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

Date of Decision: 24.04.2019

+ W.P.(C) 1469/2017 & C.M. No.6710/2017

UNION OF INDIA

..... Petitioner

Through: Mr.Gaurang Kanth, CGSC with
Mr.Aman Bakhshi, Adv. & Mr.Ram
Singh, S.P. & Mr.Sanjay Kumar, Jha,
ASO.

versus

P.A. ROSHA & ANR.

..... Respondents

Through: Mr.Anil Grover with Ms.Noopur
Singhal, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present petition under Articles 226 and 227 of the Constitution of India filed by the Union of India assails the order dated 18.07.2016 passed by the Principal Bench, Central Administrative Tribunal, New Delhi (Tribunal) in OA No.1093/2013. The aforesaid original application had been preferred by the respondent no.1 to seek *inter alia* a direction to the petitioner to re-fix his notional pay at Rs.8,000/- w.e.f. 01.01.1996 and grant him all consequential revisions and thereafter pay him the arrears of pension with interest after re-fixing his pension at Rs.40,000/- per month w.e.f. 01.01.2006.

2. The respondent no.1, a retired IPS Officer of 1948 batch, was initially allocated to the cadre of the State of Undivided Punjab and subsequently, upon bifurcation of the said State, he was allocated to the Haryana cadre. The respondent no.1 was promoted to the rank of Inspector General of Police (IGP), Jammu and Kashmir on 01.03.1974, where he served till 23.06.1977 and thereafter, he was reverted to the State of Haryana, where he served as the IGP from 03.07.1977 to 02.02.1979. It may be noted that during this period, IGP was the highest attainable rank in any state for an IPS cadre officer.

3. On 03.02.1979, the respondent no.1 was made Director General (DG), National Police Academy (NPA), Hyderabad in the pay scale of Rs.3,000-3,250/-. However, keeping in view his seniority, his pay was fixed at Rs.3,250/- vide notification dated 24.08.1979, which was the highest pay available to IPS officers, including the Director General of BSF, CRPF, CISF and Director, CBI. On 25.09.1979, the respondent no.1 was appointed as the Director General, Security in the State of Jammu and Kashmir, which was an ex-cadre post created to accommodate him in view of his seniority and his pay was again fixed at Rs.3,250/- vide notification dated 27.10.1979. The respondent no.1 retired from the said post on 30.06.1981 and was being paid pension at the rate of Rs.1425/- per month.

4. Based on the recommendations of the 4th Pay Commission, the respondent no.1's pension was revised w.e.f. 01.01.1986 by treating his notional pay as Rs.7600/- (fixed), which was once again revised w.e.f. 01.01.1996 based on the recommendations of the 5th Pay Commission, this time by treating his notional pay as Rs.24,050/- (fixed). After the

recommendations of the 6th Pay Commission came into force, the respondent no.1's pension was revised w.e.f. 01.01.2006 by treating his notional pay as Rs.75,500/- in the replacement scale of HAG + scale of Rs.75,500-80,000. Consequent to the recommendations of the 6th Pay Commission, the IPS (Pay) Rules were also amended and the posts of IG and Director, CBI, Director General, CRPF and ITBP were placed in the pay scale of Rs.80,000/- w.e.f. 01.01.2006 vide notification dated 27.09.2008. Resultantly, the existing post of DGP in each State in the scale of Rs.75500-80000 was also upgraded to the apex pay scale of Rs.80,000 (fixed).

5. As the pension payable to the respondent no.1 was based on the pay scale attached to the post from which he had retired, after the recommendations of the 6th Pay Commission came into force, he started drawing a monthly pension of Rs.37,750/- w.e.f. 01.01.2006. Upon learning that persons junior to him in the IPS cadre were being granted pension of Rs.40,000/- per month w.e.f. 01.01.2006 by treating their notional pay as Rs.80,000/- (fixed), the respondent no.1 submitted a representation to the petitioner seeking revision of his pension. In support of his case, the respondent no.1 made a special reference to the case of one Mr. O.P. Bhutani who had retired as DG, ITBP on 28.02.1987. As the petitioner rejected the respondent no.1's request, he approached the Tribunal with the following prayers:-

"1. Call for the records of the case.

2. Direct respondents to fix the notional pay of the applicant at Rs.80000/-(fixed) w.e.f. 01/01/1986 and at Rs.260000/-(fixed) w.e.f. 01/01/1996.

3. Direct that, according to the concordance table, serial No. 34, Annexure I, Govt. of India letter No.38/37/08-P&PW(A) dated 14/10/2008, the applicant's notional pay shall be Rs.80000/- (fixed) instead of Rs.75500/- w.e.f 01/01/2006.

4. Direct the respondents to pay to the applicant the arrears of pension w.e.f. 01/01/1986.

5. Direct the respondents to pay interest @ 18% per annum on the applicant's pension arrears w.e.f. 01/01/1986.

6. Pass any other order or direction, which the Hon'ble Tribunal thinks fit and proper in the facts and circumstances of the case."

6. Before the Tribunal, the petitioner opposed the respondent no.1's claim by contending that the pay scale/pension of Mr. O.P. Bhutani had been revised as a measure personal to him and his notional pay had, therefore, been retrospectively enhanced to Rs.26,000/- (fixed) from Rs.24,050/- w.e.f. 01.01.1996 and accordingly, his pension had been fixed at Rs.40,000/- w.e.f. 01.01.2006. The Tribunal, after considering the rival submissions of the parties, came to the conclusion that the respondent no.1 was entitled to parity with Mr. O.P. Bhutani and held that once the pension of Mr. O.P. Bhutani had been revised, there was no reason why the respondent no.1 who was senior to him in the IPS cadre, could not be granted the said benefit. The Tribunal, therefore, allowed the respondent no.1's OA vide its impugned order dated 18.07.2006 and directed the petitioners to re-fix his notional pay at Rs.8,000/- (fixed) w.e.f. 01.01.1986, at Rs.26000/- (fixed) w.e.f. 01.01.1996 and at Rs.80000/- fixed w.e.f. 01.01.2006. The Tribunal further directed the

petitioner to re-fix the respondent no.1's pension and pay him arrears of pension with interest at the rate of 6% per annum. In arriving at the aforesaid conclusion, the Tribunal relied on the petitioner's file notings dated 09.09.2004 in relation to the case of Mr. O.P. Bhutani, which read as under:-

"This file relates to the case of Shri O P Bhutani, former DG, ITBP. During his tenure as DO, ITBP, the scale of pay of the DGs posts were revised and the posts of DG, BSF, CRPF and CISF were authorized scale of Rs. 8000/- fixed whereas post of DG, ITBP was kept in the scale of Rs.7600/- fixed. Prior to this, the post of DG, ITBP was in flexible scale of Rs.3000 or Rs. 3250/- and Shri Bhutani was given higher scale of Rs.3250/-. However, on revision, he was given scale of Rs. 7600/- as applicable to the post.

At that time, officers junior to Shri Bhutani worked as DG, BSF and CRPF, who were drawing same scale as Shri Bhutani prior to revision of scale but were fixed in higher scale merely because those posts were allowed higher scale in revision and this flexible scales were not allowed in HBP. This has resulted in a permanent loss in pension to Shri Bhutani.

In my opinion, the case of Shri Bhutani is a fit case to allow him higher pension. Prior to pay revision the posts of BSF, CRPF were carrying scale of Rs.3250/- and the ITBP flexible scale of Rs.3000/- or Rs.3250/-. Shri Bhutani was given higher scale amongst the flexible scale because he was senior and otherwise fit for BSF and CRPF jobs. It was perhaps to avoid dislocation and have continuity in the post in the organizational interest that Shri Bhutani was not changed. Unfortunately, on revision of pay scale he was fixed at a lower scale which appears to be quite unfair to him. Persons drawing equal substantive pay show have been fixed in similar pay scale.

Subsequently, we have allowed officers scale of Rs.26,000/- fixed as personal to them when their juniors are

posted in a post carrying scale of Rs.26000/- fixed. Shri Bhutani has prayed that on the same logic, he may be granted scale of Rs.8000/- fixed and subsequently Rs.26000/- fixed for pension purpose as personal to him. The proposal has merit only on the ground that Shri Bhutani was originally posted against a post of Rs.3250/- in the flexible scale and hence this revision of pay should have been done accordingly, even though the same was on personal basis to him.

It may be admitted that so far we have not given such benefit after retirement to any officer. Perhaps there was no such case. However, natural justice demands that Shri Bhutani may be allowed this benefit of fixing his pay notionally at Rs.8000/- fixed and then at Rs.26000/- fixed for the purpose of fixation of his pension.

IFD may consider and agree.

*AS & EACH
IFD"*

7. The Tribunal also referred to the order dated 08.11.2005 passed by the petitioner directing re-fixation of the pension of Mr. O.P. Bhutani, which has been extracted hereinbelow for the sake of ready reference:-

"To

*The Secretary
Govt. of Uttar Pradesh,
Home (Police) Department,
Lucknow.*

*Sub: Fixation of pension in r/o Shri O.P. Bhutani, IPS
(UP:52:Rtd.) on the basis of the pay scale of Rs.26000/-
(fixed) - regarding.*

I am directed to refer to the subject mentioned above and to say that Shri O.P. Bhutani, IPS (UP:52:Rtd.) had submitted a letter dated 31.10.2003 addressed to the Union Home Secretary (copy

enclosed) for refixation of his pension. He further represented to the Cabinet Secretary on 26.7.2004 for the same.

2. Shri Bhutani retired as DG, ITBP on 28th February, 1987 and his pension was fixed at Rs.12025/- w.e.f. 1.1.1996. His contention is that his pension should be fixed at Rs. 13000/- on the basis of the pay scale of Rs.26000/- (fixed) w.e.f. 1.1.96, and not on the basis of pay scale of Rs.24050-650-26000/-.

3. The matter has been considered in consultation with the Department of Personnel & Training and Department of Pensions & Pensioners Welfare. It has been decided that Shri Bhutani may be allowed, as a special case, pension on the basis of pay of Rs.8000/- fixed) from 1.3.1987 and on the basis of pay of Rs.26000/- fixed) from 1.1.1996. He would also thus be eligible for higher pay of Rs.8000/- fixed) from 1.1.1986 till he retired from service on 28.2.1987. Arrears of pay and pension would also be admissible to him on this account. This is being allowed as some of his juniors were drawing pay in the pay scale of Rs.8000/- (fixed) during the relevant point of time.

4. Government of Uttar Pradesh are requested to take further necessary action accordingly for re-fixation of pay and pension of Shri O.P. Bhutani, IPS (Rtd.), under intimation to us.

Yours faithfully,

*(Y.P. Dhingra)
Under Secretary to the
Govt. of India."*

8. It is in these circumstances that the petitioner/Union of India has filed the present petition impugning the Tribunal's order dated 18.07.2016, directing revision of the respondent no.1's pay/pension and the grant of consequential arrears of pension to him.

9. Mr.Gaurang Kanth, learned counsel for the petitioner submits that the Tribunal has erred in granting parity to the respondent no.1 with Mr.

O.P. Bhutani and has failed to appreciate that Mr. O.P. Bhutani had retired on 28.02.1987, whereas the respondent no.1 had retired on 30.06.1981, i.e., much before the post of Director General of Police (DGP) was created on 16.07.1982. He submits that the Tribunal has completely lost sight of the fact that the respondent no.1 had retired from service at a time when there was no post of DGP and, therefore, he could not claim parity with those officers who, though from the same IPS cadre, had superannuated after the creation of the post of DGP with a higher pay scale of Rs.3250/- (fixed), which was revised to Rs.80,000/- w.e.f. 01.01.06 pursuant to the recommendations of the successive pay commissions. Mr.Kanth, therefore, contends that the respondent no.1 having retired much prior to the date when the post of DGP was created with a pay of Rs.3250/- (fixed), he could not claim pension on the premise that his notional pay should be treated as Rs.80,000/- w.e.f. 01.01.2006 and his pension be re-fixed accordingly, at par with officers holding the post of DG BSF, CRPF, CISF.

10. Mr.Kanth further submits that the Tribunal has failed to appreciate that the reliance of the respondent no.1 on the cases of other officers was wholly misplaced, as they had all retired after 16.07.1982 when the post of DGP with the pay scale of Rs.3000-3250 was created. In support of his aforesaid contention, he has referred to the dates of retirement of all the officers with whom the respondent no.1 had claimed parity before the Tribunal. The dates of retirement of the eight officers, including the respondent no.1, are noted hereinbelow:-

Sl. No.	Name	Cadre/Batch	Date of retirement	Date in which retired
1.	P A Rosha	PB:1948	30.06.1981	DG, Security (State Police)
2.	S N Mathur	PB:1948	31.12.1982	Director, IB
3.	T V Rajeshwara	PB:1949	01.09.1984	Director, IB
4.	J S Bawa	PB:1949	28.02.1985	Director, CBI
5.	O P Bhutani	PB:1952	28.02.1987	DG, ITBI
6.	Nirmal Singh	PB:1968	31.10.2006	DGP(State Of Haryana)
7.	M S Malik	PB:1969	31.10.2006	DGP (State Of Haryana)
8.	Vikash	PB:1970	31.10.2007	DGP (State Of Haryana)

11. Mr.Kanth further contends that the Tribunal has, while granting parity to the respondent no.1 with Mr. O.P. Bhutani, misinterpreted the file notings and orders in respect of the latter. He submits that the case of Mr. O.P. Bhutani was different as he had retired as DG, ITBP and, during the 3rd Pay Commissions itself, he had been allowed a pay of Rs.3250/- on personal basis at par with DG CRPF and Director, IB by virtue of his seniority. The said position was, however, overlooked at the time of fixation of his pay pursuant to the recommendations of the 4th Pay Commission, as a result of which his pay had wrongly been fixed at Rs.7600/- instead of Rs.8,000/- w.e.f. 01.01.1986, which pay was being granted to his counterparts - the Director, IB and DG, CRPF and BSF. He submits that it is this error and injustice caused to Mr. O.P. Bhutani which was rectified while revising his pay on notional basis to Rs.8,000/- w.e.f. 01.01.1986. He contends that the respondent no.1

having retired prior to 16.07.1982 when the post of DG in State Police was created for the first time, he cannot claim parity with Mr. O.P. Bhutani or seek the same notional pay of Rs.8,000/- as was being granted to the DGs in State Police after 01.01.1986.

12. On the other hand, Mr. Yogender Mishra, learned counsel for the respondent no.1, while supporting the impugned order, submits that the Tribunal had rightfully found that the case of the respondent no.1 was identical to that of Mr. O.P. Bhutani. He submits that both the respondent no.1 and Mr. O.P. Bhutani were receiving a notional pay of Rs.3,250/- (fixed) during the 3rd Pay Commission by virtue of their seniority. In fact, the respondent no.1 was actually holding a post which carried a pay of Rs.3250/- (fixed), while Mr. O.P. Bhutani was granted the said pay of Rs.3,250/- (fixed) only because of his seniority. He further submits that after the recommendations of the 4th Pay Commission were implemented from 01.01.1986, the pay scales of both the respondent no.1 and Mr. O.P. Bhutani were revised to Rs.7,600-8,000/- with a notional pay of Rs.7,600 (fixed) which was then revised to 24,050 (fixed) w.e.f. 01.01.1996 as a consequence of the recommendations of the 5th Pay Commission. He, thus, contends that once Mr. O.P. Bhutani's pay has been notionally revised w.e.f. 01.01.1986, there is no reason as to why the respondent no.1 ought not to be granted the same benefit. He, therefore, prays that the respondent no.1 is also entitled to the same notional pay revision of Rs.8,000 w.e.f. 01.01.1986 alongwith all consequential notional revisions of pay and revisions of pension with arrears, as directed by the Tribunal.

13. We have heard the learned counsel for the parties at length and have, with their assistance, perused the record.

14. The undisputed position which emerges from the record is that the respondent no.1 was, at the time of his retirement in 1981, the senior most officer in the IPS Cadre and was being afforded a pay of Rs.3,250 (fixed) w.e.f. from 24.08.1979 itself, when he was made Director General, National Police Academy. On the other hand, Mr. O.P. Bhutani who was in the flexible pay scale of Rs.3000-3,250/- was afforded the notional pay of Rs.3,250 (fixed) while holding the post of Director General (ITBP), only on account of his being senior to those holding the post of Director General (CRPF), (BSF) and Director (CBI) who were being granted the pay of Rs.3,250/- (fixed). Thus, both the respondent no.1 and Mr. O.P. Bhutani were receiving the pay of Rs.3,250/- (fixed). It also emerges from the record that all IPS officers who were drawing a pay of Rs.3,250 (fixed) were subsequently placed in the fixed pay of Rs.8,000/- w.e.f. 01.01.1986, which revision was initially neither granted to Mr. O.P. Bhutani nor to the respondent no.1. However, based on the representation of Mr. O.P. Bhutani, the petitioner, after considering the fact that Mr. O.P. Bhutani had been allowed to draw a pay of Rs.3,250/- per month as Director General (ITBP) along with his counterparts DG (CRPF) and Director (IB), by virtue of his seniority to the then incumbents to the said posts, has come to a conclusion that the notional pay of Mr. O.P. Bhutani ought to have been fixed at Rs.8,000/- w.e.f. 01.01.1986 along with all consequential revisions. The petitioner has, in fact, directed that his pension be determined on the basis of his personal pay of Rs.3,250/- drawn as DG (ITBP) before 01.01.1986 and not by

virtue of the pay being actually drawn by him at the time of his retirement. In this regard, we deem it appropriate to refer to the petitioner's note-sheet dated 14.06.2005 in relation to Mr. O.P. Bhutani's case and the same reads as under:-

"After going through the representations and noting at various stages, the following facts emerge for consideration:-

1. Shri O.P. Bhutani, IPS (1952 Batch) has retired as DG, ITBP in 1987 just two months after IV CPC recommendations were accepted by the Govt.

2. Shri Bhutani has been allowed to draw pay of Rs.3250/- p.m. as DG, ITBP alongwith his counterpart DG, CRPF and Director IB since he was senior to the incumbent. Shri S.D. Pandeya and Shri H.P. Brari (both 1953 Batch IPS). The scale of pay of DG, ITBP was Rs.3000-3250 variable pay scale. But Shri Bhutani was given scale of Rs.3250/- in his personal capacity by virtue of his seniority as compared to DG, CRPF and Director, IB.

3. This personal capacity should have been continued even after 1-1-1986 while fixing the pay of Shri Bhutani to keep the pay of Shri Bhutani at par with his juniors Shri Pandeya and Shri Brar as DG, CRPF and Director, IB. At the time of fixation of pay in IV CPC, the Home Ministry has not taken into account this aspect of personal scale of Rs.3250/- personal to Shri Bhutani as DG, ITBP and the pay of Shri Bhutani has been fixed at Rs.7600/- in place of Rs.8000/- and he has been virtually denied the pay of Rs.8000/- personal to him which was already granted to him before 1-1-1986 (IV CPC). The disparity arose due to fixation of pay lower than that of Director, IB and DG, CRPF incumbents who were one batch junior to him. His pay as senior was to be fixed at Rs.8000/- in relaxation of rules/personal to him as has been done before IV, CPC during his appointed as DG, ITBP. This principle has been followed in case of Shri E.L.S. Narsimhan and other seven IPS Officer of 1968 and 1969 Batch in 2004 and Shri M.K. Singh and other six IPS Officers of 167, 1968 Batch in 2003. This option was open to the Home Ministry while fixing the pay

of Shri Bhutani on its own. The pay has been fixed at lower than his junior IPS officers. Therefore, the claim of Shri Bhutani appears to be justified and deserves reconsideration with retrospective effect i.e. 1-1-1986 at Rs.8000/- p.m. by relaxing the provisions of the rules if any under AIS Rules or granting him pay of Rs.8000/- as DG, ITBP personal to him w.e.f. 1-1-1986.

4. *There is no similar case to our knowledge in this Department. However, the Court grant parity in pension and pay to the seniors as compared to their juniors in all cadres. In DS Nakra Vs. UOI, pension has been treated as matter of right and justiciable by Supreme Court. Therefore, it is for the Ministry of Home Affairs to take a corrective measure for omission of personal seniority element involved in this case and personal pay of Rs.3250/- granted to Shri Bhutani in pre 1-1-1986 scales which was omitted in the pay fixation as DG, ITBP as on 1-1-1986 vis a vis other two juniors serving as DG, CRPF and Director IB.*

5. *This Department is of the view that the pension of Shri Bhutani may be determined on the basis of his personal pay drawn as DG, ITBP before 1-1-1986 and not by virtue of the post of DG, ITBP he held on retirement, otherwise this would prove to be discriminatory by virtue of his seniority and higher pay held by him before 1-1-1986.*

6. *This appears to be an anomaly due to pay fixation on the basis of IV CPC w.e.f. 1-1-1986 which deserves to be looked into favourably by MHA in consultation with DOP&T. His case of pension may accordingly be decided."*

15. A perusal of the aforesaid note-sheet leaves no manner of doubt that the entire basis of the petitioner's order for re-fixing the pension of Mr. O.P. Bhutani by treating his notional pay as Rs.8,000/- w.e.f. 01.01.1986 is premised on the fact that he was, prior to 01.01.1986, being given the pay of Rs.3,250 (fixed) at par with his counterparts DG(CRPF) and Director (IB). Once we find that the respondent no.1 was also being

given the pay of Rs.3,250 (fixed) w.e.f. 24.08.1979 itself, which pay was being granted to the DG, BSF and CRPF and Director, CBI and was the highest pay available to IPS officers during the said period, we are unable to appreciate as to why the respondent no.1 is not entitled to the same benefits as granted to Mr. O.P.Bhutani after considering the fact that he was indeed drawing the pay of Rs.3,250/- during the 3rd Pay Commission. It is, thus, evident that the date on which the post of DG in State Police was created, would not be relevant as the only basis for revising Mr. O.P. Bhutani's notional pay and pension is that he was drawing the pay of Rs.3250/- before 01.01.1986, which fact is equally true for the respondent no. 1.

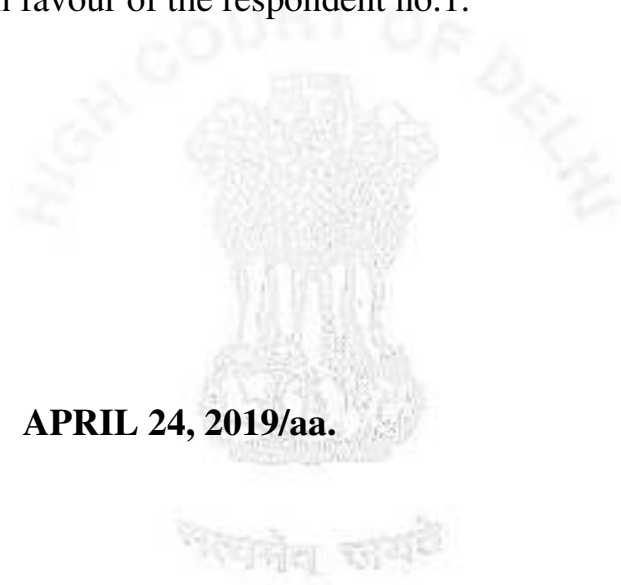
16. Thus, we have no hesitation in concurring with the finding of the Tribunal that the respondent no.1's case was identical to that of Mr. O.P. Bhutani, whose notional pay and pension have been revised after considering the fact that he was actually drawing the pay scale of Rs.3,250/- (fixed). It is unfortunate that the respondent no.1, who is today about 96 years of age, is still being made to struggle for claiming pension at par with Mr.O.P.Bhutani, a person who was junior to him in the IPS cadre and, that too, when it is an admitted position that both the respondent no.1 as also Mr. O.P.Bhutani were drawing the pay of Rs.3,250/-(fixed), which was the very basis of revising the pay and pension of other IPS officers to Rs.40,000/- w.e.f. 01.01.2006.

17. In view of our aforesaid finding, we do not deem it necessary to examine the question as to whether the petitioner was entitled to claim parity with the other six officers referred to in Para 10 hereinabove.

18. For the aforesaid reasons, we find no infirmity in the impugned

order. The writ petition, being meritless, is dismissed.

19. At this stage, we are informed that pursuant to the directions of this Court, the respondent no.2/State of Haryana has deposited a sum of Rs.5,39,870/- towards arrears of the pension payable to the respondent no.1 on 27.09.2018, which amount has been kept in a fixed deposit. In view of the writ petition being dismissed, the Registry is directed to forthwith release the amount so deposited along with up to date interest in favour of the respondent no.1.



(REKHA PALLI)
JUDGE

(VIPIN SANGHI)
JUDGE

APRIL 24, 2019/aa.