

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

% Judgment reserved on : 02.11.2022  
Judgment delivered on : 23.11.2022

+ W.P.(C) 10940/2019

SI DAYA CHAND (RETIRED) ..... Petitioners

versus

GOVT. OF NCT OF DELHI & ORS. .... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. Sourabh Ahuja, Advocate.

For the Respondents : Mrs. Avnish Ahlawat, Standing Counsel  
with Mr. Nitesh Kumar Singh, Mrs. Tania  
Ahlawat, Mrs. Palak Rohmetra, Ms.  
Laavanya Kaushik and Ms. Aliza Alam,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**JUDGMENT**

**TUSHAR RAO GEDELA, J.**

1. The petitioner challenges order dated 06.03.2019 passed in O.A. No.3074/2013 by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal'), whereby his prayer for re-fixation of pay equal to that of his junior, sought on the ground that the petitioner herein was never offered the option of fixation of pay from the date of increment of pay scale of the previous

post at the time of promotion to the rank of Head Constable (Exe.), was rejected and the Original Application dismissed.

2. The case of the petitioner as culled from the record is that the petitioner was appointed as Constable (Exe) in Delhi Police on 08.11.1976. Subsequently, one Sh. Prem Prakash had joined the Delhi Police as Constable (Exe) on 07.12.1976 and was junior to the petitioner. It is the case of the petitioner that he along with Sh. Prem Prakash was promoted as Head Constable on 12.06.1987.

3. Petitioner states that while he was drawing the pay scale of Head Constable, due to an option for fixation of pay, which was offered to Sh. Prem Prakash, said Sh. Prem Prakash subsequently, started drawing a higher pay while the petitioner was drawing a lower pay in comparison.

4. Petitioner claims that he came to know about this discrepancy in pay fixation on 18.07.2008. Petitioner submits that *vide* the inter departmental communication dated 18.07.2008, the respondent admitted that Sh. Prem Prakash, who, by then, became an ASI, was junior to the petitioner in the rank of Constable. However, the subsequent promotions of both were on the same dates.

5. It is submitted by the petitioner that the said letter further mentioned that the discrepancy/ anomaly in their pay arose on account of the fact that ASI Prem Prakash exercised his option for fixing his pay scale coinciding with the date on which the increment became due at the time of promotion to the rank of Head Constable (Exe.).

Petitioner states that no such option was sought from him at the time of fixation of his pay when he was promoted to the rank of Head Constable (Exe).

6. It is this communication which gives rise to the grievance raised by the petitioner before the respondents as well as the Tribunal.

7. The controversy as noted by the Tribunal in para 6 giving rise to the grievance is as under :

*“6. It was way back on 12.06.1997, that the applicant and Shri Prem Prakash were promoted to the post of Head Constable. Earlier to that, both of them had put in ten years of service, and they were drawing the same pay, all through. The pay of the applicant in the post of Head Constable was fixed at Rs. 1,075/-, on promotion. Shri Prem Prakash on the other hand, exercised the option that fixation of his pay in the post of Head Constable be done from the date on which he gets increment, i.e., from 01.12.1987. This resulted in a situation where the applicant started drawing the pay of Rs. 1,075/-, whereas Shri Prem Prakash was drawing lesser pay of Rs. 1,075/-. This continued up to December 1987, when they parted the ways, while the salary of the applicant was fixed at Rs.1,075/-, that of Shri Prem Prakash became Rs. 1,100/-. The salary of the applicant was enhanced to Rs. 1,100/- in June 1988, but the salary of Shri Prem Prakash was enhanced to Rs. 1,125/- from 01.12.1988 onwards. The same tendency continued for the rest of their career.”*

Subsequently, it appears that petitioner had ventilated his grievances in the years 2004, 2007 and 2008 in the form of Dak diaries, however, there was no response from the respondents.

8. Petitioner gave a representation to the Commissioner of Police on 31.01.2011 stating, *inter alia*, that at the time of his promotion to

the post of Head Constable, he was not made aware of the option in the context of fixation of pay scale and on account of that, while he ended up with a pay at a lower level, his junior Sh. Prem Prakash was drawing a higher pay. Petitioner thus, made a request for removal of this anomaly and for re-fixation of his pay scale. In the meanwhile Petitioner retired on 31.01.2012.

9. Since, the respondents did not redress his grievance, petitioner filed an application bearing O.A No.2155/2012 before the Tribunal. Vide order dated 04.07.2012, O.A No. 2155/2012 was disposed of directing respondent No.1 therein i.e., the Commissioner of Police to decide the matter finally and pass a reasoned and speaking order.

10. In pursuance thereof, vide order dated 29.08.2012 respondents rejected the representation of the petitioner on the ground that no anomaly had arisen in terms of FR 22-C [as it then was, now FR 22 (I) (a) (i)] between a junior and a senior, thus, there was no occasion for any grievance. It was also mentioned that the discrepancy arose on account of Sh. Prem Prakash exercising his option for fixation of his pay scale coinciding with the date when the increment became due, whereas the applicant wanted his pay to be fixed from the date of promotion itself.

11. Challenging the order dated 29.08.2012 passed by the respondent, O.A. 3074/2013 was filed by the petitioner which resulted in the impugned order dated 06.03.2019. It is this order which the petitioner challenges in the present writ petition.

12. Mr. Sourabh Ahuja, learned counsel for the petitioner submitted that the grievance of the petitioner had arisen only on account of the default of the respondents in not offering the option of pay fixation in the year 1987 when the petitioner was promoted to the rank of Head Constable. He further submits that the discrimination is apparent inasmuch as Sh. Prem Prakash, though was promoted to the rank of Head Constable on the same day, was offered an option of pay fixation whereas the petitioner was not. He further submits that, it is undisputed that Sh. Prem Prakash was junior to the petitioner at the initial enlistment as Constable.

13. Learned counsel for the petitioner refers to the O.M. dated 12.12.1997 of the DoP&T, which is extracted hereunder :-

*“The undersigned is directed to invite a reference to this Department Office Memoranda cited in the margin and the saving clause of F.R. 22(I)(a)(i) on the above subject. In terms of these orders and the rule quoted above, in all cases except in cases of appointment on deputation to an ex-cadre post or to a post on ad hoc basis, the Government Servant subject to the fulfilment of the eligibility conditions as prescribed in the relevant recruitment rules, on his appointment to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, has an option from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage on a time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be re-fixed in accordance with this rule on the date of accrual of next increment in the scale of lower grade or post. In the order of appointment or promotion a clause*

*to this effect is required to be incorporated. Some instances have, however, come, to the notice of the Department where the administrative Ministries/Departments etc. have failed to incorporate such a clause in the promotion order resulting in the requests from the promoted officers at a subsequent stage for condonation of delay in exercise of option for fixation of pay. It has, therefore, been decided to reiterate these instructions to ensure that in the order of promotion/appointment covered by F.R. 22(I)(a)(i) clause should invariably be incorporated to this effect with a view to avoiding undue hardship to the officials as well as unnecessary references to this Department.*

(emphasis supplied)

Learned counsel submits that the aforesaid O.M. mandates that a clause in the appointment or promotion order regarding option for fixation of pay is to be incorporated. He further submits that the respondents not having offered the aforesaid option to the petitioner committed infraction of the aforesaid O.M., warranting judicial interference.

14. Learned counsel for the petitioner also refers to the letter dated 06.06.2014, emanating from the Office of the Commissioner of Police, whereby 72 Inspectors were offered the option of re-fixation of pay at the time of their respective promotions. In particular, learned counsel refers to para 3 as well as the penultimate paragraph of the letter dated 06.06.2014, which is extracted hereunder:

*“3. At present 72 similarly placed Inspectors (18+54) have intended for the benefit of fresh option to re-fix their pay.*

x x x x x

*It is, however, requested that the opportunity of exercising fresh option may kindly be granted to all such Inspectors either retired or in service but has not availed the benefit of option at the time of promotion in the rank of Inspectors (Exe) i.e. 18.08.1994”*

Respondents have not denied this letter. On the basis of this, learned counsel submits that the option was given to the Inspectors even after the passage of 20 years. He, therefore, contends that the discrimination is apparent and it is incumbent upon the respondents to rectify the mistake committed at the time of promotion of the petitioners to the rank of Head Constable by now giving him an option to seek re-fixation of pay in terms similar to that given to the Inspectors by the above letter.

15. Learned counsel for the petitioner referred to other documents and correspondences including replies to the RTI application submitted by the petitioner to the respondents to buttress his case that petitioner had been continuously following his case for re-fixation of pay with the respondents.

16. Learned counsel for the petitioner refers to the order dated 29.08.2012 passed by the respondent No.1 in pursuance of the earlier O.A. No. 2155/2012 to submit that the said order refers to how FR 22-C [as it then was, now FR 22 (I) (a) (i)] is not applicable to the case of the petitioner and holds that the petitioner also could have tendered a similar option as exercised by Sh. Prem Prakash, but failed to do so.

17. Learned counsel submits that the said order did not discuss or refer to the actual grievance of the petitioner, which was, as to whether the petitioner was offered any such option at the time of promotion to the rank of Head Constable. Whereas subsequently, many other Police officers were offered to exercise option for re-fixation of pay even after passage of 15 to 20 years from the date of their promotion.

18. Learned counsel for the petitioner submits that petitioner in the Original Application had specifically referred to the offer of option with regard to pay fixation given to the batch-mates/ juniors and non-grant of the same to the petitioner. However, in the counter reply neither was it contradicted nor denied and thus the averments are deemed to have been admitted that no option for fixation of pay, at the time of promotion to the rank of Head Constable, was ever offered to the petitioner. Learned counsel submits that this is *ex facie* discriminatory, arbitrary, whimsical and unjust thereby warranting interference and quashing of the order dated 29.08.2012 of respondent No.1 as well as the impugned order dated 06.03.2019.

19. Learned counsel for the Petitioner relies upon the judgment of ***Union of India vs. Tarsem Singh, (2008) 8 SCC 648***, to contend that incorrect pay/pension fixation is a continuous cause of action which accrues to the person on a monthly basis, and thus submits that there is no delay in approaching the Tribunal for redressal of the grievances on account of incorrect pay fixation. He also relies on the decision of the Supreme Court in ***Coal India Ltd. vs. Saroj Kumar Mishra,***

(2007) 9 SCC 625, para 19 to contend that an apprehension that there could be a possibility of opening of flood gates of litigation, *ipso facto*, would not be a justification to deprive a party of its valuable rights.

20. On the other hand, Mr. N.K. Singh, learned counsel for the respondents supports the reasoning contained in the impugned order passed by the Tribunal.

21. Learned counsel for the respondent submits that the option of fixation of pay at the time of promotion is not offered by the respondents and it is the promotee, who exercises this option on his own volition.

22. Learned counsel further submits that the representation of the petitioner proceeded on the basis of stepping up or rectification of anomaly of pay between a junior and a senior, predicated on FR 22-C [as it then was, now FR 22 (I) (a) (i)].

23. Learned counsel further submits that it is clear that there is no anomaly of pay occasioned due to any act on the part of the respondents and having arisen due to the failure on the part of the petitioner to exercise the option available to him at the time of promotion, the rejection of the representation vide the order dated 29.08.2012 by the respondent No.1 was justified in the facts and circumstances of the present case. He thus, submits that the present petition may be dismissed being devoid of any merits.

24. The facts as capitulated above are not in controversy. In paras 5.2 and 5.8 of the grounds as raised in the Original Application, petitioner has specifically stated that option was given to others and was not given to the petitioner. This averment has not been denied by the Respondents. Paras 5.2 and 5.8 of the grounds as raised in the Original Application before the Tribunal are extracted hereunder for clarification :

*“5.2 Because the impugned action/order passed by the respondents is discriminatory and in violation of Article 14 of the Constitution of India. Admittedly, the respondents have asked for the option with regard to pay fixation from the batch mates/juniors of the Applicant (viz. Prem Prakash) on their promotion to the rank of Head Constable (Exe.) but the Applicant was not given the above mentioned option for his pay fixation on his promotion to the rank of Head Constable. It is submitted that because of the abovementioned inaction on the part of respondents the Applicant could not tendered similar option as was tendered by ASI Prem Prakash wherein he got his pay fixed in the rank of HC (Exe.) after acquiring additional annual increment of the lower rank of Constable. It is again reiterated at the cost of repetition that the respondents have asked option from Prem Prakash for pay fixation and not from the Applicant. It is pertinent to mention that the respondents failed to appreciate if they would have asked for an option from the Applicant as they did in the case of Prem Prakash, then the Applicant definitely awaited to fix the pay of higher post from later date of his actual promotion and drew increased pay of higher post from later date. Therefore, putting the Applicant to financial loss for no fault of his is not only arbitrary but also whimsical. Hence, on this ground alone the impugned order is liable to be quashed and set aside.*

x x x x x  
x x x x x

5.8 *Because the respondents did not appreciate that their action is discriminatory in as much as that they have asked for an option from the batch mates/juniors of the Applicant and not from the Applicant w.r.t. pay fixation on their fixation on their promotion to the rank of Head Constable (Exe.).*”

(emphasis supplied)

The corresponding para 5.2 and 5.8 of the counter affidavit filed by the Respondents is extracted hereunder:

Reply to 5.2 : *That the contents of corresponding para need no comments, as the pay of the applicant was fixed by DCP/2<sup>nd</sup> BN DAP.*

x x x x  
x x x x

Reply to 5.7 : *That the contents of corresponding para are wrong, misleading, misconceived and hence vehemently denied, pay of the applicant on promotion to the rank of HC was fixed by DCP/2<sup>nd</sup> BN DAP.*”

Reply to 5.8 : *That the contents of corresponding para need no comments, in view of para 5.7 above.*”

It is clear from the above that there is no specific denial to the averments made in the grounds of the Original Application. Moreover, Respondents failed to bring on record anything to substantiate that the option of pay fixation was to be exercised by the Petitioner on his own volition and was not required or mandated to be

offered by the Respondent to the Petitioner at the time of promotion to the rank of Head Constable. Having regard thereto, we are of the opinion that no option for fixation of pay was ever offered to the Petitioner. The discrimination is thus apparent.

25. The contention of the Respondents that there was neither any requirement nor mandate to offer option of pay fixation at the time of promotion as Head Constable is fallacious and is without any substance. This contention is contradicted by the letter dated 06.06.2014, issued by the office of the Commissioner of Police, whereby 72 Inspectors were permitted to exercise fresh option to re-fix their pay subsequently, though the promotions were effected many years ago. Interestingly, the same letter also refers to such option to be made available to all Inspectors, either retired or in service, but have not availed the benefit of the option at the time of promotion to the rank of Inspectors (Exe.) i.e. 18.08.1994.

26. That apart, in response to the letter dated 06.06.2014 as aforesaid, the Govt. of NCT of Delhi, Department of Home-1 (Police)/Establishment sent a reply/letter dated 12.08.2014 to the DCP, Police Headquarters sanctioning fresh option for pay fixation in respect of Inspectors of Delhi Police. The contents of the letter dated 12.08.2014 are extracted hereunder for clarification.

*“...This is with reference to your letter No.15855/CR-II(PHQ) dated 13.11.2013 and subsequent letter No.8248/CR-II (PHQ) dated 06.06.2014, whereby the list of 72 police officers, who intend to exercise their delayed option to re-fix their pay was sent to this department. In this*

*regard, I am directed to convey the administrative approval of Principal Secretary (Home) to allow the said police officers, whose names are in the Promotion Order No.28448-28449/CB-I dated 18.08.1994 and could not exercise their option for pay fixation and are getting less salary than their counter-parts, to give option afresh to re-fix their pay. This option is limited to those officers only who were promoted vide aforesaid promotion order dated 18.08.1994 and whose names were forwarded by PHQ to this department vide its aforesaid letter dated 13.11.2013 and 06.06.2014.*

*Police Department may re-fix their pay under FR-22(I)(a)(i) as special cases.”*

Having regard thereto, the rejection of the request of the Petitioner is not only discriminatory but also reeks of arbitrariness and is whimsical.

27. The contention of the Respondent that the case of the Petitioner cannot be covered under the FR 22-(C) [as it then was, now FR 22(I)(a)(i)] is predicated upon the notion that the said Rule relates only to stepping up of pay or rectification/anomaly in the pay scale of a senior in comparison to the junior which is not arising in the present case. The said argument is noted only to be rejected in view of the letters dated 06.06.2014 and 12.08.2014 wherein FR 22(I)(a)(i) was specifically invoked by Respondents themselves to grant option of pay fixation to 72 Inspectors (Exe.).

28. From a perusal of the facts arising in the present case, it is clear that, all that the Petitioner had sought from the Respondents was to make available the option to re-fix the pay scale at the time of his

promotion to the rank of Head Constable (Exe.). It was only as a matter of fact and to show apparent discrimination, that the Petitioner referred to the case of Sh. Prem Prakash, who also happened to be his junior.

29. It is clear from the perusal of O.M. dated 12.12.1997 issued by the DoP&T that it was incumbent upon the Departments to provide an option from the date of promotion or appointment as the case may be to have pay fixed under that Rule from the date of such promotion or appointment, or to have the pay fixed initially at the stage on a time scale of new posts above the pay in the lower grade or post from which an employee is promoted on regular basis, which may be re-fixed in accordance with that Rule on the date of accrual of next increment in the scale of lower grade or post. The said OM also emphasized the necessity to incorporate such option in the letter of appointment or promotion. No document to establish that the promotion order/letter, in respect of the petitioner, contained any such incorporation has been filed by the respondents on record.

30. It is evident that the Petitioner was deprived from exercising this option. We are of the considered opinion that the aforesaid option ought to have been granted to the Petitioner at the time of promotion to the rank of Head Constable and the deprivation of such option is discriminatory. Consequently, the order dated 29.08.2012 of Respondent No.1 as well as the impugned order dated 06.03.2019 are unsustainable.

31. There is neither any rationale nor cogent reason to discriminate and deprive the Petitioner, in these circumstances, from exercising the option of re-fixation of pay from the date of his promotion to the rank of Head Constable (Exe.) i.e. 12.06.1987. More so, in view of the fact that the respondents did offer such option of re-fixation of pay to other employees who were similarly circumstanced like the petitioner.

32. The Supreme Court in *Tarsem Singh (supra)* has held that the incorrect fixation of pay is a continuous cause of action which accrues to an employee on monthly basis and therefore such grievance cannot be rejected on the grounds of limitation. Said judgment applies on all fours in the present case inasmuch as the non grant of option has led to incorrect fixation of pay of the petitioner requiring re-fixation.

33. However, in the said case, the Supreme Court has also categorically held that the monetary consideration would be limited to three years prior to the filing of the Original Application. The same would apply in the present case too. The other judgments referred to by the Petitioner are not relevant in view of the conclusion reached by us.

34. In view of the above, we hereby allow the present petition and in view of the judgment of *Tarsem Singh (supra)*, we direct as under :-

(a). The Respondents are directed to give fresh option of pay fixation to the Petitioner within four weeks of this order and if the option is exercised by the Petitioner within the said period, then

notionally re-fix the pay of the Petitioner from the date of the next increment accruing to him in the scale of lower grade or post at the time of his promotion to the post of Head Constable (Exe.) i.e. on 12.06.1987 within four weeks of the option;

(b). Consequent to the notional re-fixation as directed in (a) above, such exercise would notionally be carried out to subsequent promotions, if any;

(c). Respondents are directed to also calculate the arrears of pay, if any, after the exercise of re-fixation of pay, as directed in (a) above, restricted to the period of three years before the filing of the O.A. No.3074/2013 and remit the same to the Petitioner with admissible interest as per rules within three months from the date of this order;

(d). Respondents are also directed to calculate the arrears of pension after the exercise of re-fixation of pay, as directed in (a) above and remit the same to the Petitioner with admissible interest as per rules within three months from the date of this order.

35. Petition is disposed of in above terms with no orders as to costs.

**TUSHAR RAO GEDELA, J**

**SANJEEV SACHDEVA, J**

**NOVEMBER 23, 2022**

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