



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

Reserved on: August 22, 2022

Pronounced on: August 30, 2022

+ W.P.(C) 4580/2021 & CM APPL.43010/2021

SI/GD ASHOK KUMAR

.... Petitioner

Through: Mr. N.L. Bareja, Advocate

Versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Akshay Amritanshu and Mr. Ashutosh
Jain, Advocates

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SAURABH BANERJEE, J

1. The petitioner appeared for appointment to the post of SI/GD through LDCE-2013 against the unreserved vacancies available for year 2013/2014. Despite successfully qualifying the written examination, his candidature for appointment was rejected on account of endorsement of Non-Qualifying Service (NQS) of 29 days over stay leave, which period was duly regularized as 29 days Leave Half Pay with No Leave Salary (LHF-WNLS), during the scrutiny of testimonials/ documents as part of Stage IV of SO no. 01/2010.

2. This led to the first round of litigation when the petitioner filed writ petition entitled *CT/GD Ashok Kumar Ors. vs Union of India and Ors.* W.P.(C) 9973/2016, wherein this Court vide order dated 09.08.2017 held



that mere absence which has been regularized by half pay leave or even warning may not be sufficient to declare the petitioner as disqualified and that the petitioner would be considered for promotion to the post of Sub-Inspector in accordance with law and he would not be treated as disqualified for want of clean or unblemished records for the “act of absence”.

3. Pursuant to his appointment as SI/GD on 26.04.2018, the petitioner vide GC-1 CRPF, Ajmer Office Order No R-II-I/2018-EC6(SI/LDCE-2013) dated 26.04.2018, was placed in the pay matrix, Level 6 of Rs. 35,400/- and his seniority was fixed with effect from 28.03.2014 in terms of his position in the overall merit list drawn on conclusion of LDCE-2013.

4. Despite that, as per the gradation list SI/GD (Male/Female) as on 01.12.2017 (corrected up to 30.04.2018) by the Dte. Gen. CRPF, the petitioner was not entitled to draw pay and allowances at par with his similarly situated batch-mates, who were so appointed to the post of SI/GD with effect from 28.03.2014 and was given discriminatory treatment.

5. Thus, the petitioner vide legal notice dated 24.07.2019 called upon the respondents to extend the benefits of the pay parity viz. fixation of pay and allowances along with the increments and the link in the rank of SI/GD, through LDCE-2013 with effect from 28.03.2014 as was done in the case of similarly situated persons. The respondent no.3 vide reponse dated 15.09.2020 apprised the petitioner that though the petitioner has been given seniority with effect from 28.04.2014 at par with his batch-mates, but he is not entitled to draw pay and allowances at par with his batch-mates. Receipt of the above non-satisfactory response led to the second round of litigation before us in the form of the present writ petition wherein the petitioner claims the following reliefs:-



“a) Call for the records of the case

b) Issue appropriate writ, order(s) or direction(s) in nature of mandamus, directing the respondents to extend the benefits of the pay parity viz Notional fixation of pay and allowances along with increments and like in the post of SI/GD at par with his batchmates, so appointed to the post SI/GD through LDCE-2013, w.e.f. 29.03.2017 passed in WP(C) No. 7591/2016

c) Issue appropriate writ, order(s) or direction to the respondents to pay costs of this petition to the petitioner for compelling him to approach this Hon'ble Court for indulgence to seek justice”

6. This being the second round of litigation filed by the petitioner against the respondents before us, the issue is very limited.

7. Learned counsel for petitioner submits that being similarly situated with his batch-mates and after the order passed in the first round of litigation in his favour, the petitioner is entitled to be considered for and granted notional fixation of pay and other consequential benefits at par with his batch-mates of LDCE-2013 in accordance with law laid down by this court and other high courts that similarly situated personal should be treated alike.

8. Learned counsel for petitioner further submits that the respondents have given fixation of seniority and all other consequential benefits to similarly situated personal in accordance with the judgment passed by this court in **Jignesh Kumar vs. Union of India & Ors.** W.P.(C) 960/2014 dated 28.10.2014, **Insp/GD Bidyadhar Behra & Ors. vs. Union of India & Ors.** W.P.(C) 2108/2016 and **CT/GD Girish Kumar vs. Union of India & Ors.** W.P.(C) 7563/2015 dated 11.08.2015. Relying upon the aforesaid judgments, learned counsel for petitioner contended that similarly situated



personnel in all the above cases were granted all consequential benefits from the date of seniority at par with the batch-mates and the petitioner should be extended similar benefits.

9. In response thereto, the respondents in their counter affidavit, without denying any of the averments/ allegations made in the writ petition, submit that in compliance of order dated 09.08.2017 of this court in the first round of litigation, vide order No. R-II-1/2018-EC-VI (SI/GD-LDCE-2013) dated 26.04.2018, respondent no. 2 had duly appointed the petitioner as SI/GD with effect from 26.04.2018. Since then the petitioner has been getting all the benefits and promotion from the actual date of appointment in accordance with law and has been given the original seniority from 28.03.2014 at par with his batch-mates. Also submitted the petitioner has been allowed the pay and allowances attached with the post of SI/GD only from 26.04.2018 (date of assumption of charge of SI/GD) as he cannot be granted pay fixation from a date anterior to his actual appointment i.e., 28.03.2014. Thus the contention of the petitioner that he had been deprived of his rights/entitlements are wholly incorrect.

10. Learned counsel for respondents has not disagreed with the question of facts involved in the present writ petition and has merely argued that the petitioner is not and indeed cannot be entitled to fixation of pay and other benefits from his date of appointment, i.e., 28.03.2014 because he could be allowed such benefits with effect from his actual date of assumption of charge of SI/GD, i.e., 26.04.2018 and not from before.

11. It is indeed a strange fallacy that the respondents, on one hand in compliance of order dated 09.08.2017 of this court in the first round of litigation, have recognized the date of joining of the petitioner as 28.03.2014



for the purposes of seniority but strangely on the other hand, for reasons beyond comprehension, have chosen not to extend him the benefits of pay and allowances along with increments and the like to the post of SI/GD at par with his batch-mates, appointed as SI/GD through LDCE-2013 with effect from the same date, i.e. 28.03.2014 by wrongly withholding them.

12. Once it has been affirmed vide order dated 09.08.2017 of this court in the first round of litigation and thence recognized by the respondents that the petitioner was born in the organization on 28.03.2014 along with his other batch-mates, there is no gain saying that the petitioner shall be eligible for all the benefits, emoluments, pay, allowances, perks, seniority and like with effect from the said date with retrospective effect. All these are natural corollary and consequence of the date of his joining, i.e., 28.03.2014 of the petitioner with the Central Reserve Police Force

13. The aforesaid are a matter of right of the petitioner and non-grant thereof tantamounts to gross discrimination and denial of right to equality enshrined under Article 14 and Article 16 of the Constitution of India. Such an act, if permitted to stand, shall result in causing grave miscarriage of justice, financial loss, harm and thus should not be permissible. We denounce this kind of practice followed by the respondents. Once the rights of the personnel like the petitioner before us are established and recognized, then the respondents are duty bound to extend all consequential benefits to all such personnel like the petitioner.

14. To note, in the present case the respondents have neither pleaded nor argued that this is a case of normal rule of “no work no pay”, which even otherwise does not have a straight-jacket formula and depends on the facts and circumstances of each case. More so, there is no fault on the part of the



petitioner in the present case. Thus the petitioner cannot be made to suffer for no wrong attributable to him, as such, he cannot be denied extension of his rightful dues/ benefits.

15. We agree with the position of law in the judgments cited by the learned counsel for petitioner before us. The ratio laid down in the aforesaid judgements is squarely applicable for the facts of the present case as they are *judgements in rem* and are not *judgments in personam*. The respondents cannot seek to distinguish the petitioner with the similarly situated personnel, i.e. his batch-mates and instead should rather grant him similar benefits and reliefs on the ground of parity. At the same time, we do not agree with the case and arguments put forth by the learned counsel for respondents.

16. In view thereof and in view of the settled law noted hereinabove, we have no hesitation in holding that the petitioner is entitled to fixation of notional pay and allowances along with increments and the like to the post of SI/GD at par with his batch-mates, appointed as SI/GD through LDCE-2013 with effect from the same date, i.e., 28.03.2014. We further direct that the respondents shall comply with the aforesaid and release the backlog amount within a period of *four weeks* from today along with interest @ 6% per annum from the date of its accrual to the petitioner till the date of payment. Should the respondents fail to release the same within the aforesaid time period then the petitioner shall be entitled to an interest @ 9% per annum on delayed payment.

17. A copy of the present order be sent to all the Armed Forces and Central Armed Police Forces i.e., Indian Army, Indian Navy and Indian Air Force, Assam Rifles, Border Security Force, Central Industrial Security



Force, Central Reserve Police Force, Indo Tibetan Border Police, National Security Guard and Sashastra Seema Bal for necessary compliance. Needless to say, the benefits of the present order shall be given effect by all the abovesaid forces to all similarly situated personnel. The present writ petition is allowed and pending application is disposed of. Parties to bear their own costs.

(SAURABH BANERJEE)
(JUDGE)

(SURESH KUMAR KAIT)
(JUDGE)

AUGUST 30, 2022/rr

