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

Date of Decision:- 30.04.2019

+ W.P.(C) 3373/2019

SHARAD TEWATIA & ORS Petitioners
Through Mr.M.K. Bhardwaj, Adv.

versus

GOVT. OF NCT OF DELHI & ORS Respondents
Through Ms.Vibha Mahajan Seth, Adv.
with Ms.Shweta Bhardwaj,
Adv. for R-1 to 3.
Mr.Anurag Ahluwalia, Adv. for 4
& 5.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. Vide the present petition under Articles 226 and 227 of the Constitution of India, the petitioners assail the order dated 01.02.2019 passed in Review Application No.271/2016, wherein the petitioners had sought review of the order dated 26.10.2016 passed by the Principal Bench, Central Administrative Tribunal, New Delhi in OA No.2380/2010, only to the extent that they had been granted the grade pay of Rs.2000/-, instead of the grade-pay of Rs.2400/- prayed for by them.

2. The petitioners, who are firemen in the Delhi Fire Service ('DFS'), and some Leading Firemen in the said service, had preferred the aforesaid OA seeking directions to the respondents

to maintain their pay parity with the Head Constables and Assistant Sub Inspectors (ASI) of the Delhi Police and Central Paramilitary Forces ('CPMF') w.e.f. 01.01.2006 alongwith all consequential benefits.

3. The case of the petitioners before the Tribunal was that, keeping in view the arduous nature of duties being performed by them, the erstwhile Municipal Corporation of Delhi had, in 1988, taken a conscious decision to grant them one step higher pay scales vis-a-vis the fire-fighting staff in other government organisations and, therefore, the fire-fighting staff in the Delhi Fire Service was given parity with the posts of Head Constable and ASI of Delhi Police, which parity was maintained after the DFS was brought under the administrative control of the GNCTD in 1994. The said parity was continued even after the implementation of the 5th CPC and the firemen in DFS were given the same pay scale of Rs.3200-4900/- that was given to Head Constables in Delhi Police and the leading firemen were given the pay scale of Rs.4000-6000/- at par with the post of ASI in Delhi Police. Even with respect to other perks, such as ration money and monthly compensatory pay, this parity was maintained.

4. However, after the 6th CPC made its recommendations, the respondents, instead of fixing the petitioners' pay at par with that of the posts of Head Constable and ASI in Delhi Police, started paying them a much lower pay based on the general recommendations of the 6th CPC in respect of the fire-fighting

staff, as noted hereinbelow:

“3.8.12. Fire fighting staff exists in various Union Territories as well as different Government organizations. Their job requirements and duties necessitate that the various posts of fire fighting staff should be afforded pay scales on par with those being recommended for the posts of Constable and Head Constable in CPMFs, Delhi Police, IB and CBI. Accordingly, the pay scales of the fire fighting personnel in various UTs and departments/ministries of Central Government shall be revised as under:-

Designation	Present Pay-Scale	Recommended Pay Scale	Corresponding Pay Band & Grade Pay	
			Pay Band	Grade Pay
Firemen	2610-3540	3050-4590	PB-1	1900
Leading Fireman	3050-4590	3200-4900	PB-1	2000
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5. The OA was opposed by the respondents by pointing out that the petitioners were already being granted a higher pay in accordance with the recommendations of the 6th CPC and, therefore, no case for upgradation of the petitioners’ pay scale was made out.

6. The Tribunal, after considering the rival contentions of the parties and perusing the record, including the recommendations of the 6th CPC, allowed the OA by observing as under:

“ 11. We have heard both sides and have perused the

material placed on record. We have also seen the recommendations of VIth CPC regarding the pay scales of Fire Services in various Union Territories, which have been extracted in earlier part of the judgment. From the chart, it is obvious that the recommendations of the Pay Commission are with regard to staff of Fire Services of all Union Territories as well as different Government organisations. They have not taken into account the fact that DFS Fireman as well as Leading Fireman were getting pay scale higher than their counterparts in other Union Territories as well as Government organizations. Thus, in the same chart, it can be seen that the existing pay scale of Fireman has been taken by the VIth Pay Commission to be Rs. 2610-3540 whereas DFS Fireman were getting higher pay scale of Rs. 3200-4900. Similarly Leading Fireman's prerevised scale has been shown as Rs.3050-4590 whereas they were actually getting Rs.4000-6000. Had the correct pay scales already enjoyed by DFS been taken into account, the replacement pay scales would also have been higher. From the same chart, it is evident that the replacement pay scale for Rs. 3200-4900, which was the pay scale granted to Fireman in DFS was PB-I with grade pay of Rs. 2000/- whereas replacement pay scale for Rs.4000-6000 already enjoyed by Leading Fireman of DFS was PB-I with grade pay of Rs. 2800/-. Thus, in our opinion, the error has occurred on account of wrong input being provided to the Pay Commission inasmuch as the Pay Commission was not informed that DFS staff was enjoying pay scale higher than other fire service of other Union Territories and States.

12. This is also evident from the advice given by Ministry of Finance. While they have correctly noted in their advice the existing pre-revised pay scales of Fireman/Leading Fireman of DFS, they have failed to

notice that the correct replacement pay scales were not granted to them.

13. This, in fact, was not a case of parity with Delhi Police as has been argued. This parity had been conceded long time back and there is nothing in the recommendations of the Pay Commission by which it can be concluded that they have disturbed this parity. The error occurred because recommendations have been made by the VIth CPC for all Fire Services of different States and Union Territories put together ignoring the fact that Fireman of DFS were enjoying the pay scale higher than the other.

14. In view of the aforesaid, we allow this O.A. and direct that Fireman of DFS will be placed in PB-I with grade pay of Rs.2000/- whereas Leading Fireman will be placed in PB-I with grade pay of Rs.2800/- w.e.f. 01.01.2006. The applicants shall also be entitled to arrears arising out of the aforesaid. Considering the facts and circumstances of this case, we are not inclined to grant any interest on the arrears. The above benefits shall be extended to the applicants within 08 weeks from the date of receipt of a certified copy of this order. No costs."

7. As noted hereinabove, the Tribunal directed the respondents to place the firemen of DFS in PB-1 with grade pay of Rs.2000/-, while the leading firemen of DFS were directed to be placed at PB-1 with grade pay of Rs.2800/- w.e.f. 01.01.2006. The Tribunal also directed the respondents to grant the petitioners all consequential arrears.

8. The petitioners/firemen, aggrieved by the Tribunal's order to the extent that they were directed to be placed in PB-1 with

grade pay of Rs.2000/-, filed a Review Application before the Tribunal. In their review application, the petitioners contended that although the Tribunal had allowed their OA, by accepting their contention that even after the 6th CPC, they were entitled to the same grade pay as being granted to Head Constables in the Delhi Police/CPMF, it had erroneously directed grant of grade pay of Rs.2000/- to them instead of the grade pay of Rs.2400/- being paid to Head Constables in the Delhi Police/CPMF.

9. The Review Application has been dismissed by the Tribunal vide the impugned order dated 01.02.2019 and, in these circumstances, the present petition has been filed.

10. Mr. M.K.Bhardwaj, learned counsel for the petitioner states that the Tribunal, while rejecting the review application, has failed to appreciate that an inadvertent error had crept in its order allowing the OA. The Tribunal, after accepting the petitioners' plea that they were entitled to get the pay scale at par with the post of Head Constable in Delhi Police, had granted them a grade pay of Rs.2000/- instead of Rs.2400/-, to which they were entitled. He submits that once the petitioners' pay scale of Rs.3200-4900/- was revised to Rs.5200-20,200/- with grade pay of Rs.2400/- as a consequence of the 6th CPC, they were also entitled to get the said grade pay of Rs.2400/-, instead of Rs.2000/- as granted erroneously by the Tribunal while allowing their OA.

11. On the other hand, Ms. Vibha Mahajan, learned counsel for the respondent while supporting the impugned order states that

the respondents have already granted them a grade pay higher than what had been recommended by the 6th CPC for the fire-fighting staff. She further submits that merely because the fire-fighting staff of DFS was earlier granted parity with the staff of Delhi Police/CPMF, they have no right to insist that the said parity should continue. For this purpose, she places reliance on para 3.8.3 (c) of the recommendations of the 6th CPC, which reads as under:

“ 3.8.3 (c) While dealing with these common categories, the Commission has been guided by the following principles:-

(C) Existing relativities between posts in various categories have, as far as possible, also been kept in view while evolving the new structure for various common categories. Elsewhere, the Commission has upgraded the pay scales for constables in Delhi Police, CPMFs and other police organisations. This has been done to improve the delivery mechanism. While due care has been taken to ensure that this upgradation does not disturb the existing relativities, however, some of the relativities in terms of pay scales will disturbance of any of the existing relativities on this account is as conscious decision. This is more so because posts in identical pay scales cannot, in most cases, be held analogous, especially if their functions are totally diverse.”

12. We have considered the submissions of the learned counsel for the parties and have perused the record.

13. The undisputed position which emerges from the record is that the Tribunal had, vide its order dated 26.10.2016, allowed the petitioners' OA and accepted their plea that they were entitled to parity of pay with the staff of Delhi Police/CPMF under the

recommendations of the 6th CPC. This decision of the Tribunal has not been challenged by the respondents and has, therefore, attained finality. In the light of this admitted position, it is now not open for the respondents to contend that the petitioners, despite having been placed in the pay scale of Rs.3200-4900/- prior to the recommendations of the 6th CPC itself, should be granted a grade pay lower than what is payable to those who were holding the pay scale of Rs.3200-4900/-. The respondents also do not deny that the holders of the post of Head Constable in Delhi Police as also others in the pay scale of Rs.3200-4900/- have, after the 6th CPC, been placed in PB-1 with grade pay of Rs.2400/-. Therefore, we see no reason as to why the petitioners should be deprived of the said grade pay of Rs.2400/-, which is being paid to all persons in the erstwhile pay scale of Rs.3200-4900/-.

14. We have also considered the submissions of Ms. Mahajan, learned counsel for the respondent, but in view of the finding already arrived at by the Tribunal in its order dated 26.10.2016 allowing the OA, we are unable to accept her plea that the petitioners are entitled to be granted the pay scales as recommended by the 6th CPC for the fire-fighting staff in general. A perusal of the chart as contained in Para 3.8.12 of the recommendations of the 6th CPC shows that the same could be applied only to firemen who had been placed in the pay scale of Rs.2610-3540/-, whereas the petitioners were, admittedly, in the pay scale of Rs.3200-4900/- even prior to the 6th CPC. Thus, as

held by the Tribunal, the petitioners could not be governed by the general pay scale of Rs.2610-3540/-, but had to be granted the grade pay commensurate with their pay scale, which under the 6th CPC was Rs.2400/-, as was being paid to the Head Constables in Delhi Police.

15. In light of the above, the writ petition is allowed. The impugned order rejecting the review application is set aside and the respondents are directed to extend the grade pay of Rs.2400/- to the petitioners w.e.f. 01.01.2006. The arrears of differential grade pay in terms hereinabove be released to the petitioners within 6 weeks.

REKHA PALLI, J

VIPIN SANGHI, J

APRIL 30 , 2019

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