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

+ **W.P.(C) 10660/2016**

VINOJ V. V. AND ORS

..... Petitioners

Through: Mr. Manoj V. George with Ms. Shilpa
Liza George, Advocates.

versus

UNION OF INDIA AND ANR

..... Respondents

Through: Mr. Manish Mohan, CGSC with
Ms. Manisha Saroha, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE SANJEEV NARULA

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ORDER
30.11.2018

Dr. S. Muralidhar, J.:

1. With the consent of the parties, the writ petition is heard finally.
2. There are 62 Petitioners in this writ petition. They were all appointed as Head Constables (DCPO) ['HC (DCPO)'] in the Central Industrial Security Force ('CISF'). The post of HC was an entry level post with the pay scale of Rs.3,200-85-4,900 which is at par with the pay of Head Constables ('HC') in other branches of the CISF including the Executive, Fire Service, and Administrative Branches. These recruitments happened in the years 1997-2005. It has been pointed out that the promotional avenue for all HCs in the CISF was to the posts of Assistant Sub Inspector ('ASI'), Sub Inspector

(‘SI’), Inspector, and thereon.

3. A restructuring of posts was undertaken in the CISF permitting induction of drivers in the rank of Constable by creation of temporary posts and simultaneous abolition of an equal number of posts of HC (Driver). In other words, with the entry level being the post of Constable, the HC post became a promotional post. In this freshly created promotion posts, HCs were granted basic pay of Rs.7,510/- and grade pay of Rs.2,400/- across all branches with effect from 1st January 2006 pursuant to the recommendation of the Sixth Central Pay Commission (CPC). However, the Petitioners who were appointed directly to the post of HC were given basic pay of Rs.6,750/- instead of Rs.7,510/- whereas they were given the same grade pay of Rs.2,400/- which is subsequent to all other HCs. Thus, within the rank of HC, there were two classes of employees; one drawing basic pay of Rs.7,510/- with grade pay of Rs.2,400/- and others, like the Petitioners, drawing basic pay of Rs.6,750/- plus grade pay of Rs.2,400/-.

4. On 19th September 2011, some of the Petitioners made a representation to the CISF praying that the aforementioned anomaly be rectified and that they too be granted the same pay scale as that of the other HCs. At one stage, an earlier W.P.(C) 7673/2012 was filed by the Petitioners and was heard along with W.P.(C) 496/2016 wherein similar reliefs were sought. The petition came to be dismissed as withdrawn on 25th July 2016 with liberty to file a fresh petition with the same cause. Thereafter, the present petition has been filed.

5. In the reply filed to the writ petition, it is not disputed that the Petitioners

are getting lesser basic pay of Rs.6,750/-. However, the rejection of the request of the Petitioners is sought to be justified in terms of the instructions issued by the CISF Headquarters by its letter No.E-27099/9/2010/Entt/H/105 dated 16th May 2011 on two counts: (i) No HC (DCPO) was directly recruited on or after 1st January 2006, as the cadre does not have an element of direct recruitment and (ii) there is no junior who is drawing basic pay higher than the Petitioners.

6. Learned counsel for the Petitioners has placed reliance on the order passed by this Court on 23rd March 2017 in W.P.(C) 2634/2017 (***Government of NCT of Delhi v. Somvir Rana***) where a similar issue was examined in a challenge to an order dated 4th April 2016 passed by the principle Bench of the Central Administrative Tribunal (CAT) allowing OA No.3217/2009. There, the issue was examined in the context of two pay scales within the post of Trained Graduate Teachers ('TGT'), one for direct recruits and another for promotees. In that case as well, there was a clarification that the stepping up in pay would not be available if the cadre did not have an element of direct recruitment or in cases where no junior has joined with basic pay higher than him. The judgment in ***Somvir Rana*** (*supra*) was appealed against before the Supreme Court by GNCTD. That SLP (Diary No.23663/2017) came to be dismissed by an order dated 1st September 2017.

7. Reliance is also placed on a decision dated 15th March 2018 of a Division Bench of this Court in W.P.(C) 8138/2017 (***ASI/Clerk C. P. Chakravarthy v. Union of India***) where, in similar circumstances, the Court directed that

the pay of the petitioners therein in the rank of HC(Clerk) of the CISF shall be fixed at the minimum prescribed in the Central Civil Services (Revised Pay) Rules 2008 ['Revised Pay Rules'], i.e. basic pay of Rs.7,510/- and grade pay of Rs.2,400/-. A near identical fact situation existed in the said case. Mr. Chhibber, learned counsel appearing for the Petitioner, points out that the said judgment of this Court has been accepted by the Respondents and has been implemented.

8. Learned counsel for the Union of India, on the other hand, refers to the Office Memorandum dated 28th September 2018 issued by the Department of Expenditure, Ministry of Finance, Government of India with regard to a similar issue arising in the context of the Revised Pay Rules where it is clarified that the stepping up of pay would not be available where there is no element of direct recruitment in the post is concerned. Reference is also made to a corresponding circular dated 5th November 2018 issued by the Director General, CISF where again, with the approval of the Ministry of Home Affairs ('MHA'), a similar rider was added. He submitted that since in the present case, the post of HC was a promotional post and no longer had an element of direct recruitment. Further, after 1st January 2006, no HC was directly recruited. Therefore, according to him, the benefit of stepping up of pay scales would not be available.

9. It is interesting that the OM dated 28th September 2018 relied upon by learned counsel for the Respondents refers to the decision of this Court in **Somvir Rana** (*supra*) and also refers to the fact that by dismissing the SLP of the GNCTD, the Supreme Court had affirmed the order of the CAT dated

4th April 2016. The OM dated 28th September 2018 also refers to the fact that a further SLP filed by the GNCTD against the above order was dismissed. This is evident from paras 5 and 6 of the OM dated 28th September 2018.

10. The background to issuing the OM was set out in paras 2 and 3 thereof which reads as under:

“2. A number of references were received in Ministry of Finance, Department of Expenditure, stating that the pay of seniors of a post was fixed at a stage lower than the entry pay applicable to the persons appointed on direct recruitment basis on that post on or after 1.1.2006. In such cases, stepping of pay was allowed to the senior employee at par with the entry pay of direct recruits of those posts, subject to the conditions, inter-alia, that stepping up of pay of seniors is applicable only in those cases which have an element of direct recruitment and where a directly recruited junior is actually drawing more basic pay than the seniors. Thus, the stepping up of pay of senior employees was admissible from the date a junior direct recruit joined on or after 1.1.2006.

3. The matter was also considered in the meeting of the National Anomaly Committee (NAC) held on 17.7.2012 based on a demand raised by the Staff Side under the JCM. NAC had recommended that in cases where Recruitment Rules provide for direct recruitment, then the stepping up of pay of senior may be considered, even if no actual direct recruitment takes place or no direct recruit has actually joined. However, it was decided that stepping up of the pay of seniors can be claimed only in the case of those cadres which have an element of direct recruitment and in cases where a directly recruited junior is actually drawing more basic pay than the seniors. Thus, stepping up of pay was dependent upon actual joining of a direct recruit.”

11. After noticing the decision of this Court in ***Somvir Rana*** (*supra*), in para 8 of the OM it is stated:

“8. Accordingly, the President is pleased to decide that in respect of those posts where entry pay for direct recruits appointed on or after 1.1.2006, as per Section II of Part A of the First Schedule of CCS(RP) Rules, 2008, becomes applicable by virtue of the provision of the element of direct recruitment in the relevant recruitment rules, the pay of Central government employees who were appointed to such posts prior to 1.1.2006 and whose pay, as fixed in the revised pay structure under Rule 7 thereof as on 1.1.2006 turns out to be lower than the prescribed entry pay for direct recruits of that post, shall not be less than such entry pay w.e.f. 1.1.2006. Likewise, the pay of Central Government employees who were appointed to such posts by way of promotion on or after 1.1.2006 and whose pay, as fixed under Rule 13 of CCS(RP) Rules, 2008, happens to be lower than the said entry pay, shall also not be less than such entry pay from the date of their promotion taking place on or after 1.1.2006.”

12. A careful reading of the OM would, therefore, show that it accepts the decision of this Court in ***Somvir Rana*** (*supra*) and states that the pay of Central Government employees who were appointed to their posts by way of promotion on or after 1st January 2006 and whose pay as fixed by the Revised Pay Rules happens to be lower than the entry pay, shall also not be less than such entry pay from the date of their promotion taking place on or after 1st January 2006.

13. This is precisely the principle that was underscored in the decision of this Court in ***Somvir Rana*** (*supra*). In dealing with a rider similar to the one that the Respondents seek to impose in the present case, i.e. stepping up of pay would not be available if the cadre in question “does not have any

immune of direct recruitment” or where “no junior is drawing the basic pay higher than him”, this Court in ***Somvir Rana*** (*supra*) held as under:

“5. The above clarification notices that pay scales at the same post in some cadres in the case of promotees were lower than the pay scales applicable to the direct recruits. To correct this anomaly, the clarification states that stepping up of basic pay of the seniors would be permissible in the case of those cadres (i) where appointment by way of direct recruit is permissible and (ii) when direct recruited junior actually draws basic pay more than the seniors.

6. This clarification has not been accepted by the Tribunal and, in our opinion, rightly. The anomaly and discrepancy of fixing lower pay scale for promotees amounts to invidious discrimination and violates of Article 14 of the Constitution. The same post with identical duties and responsibilities, ex facie cannot have two different pay scales, one for the promotees and the other for direct recruits. The difficulty in accepting the plea of stepping up in terms of the clarification dated 13.03.2009, is the second condition that requires, the direct recruits should have actually joined before any stepping up of pay can be granted. The date of joining would be different as filling up of the direct recruitment vacancies in the cadre would depend upon vacancy position, selection, etc. This is unacceptable as it would be fortuitous and even whimsical. In any case, the same post cannot have two pay scales – one for the promotee and other for the direct recruit for it violates the principle of “equal pay for equal work.” Stepping up of pay to be granted on satisfaction of the stipulated conditions would not rectify and undo the discrepancy and inconsistency inherent when two different pay scales are stipulated for the same post.

7. When and after initial pay of promotee Trained Graduate Teacher is fixed in terms of the order of the Tribunal, increment would be calculated and payable as in cases covered by Section II of Part A of the first schedule of the Rules as applicable to the direct recruits.”

14. In other words, the guiding principle was to be that in the same post having identical duties and responsibilities, there cannot be two different pay scales, one for the promotees and another for direct recruits.

15. In the present case, the result of a restructuring, an anomaly situation has arisen where, as a result, promotee HCs are receiving a basic pay higher than the erstwhile directly recruited HCs. Factually, the Petitioners point out that their juniors directly recruited as constables after 2005 and subsequently granted the Modified Assured Career Progression (MACP) benefit are getting basic pay of Rs.7,510/- whereas the Petitioners, who are senior to them, are getting lesser basic pay of Rs.6,750/-. This situation is precisely what has been disapproved of by this Court in its judgment in **Somvir Rana** (*supra*) which was subsequently affirmed by the Supreme Court. Furthermore, the decision in **Somvir Rana** (*supra*) has been implemented by the authorities by way of the OM dated 28th September 2018.

16. It is the same principle that informed the decision of this Court in **C. P. Chakravarthy** (*supra*) which dealt with a more or less similar case involving the post of HC (Clerk) in the CISF. There again, the differential basic pay of Rs.7,510/- for one set of HCs and Rs.6,750/- for another set of HCs was disapproved of by this Court. As noted hereinbefore, the decision in **C. P. Chakravarthy** (*supra*) has been accepted by the CISF and implemented.

17. More recently, in a decision dated 23rd October 2010 in W.P.(C) 8902/2017 (**Virender Singh v. Union of India**), this Court, in view of the OM dated 28th September 2018, directed its implementation and grant

of pay to the petitioners therein who were in the ITBP at Rs.9,910/- [Rs.7,510/- + Rs.2,400/-].

18. Finally, reference was made by learned counsel for the Respondents to the circular dated 5th November 2018 issued by the CISF itself where the rider that the stepping up of pay scales would be available only to such posts which had an element of direct recruitment was reiterated. This Court holds that the aforementioned circular dated 5th November 2018 is not consistent with the settled legal position and, therefore, cannot come in the way of the Petitioners getting relief. It appears that the CISF issued the above circular without keeping in view the correct interpretation of the settled legal position in the OM dated 28th September 2018 and as explained by this Court in *Somvir Rana* (*supra*).

19. For the aforementioned reasons, the Court is of the view that maintaining the basic pay of the Petitioners at Rs.6,750/- is discriminatory and violative of Article 14 of the Constitution of India. Accordingly, the Respondents are directed to fix the basic pay of the Petitioners at Rs.7,510/- at par with other HCs with effect from 1st January 2006. The arrears will be paid to the Petitioners not later than eight weeks from today.

20. The writ petition is allowed in the above terms.

CM APPL. 50020/2018

21. For the reasons stated in the application, the application is allowed. The earlier lead Petitioner Mr. Rameshwar Singh Tomar who wants to engage another counsel is permitted to withdraw as lead Petitioner, and, as prayed

for, Mr. Vinoj V. V. now be treated as the lead Petitioner for the remaining 61 Petitioners.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

NOVEMBER 30, 2018

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