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

+ **W.P.(C) 2372/2018**

SURJEET SINGH AND ORS.

..... Petitioners

Through: Mr. Manoj V.George, Ms. Shilpa Liza George, Ms. Ashita Arora, Mr. Amit Kumar & Mr K.Panmei, Advocates

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr. Harish Kumar Garg, Ms.Payal Aggarwal & Mr. Paras Jain, Advocates for Respondent Nos.1 & 2

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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06.12.2018

Dr. S. Muralidhar, J.:

1. The five Petitioners who all joined the Indo-Tibetan Border Police Force ('ITBP') as Head Constables ('HCs') in the Telecommunication Cadre, have filed the present petition for a direction to the Respondents to grant them benefits of the Sub-Inspector ('SI') grade under the Assured Career Progression (ACP Scheme of 1999) as granted to 61 other similarly placed Petitioners in WP(C) No. 7393/2011.

2. The basic facts are not in dispute. During the period 1995-97 under the ITBP Telecommunication Cadre (Group 'C' Recruitment Rules, 1999) (the 1999 RRs) formulated under Section 156 (2) (b) of the ITBP Act, 1992, the

post of SI (RO/RT) was to be filled up from amongst the HCs (RO/RT) of the ITBP having eight years satisfactory service in the grade subject to passing the Departmental Test and being in medical category SHAPE-1. There was no post of Assistant Sub-Inspector ('ASI') at this point in time. Rule 3 of the 1999 RRs stated:-

“The number of post, classification and pay band and grade pay/scale of pay:-

The number of posts, their classification and the scale of pay attached thereto shall be specified in columns (2) to (4) of the aforesaid Schedule.”

3. It is only in 2010 that a fresh set of rules known as the ITBP Telecommunication Cadre Rules (b) & (c) Recruitment Rules, 2010 (the 2010 RRs) introduced an intermediary post of ASI between the post of HC and SI. The 2010 RRs became operational from 28th December, 2010 onwards. Under the 2010 RRs, the post of ASI was to be filled up from amongst Head Constables (Telecommunication) who had rendered five years of regular service and successfully qualified in the pre-promotional training courses. The post of SI was to be filled up by promotion from amongst the ASIs, who rendered six years regular service or ten years combined as ASI (Telecommunication) and HC (Telecommunication) with minimum of one year regular service in the grade of ASI (Telecommunication) and have also successfully qualified in the pre-promotional training courses.

4. The ACP scheme was introduced by the Department of Personnel and Training ('DoPT') for Central Government Civilian Employees with effect

from 9th August, 1999. For the ITBP it was brought into force on 15th August, 2004 whereunder the pay of HC was fixed in the pay scale of Rs.5500-9000 with effect from 9th August, 1999. Under the ACP Scheme, those who had completed twelve/twenty four years would become entitled for an upgraded pay scale. Those who had not completed the above number of years in a particular grade and had not been promoted to the next higher rank would be given the financial benefit to the next higher scale and would be promoted to the higher rank as and when vacancies arose in that grade.

5. Isolated posts in Group A, B, C & D categories having no promotional avenues, were also to qualify for similar benefits. The highest pay scale up to which the financial upgradation was permissible was Rs.14300-18300.

6. In 2007, the Respondents granted the first financial upgradation under the ACP scheme in the scale of Rs.4000-100-6000. However, certain similarly situated employees in the same cadre were granted the first ACP in the pay scale of Rs.5500-9000 and second in the pay scale of Rs.6500-10500. It is only pursuant to orders passed by several High Courts that this anomaly was rectified. In an order dated 10th October, 2011 in WP(C) No. 7393/2011 ***Naresh Kumar v. Union of India***, a mandamus was issued by this Court directing the Respondents that they were expected to apply the same yardstick to the similarly placed employees. This Court observed:

“8. If a general issue of law affecting large number of persons is decided by a court and a specific reference is made that the department should consider extending the principle of law declared across the board to all so that others are not forced in litigation, it is expected that the bureaucrat applies himself properly and does not foist litigation on others.”

7. Nevertheless, by a communication dated 15th April 2011, the Ministry of Home Affairs (MHA) decided to extend the implementation of the Court's judgment of the grant of first ACP to HCs and second ACP to Constables only to the applicants of the various court cases filed by ITBP personnel as well as other CAPFs where the intermediary rank of ASI in the scale of Rs.4000-6000/- (pre-revised) did not exist.

8. What has come in the way of the Petitioners being granted relief similar to those Petitioners in WP(C) No.7393/2011 is the creation of the intermediary rank of ASI with effect from 23rd January, 2007. It is the case of the Petitioners that this was done by an administrative order and was therefore impermissible in law. It is submitted that only by amending the RRs could the post of ASI been created.

9. In their counter affidavit filed in the present petition, the Respondents do not dispute that the intermediary post of ASI was created through administrative orders enclosed with the counter affidavit inter-office note dated 3rd December, 2012 when this issue came up. It was noted by the DIG (ORG) of the ITBP *inter-alia* as under:

“On the subject, it is intimated that as per para 7 of DOP & T order dated 9.8.2012 that financial upgradation under the scheme shall be given to the next higher grade in accordance with the existing hierarchy in a cadre/category without creating new post for the purpose of ACP. In view of this post of ASI in Telecommunication cadre was created by Government on 23.1.2007 and accordingly the post of ASI came into the existing hierarchy of telecommunication cadre w.e.f. 23.1.2007.

3. In light of above creation of post of ASI in Telecommunication cadre, ACP benefit to eligible HCs in the existing hierarchy of SI

(Telecommunication) is extended upto 23.1.2007.”

10. In seeking to justify this creation of an intermediary post, reference is made by the Respondents to Section 156 (2)(b) of the ITBP Act which confers exclusive powers on the Central Government to make rules. Reference is further made to Explanation 2 to Section 153 of the ITBP Act which provides that “Sub-Inspector shall include an Assistant Sub Inspector in the case of personnel belonging to Combined Ministerial cadre of the force.”

11. As rightly pointed out by the Petitioners, the power to make rules is not disputed but what is sought to be done here is to introduce an intermediary post of ASI by an administrative order, which has resulted in a discrimination against the Petitioners, who are identically placed as a Petitioners in WP(C) No. 7393/2011 but have been denied the second ACP. When the Petitioners were appointed as HCs they were entitled to the pay scale of Rs.5500-9000 in accordance with the then existing hierarchy and at that time the ASI pay scale of Rs.4000-6000/- did not exist. This appears to have been accepted even in the communication dated 15th April, 2011 of the MHA which specifically noted as under:

“The case pertaining to grant of 1st financial upgradation to Head Constable (Rs.3200-85-4900) and 02nd ACP to Constables (Rs.3050-75-3950-80-4590) in the pay scale of Rs.5500-9000 in accordance with the then existing rank hierarchy and the provisions of original ACP Scheme has been examined in MoF. MoF vide their ID No.50402-C/E-III(A)/2011 dated 11.04.2011 has agreed to extend the implementation of the Court's judgment to only the applicants of the various court cases filed by ITBP personnel as well as other CAPFs where the intermediary rank of ASI in the pay scale of Rs. 4000-6000 (Pre-revised) did not exist.

2. ITBP and BSF/CRPFSSB/AR may please see for information and necessary action. File is returned to ITBP.

12. Reference is also made to the decision in *Satya Vir Singh v. Union of India 2012 SCC Online (Del) 4006* where in identical circumstances it was observed by this Court as under:

“7. It appears that in the meantime, two other writ petitions bearing WP(C) No. 7393/2011 titled *Naresh Kumar v. UOI* and WP(C) No. 7478/2011 titled *T.L Pyli v. UOI* on the same issue have been filed by the ITBP personnel which were also disposed of on 10th October, 2011 and 14th October, 2011 in terms of the judgment in *Parmal Singh* (supra).

8. The instant writ petition has been necessitated as the petitioner complains that the respondents are taking a view that the benefit of the withdrawal of the order and the judgments of several courts would be granted only to such persons who have filed the writ petitions. Such a stand is contrary to law and is violative of the directions made by this court on 29th September, 2011 in *Parmal Singh* (supra). In our view, unnecessary litigation, including the present writ petition, is being generated by the completely untenable stand of the respondents who are required to take a considered view of the matter as directed in *Parmal Singh* (supra). In case the respondents had proceeded in accordance with law, and having failed complied with the directions of this court in the previous writ petitions, this writ petition would not have been required to be filed. Valuable judicial time has been caused to be expended in this matter without any justification.

9. We were inclined to impose heavy costs in the matter, recoverable from the officials concerned. However, learned counsel appearing for the respondents have urged that the respondents are taking urgent steps to comply with the directions and prayed that therefore a lenient view be taken. We accept this submission.”

13. Despite the repeated orders, it is unfortunate that the Respondents

continue to deny relief to similarly placed persons.

14. For the aforementioned reasons, the Court allows the writ petition and issue a mandamus to the Respondents to grant the benefits of SI grade to the present Petitioners under the ACP scheme on par with the 61 other similarly placed writ petitioners in WP(C) No. 7393/2011. The consequential orders will be issued within a period of eight weeks from today.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

DECEMBER 6, 2018

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