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

\+ **W.P.(C) 3511/2018**

RAJ KUMAR ..... Petitioner

Through: Mr.Ankur Chhibber with Mr.Bhanu Gupta, Advocates.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr.S.D.Windlesh, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

O R D E R

% **09.01.2019**

1. The prayer in this petition is for quashing of two Pension Pay Orders (PPOs) dated 5th November 2007 and 14th July 2009 whereby according to the Petitioner, his pension has been erroneously fixed on the non-enhanced grade pay of Rs.1800. The Petitioner is seeking parity with those similarly situated personnel who as Petitioners had succeeded in this Court by a judgment dated 28th September 2011 in WP (C) 3930 of 2011. He seeks directions to the Respondents to fix his entry grade pay at Rs.2000 and, thereafter, grant the financial up-gradation under the Assured Career Progression (ACP) Scheme based on enhanced pay scale and re-fix his pension.

2. The background facts are that the Petitioner enrolled as Water Carrier in the CRPF on 18th November, 1969. In 1981, he completed 12 years of

service and 24 years of service in 1993. In terms of the recommendations of the 6th Central Pay Commission ('CPC'), Group 'D' posts were upgraded to Group 'C' and granted pay scale of Rs.5200 – 20200 with the entry grade pay of Rs.2000. The Petitioner, however, continued to work in the same grade pay and superannuated on 30th November 2007 with the same grade pay which had been granted to him earlier i.e. Rs.1800.

3. Certain 'Followers' (Group 'D' employees) whose posts had merged with Group 'C' filed WP (C) 3930 of 2011 (***Daftry Bhimraj Singh v. Union of India***) in this Court. That petition came to be disposed of by a judgment of this Court dated 28th September 2011 which held *inter alia* that the benefit of the entry grade pay of Rs.2000 per month had to be granted to those Petitioners with effect from 1st January 2006.

4. On 14th July 2009, the Petitioner's pension was revised and a fresh PPO was issued placing him in the pay band of Rs.5200 – 20200. However, the Respondents again erroneously fixed the grade pay of the Petitioner at Rs.1800 instead of Rs.2000. Despite the order dated 24th June, 2013 passed by this Court in WP (C) 3930 of 2011, the Respondents did not grant the benefit of financial upgradations under the ACP on the basis of the revised grade pay in the case of the Petitioner. Even his pension was not accordingly revised. It is in the above circumstances that the Petitioner approached this Court seeking the reliefs mentioned hereinbefore.

5. The copy of the counter-affidavit dated 13th November 2018 filed by the Respondents has been tendered to this Court during the course of today's hearing. The Respondents contend that the benefit of the grade pay of

Rs.2000 has already been granted to the Petitioner with effect from 1st January 2006 by GC BTB order dated 21st March 2014. It is stated that on that basis his pension was also revised by the letter of the Pay and Accounts Office (PAO) dated 16th March 2015 enhancing the basic pension of the Petitioner to Rs.4960 with effect from 1st December 2007. According to the Respondents, the second financial up-gradation under the ACP scheme was also granted to the Petitioner with effect from was also granted to the Petitioner with effect from 9th August 1999 by order dated 14th April, 2001. His pay was fixed accordingly. According to the Respondents since the Petitioner proceeded on retirement on 30th November 2007, he was not entitled to the grade pay of Rs.2400 and Rs.2800. It is pointed out that the grade pay of Rs.2400 and Rs.2800 were introduced by the 6th CPC and implemented from 1st January, 2006 onwards whilst the MACP scheme was implemented with effect from 1st September 2008. According to the Respondents, "as such the Petitioner has already been paid all legitimate claims" and, therefore, is not entitled to any further relief.

6. This Court has heard learned counsel for the parties. The admitted position is that during his entire tenure as Water Carrier in the CRPF, the Petitioner did not earn any promotion. The further admitted fact is that in terms of the recommendations of the 6th CPC, there was a merger of Group 'D' posts with those of Group 'C' and the basic entry grade pay of Rs.1800 for Group 'D' stood abolished with effect from 1st January 2006. This much has been acknowledged by the Respondents themselves as they have stated in their counter-affidavit that the benefit of the grade pay of Rs.2000 was granted to the present Petitioner from 1st January 2006 onwards.

7. The counter-affidavit is, however, evasive on the issue of grant of the benefit of first and second financial up-gradation to the Petitioner under the ACP scheme. In other words, while not giving a proper explanation for the non-grant of those revised grade pays, it is simply stated that because the Petitioner retired on 30th November 2007 he was not entitled to the grade pay of Rs.2400 and Rs.2800.

8. Once the entry grade pay of the Petitioner was fixed at Rs.2000 with effect from 1st January 2006, then clearly the Petitioner became entitled to the first and second financial up-gradation under the ACP on completion of 12 and 24 years of service respectively. The grade pay would correspondingly increase to Rs.2400 and then to Rs.2800 respectively. On the date of his superannuation i.e. 30th November 2007, the grade pay of the Petitioner would be Rs.2800. It was on that basis that he should have been granted the revised pension.

9. However, the Court finds that the impugned PPOs issued to the Petitioner show his grade pay to be Rs.2000 with effect from 1st January 2006. The revised pension appears to have been calculated without accounting for the two financial up-gradations under the ACP. Even Annexure R1 to the counter-affidavit which sets out the calculation of the revised pension amount of the Petitioner shows his grade pay to be Rs.2000 whereas on that date it was certainly Rs.2800. There is no explanation why the benefit of the two financial upgradations under the ACP as indicated hereinbefore was not granted to the Petitioner on the completion of 12 and 24 years of service

respectively and why his pension was not accordingly recalculated on that basis.

10. The order dated 28th September 2011 of this Court in WP(C) 3930 of 2011 recognises that on the basis of the refixation of the entry grade pay at Rs.2000 per month for all the erstwhile followers in Group 'D' with effect from 1st January 2006, all other consequential benefits would also be given. That judgment has been accepted by the Respondents and has been acted upon.

11. Consequently, the impugned PPOs dated 5th November 2007 and 14th July 2009 issued to the Petitioner to the extent that they continue to show the entry grade of the Petitioner as of the relevant date as Rs.2000 and not Rs.2800, as well as the communication dated 16th March 2015 which sets out the computation of the revised pension without accounting for the two ACPs to which the Petitioner is entitled, are hereby set aside.

12. As a result, the Court directs the Respondents to issue orders to revise the pension of the Petitioner after accounting for the grant the first and second financial up-gradations to the Petitioner under the ACP Scheme on the completion of 12 and 24 years of service respectively and pay him the arrears on that basis as per the date of his superannuation within a period of 12 weeks from today.

13. Arrears of pension will be paid to the Petitioner within a further period of 12 weeks thereafter.

14. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 09, 2019
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