fixed from 01.10.2006. Aggrieved by the same, the petitioners made representation for rectifying anomaly on the ground that the persons who were appointed after 01.01-2006 given benefit from the date of their appointment, but the petitioners were denied the said benefit and rejected their request by order dated 18-01-2017 and communicated to the petitioners vide proceedings dated 23-02-2017. The petitioners also assert that the similarly situated persons working in other Railway Zones benefit of revised pay scales were extended. Aggrieved by the same, the present writ petition is filed.

3. Counter affidavit is filed by the respondents denying the averments in the affidavit filed in support of the Writ Petition stating that as per Railway Board's letter No.PC-VI/2008/I/RSRP/1 dated 11.09.2008, the VI Central Pay Commission was implemented with effect from 01.01.2006. After completion of initial training petitioners have been taken into roll of RPF strength from May 2006 and pay fixation was

given to them as per VI CPC fitment table at Rs.8060 in Pay band Rs.6060 + Grade Pay Rs.2,000 with effect from 01.01.2006 by granting one additional increment in terms of Railway Board letter No.OC-VI/2012/I/RSRP-1, dated 23.03.2012. It is stated that on the request of the constables, a revised pay fixation proposal has been sent to the Finance Department for verification and certification of revised pay fixation on par with East Cost Railway Constables who were enlisted in the year 2005 and the Accounts Department has not agreed for revision of pay fixation on par with East Cost Railway Constables stating that the candidates who were enlisted in 2005 on direct recruitment are governed by V Central Pay Commission pay scale and are not entitled to the minimum pay prescribed for direct recruits as per VI Central Pay Commission, which is applicable to recruits appointed on or after 01.01.2006. That the pay fixation allowed to the petitioners by multiplying 1.86 factor for conversion in VI Central Pay Commission is in order and does not require revision. It is also stated that the pay of Constables who were enlisted in the year 2005 was stepped up on par with the Constables enlisted in the month of October, 2006 at the stage of Rs.8460/- with effect from 09.10.2006 (P) from the date of their entry into the initial training and the pay fixed at Rs.8720/- with effect from 01.07.2007 (P) and 10.09.2007(A), since the date of joining of their juniors was 10.09.2007 and sought for dismissal of the Writ Petition.

Heard learned counsel for the petitioners and Smt. K.Aruna, learned Standing Counsel appearing for the respondents.

Learned counsel for the petitioners submit that there is no basis for rejection of extending benefit of revised pay scales from October, 2006 to the petitioners, when they were appointed in May, 2006.

Smt.K.Aruna, learned Standing Counsel advanced her arguments based on the averments in the counter affidavit.

In this case, it is to be seen that admittedly, petitioners were selected in the year 2005 and after undergoing training for a period of nine months, they were appointed in the month of May, 2006 and posted in different Divisions of South Central Railway. The Railway Services (Revised Pay) Rules, 2008 came into effect from 01.01.2006 and that though the petitioners were selected in the year 2005 and appointed in May, 2006, the benefit of Rules of 2008 was not extended to the petitioners whereas the said benefit was extended to the juniors of the petitioners, who were appointed on or after 01.01.2006. Aggrieved by the same, they made a representation to Senior Divisional Security Commissioner, Railway Protection Force, South Central Railway, Secunderabad, who sent the proposal to Inspector General and Chief Security Commissioner, RPF, South Central Railway, Secunderabad-4th respondent dated 26-4-2016 requesting to redress the anomaly by taking up the matter to appropriate level and to fix the pay of petitioners in terms of the said Rules of 2008 from 1.10.2006. The Inspector General and Chief Security

Commissioner-4th respondent by letter dated 23-2-2017 rejected the request of the petitioners stating that the constables appointed in the month of May, 2006 are governed by V Pay Commission. It is to be seen that Note-7 under Rule 7 of the Rules of 2008 deals with fixation of initial pay in the revised pay structure. Note-7 under Rule 7 of the above Rules reads as follows;

“Wherein in the fixation of pay under sub-rule (1), the pay of a railway servant, who, in the existing scale was drawing immediately, before the 1st day of January, 2006 more pay than another railway servant junior to him the same cadre, gets fixed in the revised pay band at a stage lower than that of such junior, his pay shall be stepped upto the same stage in the revised pay band as that of the junior”

In view of aforesaid Rule 7, it is clear that the Rules provide unequivocally that a servant who was earning more than that of his junior in the same cadre before the VI Pay Commission came into effect, and after it came into being, started receiving lower than that of junior, in the same cadre, his pay shall be stepped up to the same stage in the revised pay band as that of the junior. It is also pertinent to note that in similar circumstances the anomaly in pay fixation of Constables of East Coast Railway Zone was considered and rectified and their pay was stepped up on par with their juniors as per the said Rules.

In **Vinod Kumar &Ors v. Union of India**¹, the High Court of Delhi, in similar fact situation, allowed the writ petitions and directed the respondents to take the appropriate action to rectify the anomaly of the petitioners therein. The court observed as follows;

¹ 2016 SCC Online Del 4264

“After the recommendations of the 6th Central Pay Commission were accepted by the Government of India the CCS (Revised Pay) Rules, 2008 were promulgated and the pay fixation of the Central Government employees post January 01, 2006 had to be as per the Revised Pay Rules, 2008. Rule 7(A)(1) (ii) of the Revised Pay Rules prescribed as under:-

“7. Fixation of initial pay in the revised pay structure:

(1)

(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 1.1.2006 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 arrive at as per (i) above, the pay shall be fixed at the minimum of the revised pay band/ pay scale;*

2. Mirroring the CCS (Revised Pay) Rules, 2008 the Ministry of Railways has promulgated the Railway Services (Revised Pay) Rules, 2008 and we note that except for the title of the Rules, both Rules are completely identical. Meaning thereby Rule 7(1)(A) (i)(ii) of the Railway Services (Revised Pay) Rules is the same as that of the CCS (Revised Pay) Rules.

7. The petitioners are constables in the Railway Protection Force and are aggrieved by the fact that as of January 01, 2006, applying Rule 7(1)(A) (i) and overlooking clause (ii), the basic pay of the petitioners in PB-I has been fixed at Rs. 6060 with Grade Pay Rs. 2000 and in some Divisions the basic pay has been fixed at Rs. 6460.

10. The writ petition is accordingly allowed. A mandamus is issued to the respondents to fix the basic pay of the petitioners who were working as constables in the Railway Protection Force as of January 01, 2006, at Rs. 6460. The Grade Pay already fixed at Rs. 2000 is maintained.”

In view of aforesaid judgment, the petitioners are entitled for revision of pay scales on par with their juniors under Note 7 of Rule 7 of Rules of 2008. Though the counter affidavit is filed by the respondents, the same is silent as to the assertions made by the petitioners in the writ affidavit.

Having regard to the above, the writ petition is allowed and the respondents are directed to extend the benefit of revised

pay scales to the petitioners and fix their pay from the date of their appointment. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

20-04-2018
Nvl/kvs

A.RAJASHEKER REDDY,J



