

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Letters Patent Appellate Jurisdiction)**

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L.P.A. No. 530 of 2012

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1. Union of India through Chief Security Commissioner, Railway Protection Force, East Central Railways, P.O. & P.S.- Hazipur, Distt.- Hazipur, Bihar
 2. Chief Security Commissioner, Eastern Railway, Kolkata, P.O. & P.S. Kolkata.
 3. The Divisional Security Commissioner/Sr. Divisional Security Commissioner, R.P.F., East Central, P.O.- Dhanbad, P.S. Dhanbad, Distt. Dhanbad (Jharkhand)
 4. Staff Officer to Chief Secretary Commissioner, R.P.F., Eastern Railway, Kolkata, P.O. & P.S. Kolkata, Distt.- Kokkata
- Appellants**

Versus

Ramesh Singh, Son of Late Harinandan Singh **..... Respondent**

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**CORAM: HON'BLE MR. JUSTICE APARESH KUMAR SINGH
HON'BLE MR. JUSTICE KAILASH PRASAD DEO**

For the Appellants-UIO : Mr. Sudhir Kumar, Advocate
For the Respondent : Mr. D.K. Dubey, Advocate

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10/11.09.2019.

I.A. No.3353 of 2013

Considering submissions of the learned counsel for the parties and the grounds urged in the Interlocutory Application No.3353 of 2013, delay of 273 days in preferring the instant memo of appeal is hereby condoned.

The aforesaid I.A. stands disposed of.

L.P.A. No. 530 of 2012

Heard, learned counsel for the appellant- Union of India and learned counsel for the sole private respondent.

By the impugned judgment dated 22.02.2012 rendered in W.P.(S) No.5338 of 2004 the learned Single Judge has remitted the matter to the appellant/respondent- Union of India to take a decision on the grievances raised by the writ petitioner in the light of Office Memorandum dated 04.11.1993 issued by the Department of Personnel and Training, Government of India pertaining to stepping up of the pay.

Facts in issues are not in the realm of the dispute. Petitioner in substance sought parity in pay scale of Rs.5500-9000/- with that of his immediate junior namely, Raj Nath Giri. Whereas both the petitioner and Raj Nath Giri were appointed as Constable on 18.06.1977 but the

petitioner got two regular promotions on 30.08.1995 and 09.12.1996 on the post of Head Constable and ASI respectively. Raj Nath Giri got one promotion as ASI in the year, 1998 under Rule 72 of the ASI Rule and subsequently got one ACP on completion of 24 years of service on 04.07.2002 in the pay-scale of Rs.5500-9000/- in pursuance of Force Order No.164 dated 04.07.2002. Petitioner/respondent was getting the pay scale of Rs.4000-6000/- in the pre-revised scale after getting two regular promotions. Petitioner had approached the respondents and thereafter the Writ Court in W.P.(S) No.832 of 2003. By virtue of the order passed in the said writ petition dated 23.06.2004, reasoned order was passed by the respondents/ appellants- Union of India bearing Memo No.346 dated 05.08.2004, whereby his representation was rejected which is Annexure-3 to the Memo of Appeal. As per the reasoned order petitioner could not avail of further financial upgradation in the next higher scale of Rs.5500-9000/- under A.C.P. Scheme having availed two regular promotions whereas Raj Nath Giri and some other juniors of the petitioner have got financial upgradation under A.C.P. on completion of 24 years of service and availing one regular promotion earlier.

Learned Single Judge took note of the circular dated 04.11.1993 (Annexure-4) which provides for stepping up of the pay of seniors in a pay scale to that of juniors as per the conditions enumerated therein:-

*“(a) both the junior and senior officer should belong to the same cadre and the posts in which they have been promoted or appointed should be identical and in the same cadre;
 (b) the scales of pay of the lower and higher posts in which the junior and senior officer are entitled to draw pay should be identical;
 (c) the anomaly should be directly as a result of the application of FR 22-C. For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments or on any other account the above provisions will not be invoked to step up the pay of senior officer.”*

Learned Single Judge, on consideration of the rival stand of the parties was of the view that by the impugned order, petitioner's claim was rejected on the ground that he is not entitled to get any financial upgradation under ACP scheme, but the applicability of Office Memorandum dated 04.11.1993 was not considered. The matter was accordingly remitted for them to decide.

During course of the submission, learned counsel for the appellant has

harped upon the reasons supplied in the order impugned dated 25.08.2004 passed by the Divisional Security Commissioner, RPF, East Central Railway, Dhanbad, which have been adequately dealt with by the learned Single Judge and taken note above as well. Since the matter has been remitted to the competent authority to take an informed decision, we do not wish to express any opinion on the merits of the case of the parties lest it may prejudice them.

However, the facts noted above, reveal an anomalous situation in the scale of pay enjoyed by the petitioner viz. a. viz. his juniors in the given circumstances. The competent authority under the Union of India should therefore, take an informed decision in the matter keeping into light the Memorandum dated 04.11.1993 and/or any other rule/regulations/office memorandum applicable on the subject within the time stipulated by the Writ Court.

We, therefore, do not find any reason to interfere with the impugned judgment. Accordingly the instant appeal is disposed of with the aforesaid observations.

(Aparesh Kumar Singh, J.)

(Kailash Prasad Deo, J.)