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

+ **W.P.(C) 7616/2019**

KANHIYA KUMAR PATHAK Petitioner
Through: Mr. Naushad Alam, Advocate with
Mr. Jitendra Bharti, Advocates

Versus

UNION OF INDIA Respondent
Through: Mr. K. V. Sreemithun, Sr. Panel
counsel

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
17.02.2020

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1. The Petitioner is serving as Inspector (Technical) with BSF and posted at Special Repair Organization (SRO), BSF, Saket, New Delhi. He had joined the Respondent on 04.04.1987 as Constable (GD) and later on he was transferred to this workshop where hierarchy of post was: Constable (Technical), Head Constable (Technical), Sub Inspector (Technical) and Inspector (Technical) and there was no post called Assistant Sub Inspector (ASI). Similarly, in the general duty (GD) cadre there is no post of ASI (GD).

2. The grievance of the Petitioner is twofold; the first is to fix his pay under Central Civil Services (CCS) (Revised Pay) Rules, 1997 in the new pay scale and second is to grant him second financial upgradation under MACP

w.e.f. 3rd April, 2007 on completion of 20 years' of service in the grade pay of Sub Inspector i.e. Rs.5,500-9,000 (pre-revised), which was then upgraded to Rs. 9,300-34,800 (revised) with grade pay of Rs. 4,200 S-10 PB-II.

3. Notice of this writ petition was issued on 17th July, 2019. The Respondent has filed a counter affidavit to which a rejoinder has been filed by the Petitioner.

4. We have heard the arguments. As far as the first prayer is concerned, the Central Civil Services (CCS) (Revised Pay) Rules, 1997 are quite clear and Rule 6 takes care of the situation where no option is exercised by a Government employee. Rule 6 is quoted hereunder:

“6. Exercise of Option. – (1) The option under the proviso to Rule 5 shall be exercised in writing in the form appended to the Second Schedule so as to reach the authority mentioned in Sub-rule (2) within three months of the date of publication of these rules or where an existing scale has been revised by any order made subsequent to that date, within three months of the date of such order.

Provided that-

(i) in the case of a Government servant who is, on the date of such publication or, as the case may be, date of such order, out of India on leave or deputation or foreign service or active service, the said option shall be exercised in writing so as to reach the said authority within three months of the date of his taking charge of his post in India, and

(ii) where a Government servant is under suspension on

the 1st day of January, 1996, the option may be exercised within three months of the date of his return to his duty if that date is later than the date prescribed in this sub-rule.

(2) The option shall be intimated by the Government servant to the Head of his Office.

(3) If the intimation regarding option is not received within the time mentioned in Sub-rule (1), the Government servant shall be deemed to have elected to be governed by the revised scale of pay with effect on and from the 1st day of January, 1996.

(4) The option once exercised shall be final”.

5. Thus even if the case of the Respondents is that the Petitioner had not submitted his option within the prescribed time limit, in view of Sub rule (3) of Rule 6 of Central Civil Services (CCS) (Revised Pay) Rules 1997, he is deemed to have chosen the revised pay scale w.e.f. 1st January, 1996. This Rule has in fact been relied on by the Respondents in their counter affidavit. Hence, the Petitioner is entitled to the revised pay scale in terms of CCS (Revised Pay) Rules 1997 w.e.f. 1st January, 1996.

6. As far as the second relief is concerned, the same is already covered under a number of judgments pronounced by this Court including *Sunil Kumar Tyagi vs. Union of India & Anr.*, W.P (C) 3549/2018 decided on 1st May, 2019. The benefit of MACP is to be granted from the date when the Petitioner completes 20 years of service. Since there was no pay-scale of ASI in the SRO, BSF where the Petitioner was posted as detailed above, as well as in the general cadre, hence the next available scale is that of Sub Inspector (Technical) and accordingly the benefit of second MACP is to be granted as per the pay-scale of Sub Inspector (Technical).

7. In view of the above, it is directed that the Petitioner shall be given the benefit of the revised fixation of pay scale from 1st January, 1996. Upon completion of 20 years of service on 3rd April, 2007, Petitioner be granted benefit of MACP in the pay-scale of Sub-Inspector (Technical) of Rs.5500-9000 (pre-revised) later upgraded to 9300-34800 (revised) with grade pay of Rs.4200 (S-10 PB-II) with all consequential benefits. The arrears shall be paid within a period of 12 weeks from today.

8. The petition is allowed in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 17, 2020

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