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

% *Date of decision: July 13, 2022*

+ W.P.(C) 862/2021 & CM APPL. 9782/2021(impleadment)

RAJENDRA PRASAD & ORS. Petitioners

Throug mklh: Ms. Saahila Lamba, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Dev P. Bhardwaj, Standing
Counsel with Ms.Anubha Bhardwaj
and Mr. Sarthak Anand, Advocates

+ W.P.(C) 11259/2021 CM APPL.34666/2021

RAJENDRA PRASAD NAUTIYAL AND ORS Petitioners

Through: Mr. Ankur Chhibber and Mr. Nikunj
Arora, Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Shubham Gupta, Advocate and
Ms. Kamlesh Rani, Dy. Jag, ITBP

+ W.P.(C) 6224/2021

OM PARAKASH YADAV & ORS. Petitioners

Through: Appearance not given

versus

UNION OF INDIA & ORS. Respondents



Through: Mr. Kirtiman Singh, CGSC with Mr.
Waize Ali Noor, Advocate
+ W.P.(C) 6359/2021
SUNIL KUMAR AND ORS Petitioners

Through: Mr. Ankur Chhibber and Mr. Nikunj
Arora, Advocates.

versus

UNION OF INDIA AND ORS Respondents

Through: Ms. Nidhi Raman, CGSC with Ms.
Kamlesh and Mr. Zubin Singh,
Advocates

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT (oral)

1. The issue(s) raised in these petitions and the relief(s) sought are similar, therefore, these petitions were heard together and are being disposed of by this common order, treating W.P.(C) 862/2021 as lead matter. We note that W.P.(C) 862/2021 & W.P.(C) 6224/2021 have been filed by personnel belonging to CRPF and W.P.(C) 11259/2021 & W.P.(C) 6359/2021 have been filed by personnel belonging to ITBP.
2. Vide the present petition, the petitioners are seeking directions to the respondents to grant notional monetary benefit in replacement pay scale of the rank held by petitioners as on 01.01.1996 with effect from 01.01.1996 to 10.10.1997 with payment of interest @ 12% per annum from the date such payment became due till its realization.



3. Pursuant to the order dated 18.02.2022 passed in W.P.(C) 862/2021 & W.P.(C) 6224/2021, the respondents therein filed short-affidavit stating as under:

“j. That, the proposal of CRPF is under active consideration with the Ministry and CRPF has been asked to submit the proposal with an illustration showing pay anomaly for the post of Inspector and Sub-Inspector, which is still under examination with Admn. Directorate of CRPF. A copy of the proposal UO No.P-I-1/2020-Adm-I-DA-3 dated 16.08.2021 is annexed herewith as Annexure-R/6.

k. Since, the issue in the proposal of CRPF relates to 5th CPC in respect of SIs and Insp in CRPF, the proposal as already stated above is required to be examined in consultation with Ministry of Finance (MoF) and as such, necessary needful action can only be taken thereafter.

4. Attention of this Court has been drawn to the proposal dated 21.08.2021 sent to the Ministry of Home Affairs by CRPF. The same is reproduced as under:-

(ANNEXURE R-6)

DIRECTORATE GENERAL: C.R.P.F.

(Ministry of Home Affairs)

Subject:- REG. ANOMALIES IN FIXATION OF PAY AS ON 10.10.97 IN THE RANK OF SUB-INSPECTOR ON RATIONALIZED PAY SCALE OF RS.5500-175-9000.

Kindly refer to your UO Note No.P.1/2020-Pers-II dated 01/04/2021 (Copy enclosed for ready reference).

In this context, it is submitted that all the CAPF HQrs were requested to provide the required details vide this Directorate letter dated 08/04/2021. In turn, other CAPFs like Assam Rifle, ITBP & CISF have furnished nil report as no anomaly/representations have been noticed in their department. It is needful to mention here that, despite of repeated requests made vide this office letter dated



28.05.2021, 18.05.2021, 01.07.2021 and 19.07.2021, no reply has been received from BSF HQrs so far. We have already requested that nil report will be assumed if the desired information is not submitted by them by 30.07.2021. Therefore, report from their organization may be treated as nil.

However, Directorate General SSB vide their office letter No.08/SSB/Pay-Fixation/19-20/21789 dated 30.07.2021 have intimated that the pay of following post/rank in SSB was fixed in the entry Pay as under w.e.f. 01.01.1996:-

S.No	Rank/Post	Pay Fixation
01	Under matric CTs(GD) & Tradesman	Rs.2750/-
02	Matriculate CTs (GD)	Rs.3050/-
03	SI (GD)	Rs.5500/-
04	INSP (GD)	Rs.6500/-

As per GOI/MHA Order no.27012/1/97-PC-Cell/PF-2 dated 10.10.1997 NGOs of CAPF (CRPF/BSF/ITBP/SSB/Assam Rifles) were allowed replacement scale to be effective from 10.10.1997 as under:

1)	Inspector	Rs.650 0-200- 10500
2)	SI	Rs.550 0-175- 9000
3)	CT	Rs.305 0-70- 4590

As intimated by SSB vide their letter No.08/SSB/Pay-



Fixation/19-20/21789 dated 30.07.2021, the above scale was effective in their department w.e.f. 01.01.1996 as SSB is also a part of CPOs, therefore, the anomaly is persisting in pay of SI & Inspector of CRPF/BSF/ITBP/CISF/Assam Rifles due to its implementation w.e.f. 10.10.1997 instead of 01.01.1996. Since no anomaly in other CAPFs has been reported by them, uniformity is required to be established amongst the CAPF personnel.

In view of the above, MHA is requested to kindly consider our proposal for grant of entry pay @ Rs.5500/- to the rank of SI/GD and Rs.6500/- to the rank of Insp./GD w.e.f. 01.01.1996 to remove anomalies by allowing the replacement scale of Pay at par with SSB.

*(Manoj Dang), 2-I/C
Asstt. Director (Adm/Accts)
Directorate. Genl. CRPF*

*Shri Lalit Kapoor, DS (Pers-II), MHA
DG, CRPF UO No.P.I-1/2020-Adm-I-DA-3*

Dated. The 11th Aug. 2021

5. It is pertinent to mention here that similar issue(s) came before this Court in W.P.(C) 6224/2021 titled as **Om Parakash Yadav & Ors. vs. Union of India & Ors.** and the said petition was dismissed vide order dated 08.07.2021 by a Co-ordinate Bench of this Court. Thereafter, on 20.07.2021, W.P.(C) 6359/2021 titled as **Sunil Kumar and Ors vs. Union of India & Ors.** came before the same Bench wherein the following order was passed:

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*7. A copy of this order be also placed on the file of W.P.(C) 6224/2021 titled **Om Prakash Yadav Vs. Union of India** which entailed the same question and which was dismissed on 8th July, 2021 and the said petition be also listed on the same date as this petition.*

*8. The counsel for the parties in **Om Prakash Yadav Vs.***



Union of India be also informed.

9. The counsel for the petitioners herein states that the petitioners in **Om Prakash Yadav Vs. Union of India** have now engaged him and he is accepting notice on their behalf.”

6. Thus, the order dated 08.07.2021 passed in W.P.(C) 6224/2021 was recalled vide order dated 20.07.2021 passed in W.P.(C) 6359/2021. Further and since the said order dated 20.07.2021 was not challenged by the respondents, the same has attained finality.

7. It is pertinent to note here that the personnel belonging to BSF filed a writ petition titled as **Jagmal Singh vs. Union of India : C.W.P. No.17711/2000** before the Division Bench of the High Court of Punjab & Haryana for the same relief as sought by the petitioners before us and that the same has already been disposed of vide judgment dated 14.11.2002. The relevant paras of said judgment are as follows:

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*The learned counsel for the petitioner while relying upon a judgement of the Single Bench of Delhi High Court in the case of **Lal Bahadur Singh Vs Union of India 2001(1) SCT 549** contended that the said clause is arbitrary, irrational and in fact, is violative of the pay commission Recommendations. In the case of **Lal Bahadur Singh's case (Supra)**, various judgements were considered and the court held as under:*

"It may be mentioned at this stage that at the time of arguments, counsel for the petitioner had even tried to argue that petitioners were entitled to the revision in the pay scales at par with Delhi Police etc, w.e.f. 1.1.1996 and directions be given to this effect. However, I am not inclined to accept this



submission. First of all, it may be noticed that the prayer of the petitioners in the writ petition is for grant at revision in the pay scales w.e.f. 1.1.1996 and there, is no prayer that the petitioners are entitled to the same pay scale as was given to their counterparts in Delhi Police w.e.f. 1.1.1996. Secondly, the entire case is based on order dated 10.10.1997 which had been passed after undertaking the exercise of rationalization of vs central pay commission. Therefore the relevant date has to be 1.1.1996. Thirdly, even on merits, there is no basis to make the claim of parity w.e.f. 1.1.1986. Para 2 of order dated 10.10.1997 whereby pre-revised pay scales are rationalized (Le. the pay scales of IV Central Pay Commission) is for the purpose of giving replacement pay scales after the implementation of recommendations of V Central Pay Commission and not for any other purposes. Therefore, as pointed out above, the rationalization of pre-revised pay scales has to be as on 31st December, 1995 to make the replacement scales application to the petitioners and therefore, pre-revised pay scales cannot be granted to the petitioners w.e.f. 1996 as claimed.

The bare reading of the above clause shows that there is no rational or logical basis of excluding the period w.e.f. 1.1.1996 till issuance of the order i.e. 30.10.1997. Once the letter itself has been made effective by the competent authority from 1.1.1996 then the fixation of dated of 10.10.1997 apparently has no rationale. Fixation of date primarily would fall within the domain of the competent authority but it cannot be fixed arbitrarily so as to invite evitable discrimination between the employees who might be somewhat similarly placed, Nexus of a cut off date to the object underling the police decision of the Government is a condition precedent for upholding by validity of such a circular. As the object of the circular was to rationalize



*Rank structure and pay scales to the various central originations w.e.f. 1.1.1996 such date is obviously corelatable to the recommendations of the pay commission which itself has fixed the effective dated as 1.1.1996. The alternation of this date by the respondents in the manner in which it has been done, certainly suffers from the vice of arbitrariness. Reference can also be made to the judgements reported as **Krishena Kumar Vs Union of India and others (1990) 4 Supreme Court cases 207 and Indian Ex-services league & Others Vs Union of India Jt 1991(1) S.C. 243.***

We may also notice that during the course of hearing it was conceded on behalf of the respondents that the Union of India has not assailed the judgement of Delhi High Court and it has attained finality between the parties. As clause 5 of the letter was quashed by the judgement of Delhi High Court pronounced on 26.5.2000, as of today, the respondents cannot place reliance upon the said clause before this court as it has been rendered ineffective and does not exist as a valid clause of the letter dated 10.10.1997 Annexure P-2 to the petition.

For the reasons afore-stated, we accept this writ petition and direct the respondents to grant benefits to the petitioner of the revised pay scales w.e.f. 1.1.1996 along with payment of the difference amount in the pensionary benefits already granted to him. We do not consider it fair to award interest to the petitioner as the matter was being contested before the court and that the respondents has a reasonable stand to be adjudicated by the court.

The Writ petition is allowed to the limited extent aforenoticed, leaving the parties to bear their own costs.”

8. In the short affidavit filed by the respondent-CRPF in W.P.(C) 862/2021 & W.P.(C) 6224/2021 it is stated that the proposal of CRPF is under active consideration with the Ministry and the CRPF has been asked to submit the proposal with an illustration showing pay anomaly for the post of Inspector and Sub-Inspector, which is still under examination with Admn.



Directorate of CRPF.

9. It is not out of place to mention here that the respondents preferred an SLP (C) No.545/2005 before the Hon'ble Supreme Court of India against the aforesaid order dated 14.11.2022 passed in the case of **Jagmal Singh (supra)**, and the same has been dismissed vide order dated 28.01.2005.

10. It is not in dispute that the judgment passed in the case of **Jagmal Singh (supra)** qua personnel belonging to BSF has since been implemented.

11. Learned counsel(s) for petitioners submit that as noted in the judgment passed in **Jagmal Singh (supra)**, prior to passing of the said judgment, this Court had also granted similar relief(s) in the case of **Lal Bahadur Singh Vs. Union of India** 2001(1) SCT 549.

12. Learned counsel for petitioners further submit that in view of the aforesaid, since two forces, namely, BSF and SSB have already implemented the orders on the basis of the judgments passed in **Jagmal Singh (supra)** by the High Court of Punjab & Haryana and in **Lal Bahadur Singh (supra)** by this Court, therefore, there is no justification for not implementing the same by both CRPF and ITBP in all the four cases pending before this Court.

13. At this stage, the learned counsel for the CRPF submits that such a proposal has already been sent by the CRPF to the Ministry of Home Affairs, however, till date, the same has not been sent by the ITBP. Therefore, the respondents in W.P.(C) 11259/2021 & W.P.(C) 6359/2021 are directed to send similar proposal for personnel belonging to ITBP to Ministry of Home Affairs within four weeks from today. On receipt of the same, the Ministry of Home Affairs is directed to take final decision on the said proposal of the ITBP alongwith the already pending proposal of the



CRPF within six weeks and communicate the same to both ITBP and CRPF within one week thereafter.

14. With the aforesaid directions, we hereby dispose of the present petitions.

15. Pending applications also stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

JULY 13, 2022/rk

