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

+ W.P.(C) 8306/2017

KANWAL SINGH

..... Petitioner

Through: Mr.Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Ripu Daman Bhardwaj,
CGSC, Mr.Sushil Kumar
Pandey, Mr.T.P.Singh and
Mr.Sahaj Garg, Advocates for
R-1 to R-5.

AND

+ W.P.(C) 8324/2017 & CM No.2981/2018

VASANT TULSI RAM PATIL

..... Petitioner

Through: Mr.Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Ripu Daman Bhardwaj,
CGSC, Mr.T.P.Singh and
Mr.Sahaj Garg, Advocates for
R-1 to R-5.

AND

+ W.P.(C) 4629/2017

KRISHAN DUTT

..... Petitioner

Through: Mr.Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr.Prashanta Varma, Sr.CGSC
and Ms.Shalu Goswami,
Advocates.

AND

+ W.P.(C) 4654/2017
JAGDISH CHANDER Petitioner
Through: Mr.Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Ms.Sangita Rai and Mr.Pradeep
Singh Tomar, Advocates.

AND

+ W.P.(C) 4655/2017
RAMESH CHANDER Petitioner
Through: Mr.Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Ms.Sangita Rai and Mr.Pradeep
Singh Tomar, Advocates.

AND

+ W.P.(C) 4658/2017
ASHOK KUMAR Petitioner
Through: Mr.Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr.Prashanta Varma, Sr.CGSC
and Ms.Shalu Goswami,
Advocates.

AND

+ W.P.(C) 4659/2017
BHUPINDER SINGH Petitioner
Through: Mr.Ankur Chhibber, Advocate.

versus

UNION OF INDIA & ORS Respondents
Through: Mr.Prashanta Varma, Sr.CGSC
and Ms.Shalu Goswami,
Advocates.

AND

+ W.P.(C) 5972/2017
RAMPAT SINGH Petitioner
Through: Mr.Ankur Chhibber, Advocate.
versus

UNION OF INDIA AND ORS Respondents
Through: Mr.Vivekanand Mishra,
Advocate.

AND

+ W.P.(C) 6890/2017 & CM No.3646/2018
RAM NIWAS Petitioner
Through: Mr.Ankur Chhibber, Advocate.
versus

UNION OF INDIA AND ORS Respondents
Through: Mr.Vijay Joshi, Advocate with
Mr.Nishant Yadav, DC(Law).

CORAM:

**HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI**

ORDER

% **22.02.2018**

1. Mr.Ankur Chhibber, learned counsel for the petitioners states at the outset that the issue raised in the present petitions is no longer *res integra* and stands covered by earlier decisions of coordinate Benches of this Court and of a Division Bench of the Punjab & Haryana Court that has been upheld right upto the Supreme Court.

2. With the consent of the parties, W.P.C. No.8306/2017 is being treated as the lead matter and the facts of the said case are noticed hereinafter.

3. The petitioner in the captioned petition, who is an Ex-Head Constable (GD) in the CRPF, has prayed for issuance of a writ of certiorari for quashing the PPO dated 04.01.2016, on the ground that his pension has been incorrectly revised w.e.f. 01.01.2006 and he was deprived the benefit of the revised payscale of a Head Constable as prescribed in the in the fitment table appended to the Office Memorandum dated 28.01.2013, issued by the Department of Pensioners Welfare.

4. Learned counsel for the petitioners states that the CCS Revised Pay Scale Rules, 2008, as made effective from 01.01.2006, has set out a table indicating the revised pay scale of a Head Constable in the CAPF's at `4,000-6,000 in Pay Band-I with Grade Pay of `2,400. Despite the aforesaid clarification/revision, the respondents are paying pension to the petitioner at the old pay scale of `3,200-4,900, by fixing his Grade Pay as `2,000/- in terms of the impugned PPO dated 04.01.2016.

5. Learned counsel refers to OM dated 11.02.2009, issued by the Department of Pension & Pensioner's Welfare, Ministry of Personnel, Public Grievances & Pensions, Government of India wherein it was directed as follows:

“5. In accordance with the instructions contained in para 4.2 of this Department's OM of even number dated

01.09.2008, the fixation of the pension will be subject to the provision the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay bank plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. Therefore, the benefit of upgradation of posts subsequent to their retirement would not be admissible to the pre-2006 pensioners in this regard.

6. It is submitted that the aforesaid OM had come up for consideration before a Full Bench of the Central Administrative Tribunal, Principal Bench, Delhi in a batch of petitions, lead matter being O.A. No.655/2010, entitled Central Government SAG (S-29) Pensioners' Association & Anr. vs. Union of India & Anr., which was decided on 01.11.2011. The grievance raised by the petitioners therein was that the respondents had not revised the pension of the pre-2006 retirees as per the formula recommended by the Pay Commission and adopted by the Government of India, vide Resolution dated 29.08.2008. The said O.As were disposed of by the Tribunal in the following words:

“30. In view of what has been stated above, we are of the view that the clarificatory OM dated 3.10.2008 and further OM dated 14.10.2008 (which is also based upon clarificatory OM dated 3.10.2008) and OM dated 11.02.2009, whereby representation was rejected by common order, are required to be quashed and set aside, which we accordingly do. Respondents are directed to re-fix the pension of all pre-2006 retirees w.e.f. 01.01.2006, based on the resolution dated 29.08.2008 and in the light of our observations made above. Let the respondents re-fix the pension and pay the arrears thereof within a period of 3 months from the date of receipt of a copy of this order. OAs are allowed in the aforesaid terms, with no order as to interest and costs.”

7. Aggrieved by the said decision, the Union of India had approached this Court by filing a batch of writ petitions including W.P.(C) 1535/2012, entitled Union of India & Anr. vs. Central Government SAG & Ors., which were dismissed by the Division Bench vide order dated 29.04.2013, observing *inter alia* that an identical question had been examined by a Division bench of the Punjab & Haryana High Court in W.P.(C) 19641/2009, entitled R.K.Aggarwal and Ors. vs. State of Haryana & Ors., that was decided on 21.12.2012. The reasoning given in the said judgment was extensively referred to by the Division Bench of this Court in para 7 and concurring with the said line of thought, the writ petitions filed by the Union of India were dismissed.

8. Not satisfied by the judgment dated 29.04.2013, passed by the Division Bench in the captioned connected petitions, following the decision of the Punjab & Haryana High Court in the case R.K.Aggarwal (supra), the Union of India had filed a SLP before the Supreme Court, which was also dismissed.

9. This was followed by a second judgment pronounced by the Division Bench of this Court on 03.08.2016, in W.P.(C) No.3035/2016 entitled Ram Phal vs. Union of India & Ors., where the petitioner therein, who was last promoted to the rank of a Subedar Major in the ITBP, had challenged the applicability of para 5 of the OM dated 11.02.2009, referred to herein above, limited to the direction that '*benefit of upgradation of post subsequent to their retirement would not be admissible to the pre-2006 pensioners in this regard*'. Vide judgment dated 03.08.2016, the Division Bench had

allowed the captioned petition and quashed OM dated 11.02.2009, to the extent quoted hereinabove. Further, a writ of mandamus was issued to the respondents therein, directing them to fix the pension of the petitioner as given in the fitment table appended to the Government of India, Ministry of Personnel, Public Grievance & Pension, Department of Pensioner's Welfare Memorandum dated 28.01.2013, w.e.f. from 01.01.2006. The petitioner therein was also granted arrears of pension after re-fixation of his revised pension w.e.f. 01.01.2006.

10. Learned counsel for the petitioners submits that the fact situations in the present cases are no different as the very same OM dated 11.02.2009 has been relied on by the respondents to disallow the claim of all the petitioners for upgradation of the post subsequent to their retirement and for enhancement of their pension after fitment in the appropriate table w.e.f. 01.01.2006. The above legal position is not disputed by the other side.

11. In view of the fact that the issue raised in the present petitions is no longer *res integra*, they must be allowed on the same lines.

12. Ordered accordingly.

13. The PPOs impugned in each petition are accordingly quashed and set aside. The respondents are directed to issue a fresh PPO in each case by fixing the pension of the petitioners in terms of the fitment table for the posts which they were holding at the time of their superannuation, payable w.e.f. 01.01.2006, along with the arrears of pension after re-fixation of their pension.

14. Needful shall be done within a period of three months. In the

event, the said process is not completed within three months, then the respondents shall be liable to pay the petitioners simple interest on the arrears of pension at the current PPF rate.

15. The petitions are disposed of along with pending applications, while leaving the parties to bear their own costs.

HIMA KOHLI, J.

REKHA PALLI, J.

FEBRUARY 22, 2018

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