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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: October 19, 2023

+ W.P.(C) 13852/2023

BABU LAL MITHARWAL

..... Petitioner

Through: Mr. Gyanant Kr. Singh, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel with Mrs. Taniya Ahlawat, Mr. Nitesh Kr. Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

CORAM:**HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA****V. KAMESWAR RAO, J. (ORAL)**

1. The challenge in this writ petition is to an order dated June 02, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA No. 390/2017, whereby the Tribunal has dismissed the OA filed by petitioner herein seeking benefit of pay scale of Rs. 10,300-34,800/- with Grade Pay of Rs. 3200 at par with the pay scale being enjoyed by Constable (Executive) in Chandigarh Police. The Tribunal rejected the OA on the basis of the following findings:-

"8. We have perused the pleadings on record, including the counter and rejoinder and also heard Shri Gyanant Kumar Singh, learned for the applicant and Shri Gyanendra Singh, learned counsel for the respondents.

9. It is not in dispute that the pay scales and allowances in respect of Delhi Police personnel are sanctioned by the Govt. of India on the recommendations of Central Pay



Commissions and as per the recommendation of 6th Central Pay Commission, the pay of the applicant was fixed in revised scale of Pay Band-1 Rs. 5200-20200+Grade Pay Rs. 2000/- w.e.f 01/01/2006. This is also undisputed that the applicant was offered appointment as Constable (Exe.) w.e.f. 21/01/2003 in the pay scale of Rs.3050-75-3950-4590 as per the prescribed recruitment rules.

10. His entitlement to draw his, pay is as per the pay scale fixed which is duly recommended by the relevant pay commission. Further, it is an established fact the pay scale is determined on the basis of the Central Pay Commission and sanctioned by the Government.

*11. We have also gathered from the pleadings that a proposal was also submitted by Delhi Police to 7th Central Pay Commission reg ungradation in the pay scales of Delhi Police personnel (from Constable to Inspector) at par with similar posts of Punjab, Himachal Pradesh, Haryana, and UT Chandigarh Police. But the 7th Central Pay Commission vide para 11:22:136 of its report recommended that **“there is no justification for drawing parity with the State Police as they are outside the mandate of this Commission. Hence, this Commission cannot consider the demand. Therefore, it is evident that the proposal of parity was duly considered by the Commission but was found devoid of merit. We are also conscious of the fact that any modification in the pay scale to a Government employee is wider ramification which is likely to create imbalance and disparity in the hierarchy of pay scales admissible to various posts and such issues cannot be seen isolation at all.”***

12. We have perused order passed by this Tribunal while disposing of the OA No.1706/2012 wherein claim of the applicant for parity was examined at length and it was opined that in view of the' law laid down by the Hon'ble Supreme Court in Union of India & Another vs. P.V.Hariharan & Anr. sec (L&S) 838 and Union of India & Ors. Vs. Makhan Chandra Roy AIR 1997 SC 239, where it has been held that matter of pay scales lies with the Expert Bodies, like Pay Commission and it is not for the courts or Tribunals to fix the pay scales. It should be best left to be



decided by expert bodies like Pay Commissions. We also find that the judgments cited in the present OA are distinguishable and they do not apply to the instant case as such.

13. In view of aforesaid, we do not see any merit in the OA and the same is dismissed accordingly. No order as to costs.”

2. Mr. Singh, learned counsel appearing for the petitioner makes similar submissions as were made before the Tribunal that Constable (Executive) working in Chandigarh Police, which is a Union Territory under the same cadre controlling authority i.e. Ministry of Home Affairs, is enjoying a higher scale which is denied to him. He also seeks parity with the pay enjoyed by the personnel holding similar post in the state of Himachal Pradesh and Haryana.

3. Insofar as the plea relatable to the Chandigarh Police is concerned, Chandigarh though is a Union Territory governed by the Central Government, is not similarly placed like Delhi as it is the capital of two States i.e. Punjab and Haryana because of which Constable (Executive) working in Chandigarh Police is given the benefit as per the notification issued on January 13, 1992, which are the conditions of service applicable to the employees appointed to the corresponding posts in Punjab Civil Services which resulted in grant of higher pay scale and as such the comparison is misplaced.

4. Moreover, the aspect of grant of similar scale has been considered by the 7th CPC in paragraphs 11:22:136, which has been noted by the Tribunal, wherein the following has been stated:

“there is no justification for drawing parity with the State Police as they are outside the mandate of this



Commission. Hence, this Commission cannot consider the demand.”

5. Mr. Singh would submit the conclusion of the Tribunal., “*therefore, it is evident that the proposal of parity was duly considered by the Commission but was found devoid of merit.*” is not a conclusion of the pay commission, may be right but it can be said the commission did consider the issue of parity with the State Police and rejected the same by holding it is outside its mandate. In other words, the scales as applicable in State Government cannot be applied/ made applicable to the Delhi Police.

6. The law is well-settled as has been noted by the Tribunal in paragraph 12 of its judgment by referring to the judgment of the Supreme Court in ***Union of India & Another vs. P. V. Hariharan & Anr., SCC (L&S) 838*** and ***Union of India & Ors. Vs. Makhan Chandra Roy, AIR 1997 SC 239.***

7. Mrs. Ahlawat is right in drawing the attention of this court on the order passed by the Office of the Commissioner of Police pursuant to the first round of litigation, wherein the respondents have rejected the representation made by the petitioner for the following reasons:

“(i) *The pay scales and allowances in respect of Delhi Police personnel are sanctioned by the Govt. of India on the recommendations of Central Pay Commissions. As per the recommendation of 6th Central Pay Commission, the pay of the applicant was fixed in revised scale of Pay Band-1 Rs.5200-20200+Grade Pay Rs.2000/- w.e.f. 01/01/2006. While the claim of the applicant is to fix his pay in PH Rs.10300-34800+Grade Pay Rs.3200=Rs.13500 w.e.f. 01/12/2011 on the pattern of Constable working in Chandigarh Police.*

(ii) *The applicant was offered appointment as Constable (Exe.) w.e.f. 21/01/2003 in the pay scale of Rs.3050-75-3950-4590 as per the prescribed recruitment rules. Therefore, he is entitled to draw pay in the pay scale of Rs.3050-75-3950-*



4590/Revised Pay Band-1 Rs.5200-20200+Grade Pay Rs.2000/- w.e.f. 01/01/2006. -it is not appropriate to prefer claim to fix his pay at par with other organization/deptt.'s pay scale until the same is recommended by the Central Pay Commission and sanctioned by the Government.

(iii) A proposal was also submitted by Delhi Police to 7th Central Pay Commission reg. upgradation in the pay scales of Delhi Police personnel (from Constable to Inspector) at par with similar posts of Punjab, Himachal Pradesh, Haryana, and UT Chandigarh Police. But the 7th Central Pay Commission vide para- 11,22,136 of its report recommended that "There is no justification for drawing parity with the State Police as they are outside the mandate of this Commission. Hence, this Commission cannot consider the demand."

(iv) Any increase in the pay scale of applicant may lead to disparity/ repercussions in the hierarchy of pay scales admissible to the posts like Hd. Constable, Assistant Sub-Inspector, Sub-Inspector and so on.

(v) The Hon'ble CAT, New Delhi has already examined his claim vide OA No.1706/2012 and dismissed the same mainly on following grounds:-

i. "the law cited by the Hon'ble Supreme Court in Union of India & Another vs. P.V. Hariharan & Anr. SCC (L&S) 838 and Union of India & Ors. vs. Makhan Chandra Roy AIR 1997 SC 239, where it has been held that matter of pay scales lies with the Expert Bodies, like Pay Commission and it is not for the Courts or Tribunals to fix the pay scales. It should be best left to be decided by expert bodies like Pay Commissions.

ii. The 6th CPC has recommended pay scales for Central Government Employees which, for reasons recorded above, apply to Delhi Police as well. Through 1992 notification and decision of the Punjab Government, the Chandigarh Administration awarded the pay scale depending upon recommendations by the Pay Commission set up by the Government of Punjab. Moreover, the applicant has not challenged the notification dated 13.01.1992 which is the genesis of awarding higher pay scales to the Constables in Chandigarh Police.



(vi) *The Hon'ble CAT has already upheld (in OA No.1706/2012) that as per the Hon'ble Supreme Court verdicts passed in Union of India & Another Vs. PV Hariharan & Anr. SCC (L&S) 838 and Union of India & Ors. Vs. Makhan Chandra Roy AIR 1997 SC 239, the matter of pay scales lies with the Expert Bodies, like Pay Commission and it is not for the Courts or Tribunals to fix the pay scales."*

8. In view of the position of law and the stand taken by the respondents, we are of the view that the Tribunal has rightly rejected the OA, We accordingly, dismiss the writ petition. No costs.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 19, 2023/R