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

+ **W.P.(C) 9256/2020**

HARJINDER SINGH AND ORS.Petitioners

Through: Mr.Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS.Respondents

Through: Mr. R.V. Sinha, Sr. CGC with
Mr. Amit Sinha, CGC and
Ms. Sharanya Sinha, Advocate.

% Date of Decision: 06th January, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed seeking quashing of pay fixation orders of the petitioners upon their promotion to the rank of Sub-Inspector CRPF through LDCE to the extent that the said pay fixation orders fixed the pay of the petitioners incorrectly at Rs.9300-34800 + Grade pay of Rs.4200/- and to re-fix the pay of the petitioners in the pre-revised pay structure being Rs.10230-34800 + Grade Pay of Rs.4200/- as per the option form submitted by them in a time bound manner as per instructions laid down by the DOPT to ensure career progression along with all the consequential benefits and arrears as due to them.

2. In the alternative, the petitioners pray for a direction to the respondents to grant similar relief as was granted to similarly situated personnel of the Force by this Court in the case of ***Braham Prakash Vs. Union of India; W.P.(C) No.3636/2016*** and connected matters vide judgment dated 16th October, 2018.

3. Mr.Ankur Chhibber, learned counsel for the petitioners submits that the LDCE is only a method of promotion and therefore, the appointment of the petitioners as Sub-Inspector by way of LDCE has to necessarily be treated as a promotion and not a fresh appointment in government service. In support of his submission, he relies upon the Division Bench judgment in W.P.(C) No.3636/2016.

4. He points out that a special leave petition filed against the judgment and order dated 16th October, 2018 has been dismissed by the Supreme Court and the said judgment has been implemented vide office order dated January, 2020 - which has been placed on record as Annexure 'P-10'.

5. Issue notice.

6. Mr.R.V.Sinha, Advocate, accepts notice on behalf of the respondents. He states that SLP against Division Bench judgment of this Court in ***Braham Prakash*** (supra) was dismissed on the ground of delay leaving the question of law open and that on account of dismissal of the SLP, the Division Bench judgment referred to herein had to be implemented. On instructions, he further states that the judgment in ***Braham Prakash*** (supra) has not attained finality inasmuch as certain SLPs are pending before the Apex Court.

7. Having heard learned counsel for the parties, this Court finds that the issue raised in the present writ petition is no longer *res integra* and is squarely covered by the decision of the Division Bench in ***Braham Prakash (supra)***; W.P.(C) No.3636/2016. The relevant portion of the said judgment is reproduced hereinbelow:-

“7. We have heard the learned counsel for the parties and find that the only stand taken by the respondents to deny the petitioner the benefit of his revised option dated 03.12.2010, is that he being a fresh appointee to the post of Sub-Inspector (GD) w.e.f. 08.11.2007, was not eligible to exercise any option in accordance with Rule 5 of the CCS Rules as the said option was available only to persons who were already in service before 01.01.2006. It may be noted that it is undisputed before us that the petitioner had joined the CRPF on 23.02.2003 and was appointed as a Sub-Inspector (GD) on 08.11.2007 by way of LDCE. Therefore, the question before us would be whether upon joining the post of Sub Inspector (GD) by way of LDCE on 08.11.2007, it could be said that the petitioner had joined Government service after 01.01.2006.

8. Before we deal with the rival contentions of the parties, it is deemed it appropriate to refer to Rules 5 and 6 of the CCS (Revised Pay) Rules, 2008, which read as under:-

"5. Drawal of pay in the revised pay structure -
Save as otherwise provided in these rules, a Government servant shall draw pay in the revised pay structure applicable to the post to which he is appointed;

Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

Provided further that in cases where a Government servant has been placed in a higher pay scale between 1.1.2006 and the date of notification of these Rules on account of promotion, upgradation of pay scale etc., the Government servant may elect to switch over to the revised pay structure from the date of such promotion, upgradation, etc.

Explanation 1 - The option to retain the existing scale under the provisos to this rule shall be admissible only in respect of one existing scale.

Explanation 2 - The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January, 2006, whether for the first time in Government service or by transfer from another post and he shall be allowed pay only in the revised pay structure.

Explanation 3 - Where a Government servant exercises the option under the provisos to this rule to retain the existing scale in respect of a post held by him in an officiating capacity on a regular basis for the purpose of regulation of pay in that scale under Fundamental

Rule 22, or any other rule or order applicable to that post, his substantive pay shall be substantive pay which he would have drawn had he retained the existing scale in respect of the permanent post on which he holds a lien or would have held a lien had his lien not been suspended or the pay of the officiating post which has acquired the character of substantive pay in accordance with any order for the time being in force, whichever is higher.

6. Exercise of Option -

1) The option under the provisos 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 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, 2006, 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 pay structure with effect on and from the 1 day of January, 2006.

(4) The option once exercised shall be final
Note 1
- Persons whose services were terminated on or after the 1st January, 2006 and who could not

exercise the option within the prescribed time limit, on account of discharge on the expiry of the sanctioned posts, resignation, dismissal or discharge or disciplinary grounds, are entitled to the benefits of this rule

Note 2 - Persons who have died on or after the 1 day of January, 2006 and could not exercise the option within the prescribed time limit are deemed to have opted for the revised pay structure on and from the 1 day of January, 2006 or such later date as is most beneficial to their dependents, if the revised pay structure is more favourable and in such cases, necessary action for payment of arrears should be taken by the Head of Office*

Note 3 – Persons who were on earned leave or any other leave on 1.1.2006 which entitled them to leave salary will be allowed the benefits of this rule.”

9. A perusal of the aforesaid Rules clearly reveals that as per Explanation 2 to Rule 5, “those persons who are appointed to a post for the first time in Government service on or after 01.01.2006”, are prohibited from exercising the option to switch over to the revised pay structure from a date later than 01.01.2006. Thus, the entire claim of the petitioner hinges on whether he can be treated as a person who had joined Government service for the first time, on or after 01.01.2006.

10. The question as to whether a person appointed by way of LDCE is a direct recruit or a promotee, need not detain us for too long as we find that a Division Bench of this Court in the case of Man Singh (supra), has categorically held that appointment through LDCE is merely an appointment by way of promotion albeit fast tracked. In arriving at the aforesaid decision, the Division Bench had

relied upon the notings of the Ministry of Home Affairs itself wherein, it had been clearly stated that LDCE is a mode of promotion. For the sake of ready reference, the relevant extracts of the decision in the case of Man Singh (supra), are reproduced hereinbelow:-

“17. Learned counsel for the petitioner has drawn our attention to the stand of the Ministry of Home Affairs (Personnel), New Delhi as well as the Department of Personnel and Training of the Government of India in their records which have been filed in a pending matter before the Supreme Court of India. The first noting (dated 18th November, 2011) is extracted in extenso hereafter and reads as follows:-

*“Department of Personnel & Training
Estt (res)*

Reference notes of Ministry of Home Affairs on pages 2-3/ante.

2. Regarding clarification whether LDCE is Direct Recruitment or a mode of promotion, the RR Branch of this Department has clarified that the LDCE is a mode of promotion. On the issue of change in category of a person, who has been appointed on the basis of reservation, it is clarified vide this Department's OM dated 11.7.2002 that SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.

-sd-

*(Sharad Kumar Srivastava)
Under Secretary (Res)”
(underlining by us)*

18. This noting was reiterated by the Ministry of Home Affairs in a noting dated 22nd November, 2011 of Shri R.P. Sati, Under Secretary referring to a writ petition filed in this court. The noting dated 22nd November, 2011 reads as follows:-

“Ministry of Home Affairs

Pers – II

Reference note on pre-pages.

2. This is regarding Writ Petition(C)No.5460/2011 filed by Shri Sundeep Kumar Dubey, Constable)GD) of CRPF in the High Court of Delhi against his nonselection for the post of Sub, Insp(GD) through Limited Department Competitive Examination (LDCE), 2010.

3. The matter was considered in this Ministry (p2/n) and DoP&T was requested to clarify the position as mentioned in para – 3(p-2/n). In this connection DoP&T vide their UO dated 18.11.2011 (p-4/n) has clarified the following:-

“Regarding clarification whether LDCE is Direct Recruitment or a mode of promotion, the RR Branch of this Department has clarified that the LDCE is a mode of promotion. On the issue of change in category of a person, who has been appointed on the basis of reservation, it is clarified vide this Department's OM dated 11.7.2002 that SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.”

4. We may convey the above mentioned clarification of DoP&T to CRPF.

-Sd-
(R.P. Sati)
Under Secretary
22.11.2011

Director (Pers)/DS(Pers-I)”

(Underlining supplied)

The correctness and authenticity of these notings have not been disputed before us by the respondents.

19. The respondents have urged in the present proceedings that appointments through the LDCE is a mode of fast tracked promotion. In the above notings, the respondents have themselves taken the position that appointment through the LDCE is a mode of promotion. Given the stand of the respondents in the notings aforesaid and before this Court it is clear that appointment to LDCE is merely an appointment by promotion, albeit fast tracked. It would, therefore, follow that the recruitment rules or guidelines for appointments which would apply to appointments through the LDCE, would have to be those which are applicable to appointment by promotions.”

11. The aforesaid extracts from the internal notings of the respondents themselves, as reproduced in the case of Man Singh (supra), leave no manner of doubt that as per the respondents' own understanding, LDCE is treated only as a method of promotion and therefore, the appointment of the petitioner on 08.11,2007 as a Sub-Inspector (GD) by way of LDCE as to necessarily be treated as a promotion and not a fresh appointment in government service.

12. The petitioner had admittedly joined the CRPF on 25.02.2003, as a Constable (GD) and once we have come

to the conclusion that his appointment as a Sub-Inspector (GD) on 08.11.2007, cannot be treated as a fresh appointment, he must be treated as already being in Government Service as on 01.01.2006, i.e., the cut-off date which is relevant for the purposes of exercising the option under Rule 5 of the CCS Rules. In the light of the above, the decision of the respondent in treating the petitioner as having joined government service for the first time after 01.01.2006, is clearly erroneous and, therefore, the respondents' reliance on the

Explanation 2 to Rule 5 to hold that the petitioner was not entitled to exercise any option, is not sustainable as the said provision which excludes the applicability of Rule 5 to persons who joined government service on or after 01.01.2006, is inapplicable to the petitioner.

13. What emerges from the above discussion is that the petitioner has been denied the benefit of the option exercised by him in accordance with Rule 5, on an erroneous presumption drawn by the respondents that he had joined government service for the first time after 01.01.2006. The respondents have not raised any other ground to deny the petitioner the benefits of his revised option. In the light of the aforesaid conclusion, the denial on the part of the respondents in extending the petitioner the benefits of his revised option, is found to be wholly erroneous, arbitrary and cannot be sustained.

14. For the aforementioned reasons, the respondents are directed to extend the benefits of the revised option exercised by the petitioners in each case under Rule 5 of the CCS(RP) Rules, 2008 and grant them all the consequential benefits to which they would be entitled, within eight weeks."

8. Being a Co-ordinate Division Bench, it is not open for us to take a different view and, more so, when we find that the view taken by the earlier Division Bench is legal, fair, just and reasonable.

9. Consequently, the present writ petition is disposed of with a direction to the respondents to extend the benefits of the revised option exercised by the petitioners in each case under Rule 5 of the CCS(RP) Rules, 2008 in accordance with the office order dated January, 2020, (which has been placed on record as Annexure 'P-10' of the paper book) and grant them all the consequential benefits to which they would be entitled within eight weeks.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

ASHA MENON, J

JANUARY 06, 2021
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