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

+ **W.P.(C) 6298/2014**

VIKAS CHANDEL

..... Petitioner

Through: **Ms.Saahila Lamba, Advocate**

versus

UNION OF INDIA & ORS

..... Respondents

Through: **Mr.Dev.P.Bhardwaj, CGSC for UOI**
with Ms.Anubha Bhardwaj &
Mr.Surender Kumar, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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02.02.2018

1. The petitioner is seeking quashing of OM dated 19.07.2013 issued by the Directorate General, SSB rejecting a representations made by him and two other personnel regarding the anomalies in the fixation of their pay and for stepping up of pay.

2. The petitioner was recruited as a Constable in the Medical Cadre of the respondent No.2/SSB on 06.02.2004 in the pay-scale of `3050-75-3950.

On 01.01.2006, the recommendations of the Sixth Pay Commission was accepted by the Central Government and on applying the said recommendations, all the Constables in the SSB including the petitioner

herein were granted Grade Pay of `2000/- and their pay was fixed at `6060/- per month. Since the direct recruits, who had joined on or after 01.01.2006, were given a fixed pay at `6460/- per month, the pay of Constables in General duty cadre and other cadres/trades, who had joined SSB prior to 01.01.2006, was stepped up to `6460/-. However, the pay of Constables working in the Medical Cadre was not stepped up for the reason that no recruitment had taken place in the said post after 01.01.2006.

3. When the petitioner had pointed out the anomalies in his pay fixation by submitting a representation dated 12.09.2012, the respondent No.2/SSB had issued OM dated 19.07.2013, stating *inter alia* that it had forwarded a proposal to the Ministry of Home Affairs for obtaining a one time relaxation in the provisions of stepping up of pay for removing the anomalies in the matter of pay fixation of the Constables in the Medical Cadre but the Ministry had returned the said proposal on the ground that no recruitment had taken place to the subject post after 01.01.2016. Hence, the present petition.

4. Learned counsel for the petitioner states that aforesaid reasoning given by the respondents to deny stepping up of the pay-scale to the petitioner is unjustified as recruitments had been made on the post of Constable in the Medical Cadre in the year 2007. She further states that the issue raised in the present petition is no longer *res integra* inasmuch as a Division Bench of this Court has already given the same relief to the petitioners in W.P.(C) No.4368/2017 entitled “*Dharambir Singh Vs. Union of India and Others*” vide judgment dated 10.08.2017, where the SSB was a co-respondent.

5. In the captioned case, the respondents had taken a similar stand as

taken in the present case which was turned down. The operative paras of the said judgment are as follows:-

“5. This contention and stand of the respondents has been rejected by this Court in several cases. Reference can be made to the judgment dated 27th January, 2015 in WP(C) no.727/2015 titled Dasrath & Ors. vs. Union of India & Anr., judgment dated 18th July, 2016 in WP(C) no.10071/2015 titled Ram Niwas vs. Union of India & Ors., judgment dated 2nd March, 2015 in WP(C) 1853/2015 titled Lalit Kumar Choudhary vs. Union of India & Ors. and judgment dated 4th November, 2016 in WP(C) No.8058/2015 titled Union of India & Ors. vs. Malbika Deb Gupta & Ors. These decisions highlight that there cannot be two different pay scales for the same posts, one for those who are appointed prior to 1st January, 2006 or promoted even after 1st January, 2006 and those who are appointed as direct recruit after 1st January, 2006.

6. In view of the aforesaid position, the writ petition has to be allowed. Accordingly, mandamus is issued that the petitioner would be entitled to benefit of the revised pay as applicable to a direct recruit w.e.f. 1st January, 2006. The arrears of pay would be paid within a period of 4 months from the date a copy of this order is received. Non-payment within a period of 4 months would entail payment of interest @ 8% from the date of this order till payment is made. No costs.”(Emphasis added)

6. Mr.Dev.P.Bhardwaj, learned counsel for the respondents submits that after obtaining legal opinion, the Union of India has filed an SLP challenging the judgment dated 10.08.2017 passed in the case of **Dharambir Singh (supra)**, which is likely to be listed before the Supreme Court very soon.

7. Learned counsel for the petitioner submits that the respondents did file

an SLP against the judgment dated 04.11.2016 passed in W.P.(C) No.8058/2015, “*Union of India & Ors. Vs. Malbika Deb Gupta & Ors.*” which has been rejected by the Supreme Court vide order dated 01.09.2017. A copy of the said order is handed over by the learned counsel for the petitioner and is taken on record.

8. In view of the fact that the decision taken in the case of **Malbika Deb Gupta (supra)** has attained finality, we have no hesitation in allowing the present petition on the same lines and on the same terms as recorded in para No.6 of the judgment dated 10.08.2017 passed in the case of **Dharambir Singh (supra)**, reproduced herein above.

9. The present petition is allowed and disposed of, leaving the parties to bear their own costs.

HIMA KOHLI, J.

REKHA PALLI, J.

FEBRUARY 02, 2018

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