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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 15th September, 2020**

+ **W.P. (C) 6430/2020**

UNUSH KHAN AND ANR.Petitioners

Through: Mr.K.K.Sharma, Advocate

versus

UNION OF INDIA & ORS.Respondents

Through: Mr.Farman Ali, Senior Panel
Counsel and Mr.Syed Husain Adil
Taqvi, GP for R/UOI

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

JUSTICE RAJIV SAHAI ENDLAW

C.M. Appln. No.22743/2020 (Exemption from filing the true copies and from filing dim copies of annexures)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

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3. The two petitioners, being Sub-Inspectors (SIs) in the respondents Central Reserve Police Force (CRPF), have filed this petition seeking mandamus to the respondents CRPF to give the benefit of 2nd Modified Assured Career Progression (MACP) Scheme to the petitioners, in the pay-scale of SI i.e. at Rs.9300-34800 with Grade Pay of Rs.4200/-, since 1st January 2006, upon

completion of 20 years of regular service, in the year 2005, by treating MACP Scheme as applicable since 1st January, 2006 onwards and to consequentially revise the pay of the petitioners.

4. It is the case of the petitioners that they are similarly placed as the petitioners in (i) ***Ex.HC/GD Prahalad v. Union of India and Ors.*** 2019 SCC OnLine Del 10074; (ii) W.P.(C) 8722/2019 titled ***Kanhaya Lal and Anr. V. Union of India and Ors.*** decided on 5th December, 2019; (iii) ***Union of India and Ors. v Balbir Singh Turn & Anr.,*** (2018) 11 SCC 99; and, (iv) W.P.(C) 3549/2018 titled ***Sunil Kumar Tyagi v. Union of India and Anr.*** decided on 1st May, 2019, copies whereof are annexures 'A' to 'D' to the petition.

5. The counsel for the petitioners states that this Bench also has, on 31st July 2020, passed a similar order in W.P.(C) 4821/2020 titled ***Vinod Kumar & Ors. v. Union of India & Ors.,*** entailing the same controversy.

6. The counsel for the respondents CRPF appearing on advance notice states that the respondents have preferred an SLP on a similar issue and this petition should be held over awaiting the listing and outcome of the said SLP.

7. We are repeatedly facing this request, in this roster. However what we have found is that even after issues of pay fixation or other service issues affecting all personnel in a particular cadre or rank or otherwise similarly placed are decided by this court, by judgments in the nature of being in *rem*, for all those similarly situated as in petitions filed by few, the Central Armed Police

Forces (CAPFs) reject representations filed before them by those claiming to be similarly placed, for the same benefits as allowed by this court, merely by stating that the benefit has been granted by the court only to the petitioners before it and not to others i.e. that the judgment is in *personam* and not in *rem*. It is further found that CAPFs, while rejecting such representations do not even controvert that the representationists are similarly placed as those who have been granted the benefit vide judgment of the court. This results in all those, even though similarly placed as those who already have a judgment in their favour, being compelled to approach the courts.

8. We have, from time to time, in our orders/judgments, expressed dissatisfaction with the aforesaid state of affairs prevalent in the CAPFs. It is felt that such attitude of the CAPFs and the concerned ministries of the Government of India demonstrates total disregard for the conditions in which personnel of the CAPFs serve and the hardships they and their families face. It is inhumane, to thereby coerce personnel of the CAPFs, guarding the borders and other sensitive installations of the country and posted at different, often remote, places, to spend time, money and energy in engaging advocates and approaching the courts, when their batch mates or others similarly placed as them have already undertaken the said route and after fighting in the courts got the claim decided in their favour. Such conduct of the decision makers in the CAPFs and the ministries concerned, sitting in the comfort of their offices, also results in delays, first in adjudication of petitions by those who approach the court first and thereafter again

in disposal of repeat petitions which the others are compelled to file because of the refusal to apply the judgment to all to whom it may be applicable. This in our view, not only works injustice to those who put their lives at stake for the country but also multiplies litigation against the Government and is against the litigation policy announce by the Government and puts unnecessary burden on the courts. This needs to be remedied in right earnest.

9. We have, from time to time in the recent past, made it clear to the counsels for the CAPFs appearing in petitions filed against orders of rejection of representations like aforesaid and who seek deferment of such petitions on the grounds of SLP being intended to be filed or filed but not listed, that either the CAPFs should make a statement, that benefit of judgments in the nature of *rem* shall be given to all personnel similarly placed as personnel whose petitions on subjects pertaining to service conditions are allowed, subject of course to the final outcome of the appeals/SLPs if any preferred thereagainst, thereby obviating the need for all others though similarly placed as those whose petitions are allowed, to file petitions in the Courts owing to rejection by the CAPFs of their representations or face repetitive petitions and similar orders therein, in the absence of any contrary order of the appellate court or restraint by the Supreme Court. However none of the counsels for the CAPFs have agreed thereto and the counsel for the respondents CRPF appearing today also has no instructions to give any such statement. In the circumstances, need is not felt to keep this petition pending and/or to deny to the petitioner the same relief

as has already been granted by this court to others, similarly placed as the petitioners.

10. However we once again implore upon the decision makers in CAPFs and Ministries of Government of India to bestow attention to the malady aforesaid and cure the same.

11. Accordingly, this petition is disposed of, directing the respondents CRPF to, within eight weeks hereof, either release to the petitioners the differential amounts due to the petitioners in accordance with the judgments *supra* or, within the said eight weeks, furnish to the petitioners, reasons in writing, why the petitioners are different from the petitioners in the judgments aforesaid and/or why the petitioners are not entitled to the same relief as already granted.

12. If the payments due are not released within eight weeks, the same will also incur interest @ 9% *per annum*.

13. With the aforesaid, the petition is disposed of.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**ASHA MENON
(JUDGE)**

SEPTEMBER 15, 2020
s/pkb