2024:DHC:8646-DB

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

Date of decision: 04.11.2024

\+ W.P.(C) 1660/2023 & CM APPL. 6342/2023

MAHENDER SINGH .....Petitioner

Through: Mr. K. K. Sharma, Adv.

versus

UNION OF INDIA & ORS. .....Respondents

Through: Mr. T.P.Singh, Adv. For UOI.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE SHALINDER KAUR

SHALINDER KAUR, J. (ORAL)

1. The petitioner, who is currently serving as an Assistant Sub-Inspector (ASI) in the Central Reserve Police Force (CRPF), has approached this Court *inter alia* praying as under:-

> *"(a) To issue a writ of mandamus or any such order by directing the Respondent No. 2 to 4 for calling the basic pay fixation record of the Petitioner ASI/GD Mahender Singh Force No.931341191 along with basic pay fixation record of ASI/GD Chandra Pal Singh whose Force No. 931340773 and ASI/GD Jai Mohar Prasad whose Force No. 931171447 from the joining to till date in order to rectify the basic pay scale of the Petitioner in interest of justice;*
> *(b) To issue a writ of mandamus or any such order by directing the Respondent No. 2 to 4 to fix/correct the basic pay scale of the Petitioner @ Rs. 44,100/- p.m. alike to the juniors/similarly placed personnel;*
> *(c) To issue a writ of mandamus or any such order by directing the Respondent No. 2 to 4 to grant all the subsequent benefits arising therefrom to the Petitioner and the respective arrears after re-fixation of his basic pay scale be granted to the Petitioner along with his pension;"*

2. A brief background leading to the filing of the present petition is that the petitioner joined the CRPF as a Constable (GD) on 27.05.1993. Before we proceed with a further elucidation of facts, it may be noted that the respondents have mentioned the petitioner's date of joining as 07.05.1993 and date of confirmation in the said rank as 07.05.1995. After completion of 12 years of service, the petitioner was granted the benefit of 1st Assured Career Progression (ACP) with effect from 07.05.2005 in the pay scale – Rs. 3200-85-4900 and his pay was fixed as Rs. 3625/-. He was, thereafter, promoted as Head Constable (GD) on 10.03.2013 (the date of promotion as per the respondents is 07.06.2013) and received the benefit of 2nd Modified Assured Career Progression (MACP) in the pay scale – Rs. 5200-20200/- with grade pay of Rs. 2,800/- after his completion of 20 years of service, and his pay was fixed as Rs. 8260/- + Grade Pay of Rs. 2800/-. Thereafter, the petitioner, on 10.03.2021, was able to secure his promotion to the rank of ASI (GD).

3. Subsequent thereto, the recommendations of 7th Central Pay Commission (CPC) were implemented and the petitioner's pay was fixed at Rs. 34,900 with effect from 01.01.2016 and Rs. 35,900/- with effect from 01.07.2016, based on the option exercised by the petitioner on 05.09.2016.

4. It is the case of the petitioner that in the year 2021, it came to his notice that he was receiving a lesser pay as compared to his juniors and other similarly placed personnel. Accordingly, he made several representations to the respondents, however, they failed to rectify his

basic pay which is Rs. 42,800/- per month from July 2022. Whereas, the basic pay of his juniors, namely Chander Pal Singh and Jai Mohan Prasad, is Rs. 44,100/- per month. Since the respondents failed to grant redressal to his grievance and correctly fix his basic pay, he was compelled to approach this Court by way of the present writ petition.

5. In support of the petition, the learned counsel for the petitioner submits that the action of the respondents in not rectifying his basic pay is *malafide*, arbitrary and illegal. He submits that the position of law is well settled that a junior cannot draw more pay than his senior and thus, the said action of the respondents has led to travesty of justice, resulting in financial loss to the petitioner.

6. He further submits that the petitioner has been working diligently in the Force since his appointment and despite maintaining a good service record, the respondents have failed to correct his basic pay. The learned counsel, in addition to the above, submits that due to the incorrect implementation of the pay scale, the respondents have created an anomalous situation as the petitioner is not drawing pay at par with his batchmates and other personnel who are similarly placed as him. He submits that therefore, to overcome the said aberration, it is incumbent upon the respondents to rectify the fixation of his basic pay.

7. *Per contra*, the learned counsel for the respondents, while seeking dismissal of the writ petition, urges that the basic pay of the petitioner was fixed with effect from 01.01.2016 at Rs. 34,900/- and Rs. 35,900/- with effect from 01.07.2016, based on the Option Form furnished by him on 05.09.2016. He further submits that the petitioner

was granted annual increments on the due dates, which are as under:-

01.07.2017	-	37,000/-
01.07.2018	-	38,100/-
01.07.2019	-	39,200/-
01.07.2020	-	40,400/-
01.07.2021	-	41,600/-
01.07.2022	-	42,800/-

He submits that the petitioner is drawing basic pay of Rs.42,800/-, which is correct as per the option submitted by him.

8. The learned counsel, relying on the Notification No. 1-2/2016-IC dated 25.07.2016 issued by the Ministry of Finance (Department of Expenditure) and the Office Memorandum (O.M) No. 4-13/17-IC/E-IIIA dated 12.12.2018 issued by the Ministry of Finance, submits that the petitioner was required to furnish his option in writing within three months of the notification, and the option, once exercised, would be final. However, during the period of three months, when the petitioner could submit his re-option/amendment, the petitioner did not apply for re-fixation of his pay after exercising his option initially and thus, the petitioner's pay was fixed based on "Option Form" submitted by him, and the same was audited by Senior Account Officer (Audit) IAP-13 CRPF, Ministry of Home Affairs (MHA), Lucknow on 08.02.2017 and by IAP, CRPF/MHA, Ajmer on 01.10.2018. The learned counsel, thus, seeks dismissal of the writ petition.

9. We have heard the learned counsels for the parties and carefully examined the record.

10. In order to appreciate the pleas taken by the parties, it may be

beneficial to note the Notification dated 25.07.2016 issued by Ministry of Finance, formulating rules for 'government servant' in the revised pay structure applicable to the post to which he is appointed, which are as under:-

> "2. ***Categories of Government servants to whom the rules apply***.-
> *(1) Save as otherwise provided by or under these rules, these rules shall apply to persons appointed to civil services and posts in connection with the affairs of the Union whose pay is debitable to the Civil Estimates as also to persons serving in the Indian Audit and Accounts Department.*
>
> *(2) These rules shall not apply to-*
>
> *(i) persons appointed to the Central Civil Services and posts in Group 'A', B' and 'C', under the administrative control of the Administrator of the Union Territory of Chandigarh;*
> *(ii) persons locally recruited for services in Diplomatic, Consular or other Indian establishments in foreign countries;*
> *(iii) persons not in whole-time employment;*
> *(iv) persons paid out of contingencies:*
> *(v) persons paid otherwise than on a monthly basis including those paid only on a piece rate basis:*
> *(vi) persons employed on contract except where the contract provides otherwise;*
> *(vii) persons re-employed in Government service after retirement;*
> *(viii) any other class or category of persons whom the President may, by order, specifically exclude from the operation of all or any of the provisions contained in these rules."*
>
> 4. ***Level of posts***. *The Level of posts shall be determined in accordance with the various Levels as assigned to the corresponding existing Pay Band and Grade Pay or scale as specified in the Pay Matrix.*

*5. **Drawal of pay in the revised pay structure**. Save as otherwise provided in these rules, a Government servant shall draw pay in the Level 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 pay structure until the date on which he earns his next or any subsequent increment in the existing pay structure or until he vacates his post or ceases to draw pay in the existing pay structure:

Provided further that in cases where a Government servant has been placed in a higher grade pay or scale between Ist day of January, 2016 and the date of notification of these rules on account of promotion or upgradation, the Government servant may elect to switch over to the revised pay structure from the date of such promotion or upgradation, as the case may be

Explanation 1-

The option to retain the existing pay structure under the provisos to this rule shall be admissible only in respect of one existing Pay Band and Grade Pay or scale

Explanation 2-

The aforesaid option shall not be admissible to any person appointed to a post for the first time in Government service or by transfer from another post on or after the 1st day of January, 2016, 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 pay structure of a post held by him *in an officiating capacity on a regular basis for the purpose of regulation of pay in that pay structure under Fundamental Rule 22. or under 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 pay structure 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 these rules so as to reach the authority mentioned in sub-rule (2) within three months of the date of notification of these rules or where any revision in the existing pay structure is made by any order subsequent to the date of notification of these rules, 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 notification 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 Ist day of January, 2016, 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 along with an undertaking, in the form appended to these rules.

(3) If the intimation regarding option is not received by the authority within the time specified in sub rule (1), the Government servant shall be deemed to have elected to be governed by the revised pay structure with effect from the 1st day of January, 2016.

(4) The option once exercised shall be final

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11. We may also refer to the Rule 6 of the "Memorandum explanatory" appended to the Central Civil Services (Revised Pay) Rules, 2016, which provides as under:-

"Rule 6- This rule prescribes the manner in which option has to be exercised and also the authority who shall be apprised of such option. The option has to be exercised in the form appended to the rules. It should be noted that it is not sufficient for a Government servant to exercise the option within the specified time limit but also to ensure that it reaches the prescribed authority within the time limit. In the case of persons who are outside India at the time of notification of these rules, the period within which the option has to be exercised is three months from the date they take over charge of the post in India. In the case of Government servants the revised pay structure of whose posts are announced subsequent to the date of issue of these rules, the period of three months will run from the date of such announcement.

Persons who have retired between 1st January 2016 and the date of notification of these rules are also eligible to exercise option."

12. In this regard, it would be relevant to refer to the OM No. 4-13/17-IC-EIIIA, Government of India, Ministry of Finance dated 12.12.2018, which provides for another opportunity to revise the initial option exercised by a government employee. The same reads as under:-

> *"Rule 3. The matter has been considered and the President is pleased to decide that in relaxation of the stipulation contained in Rule 6(4) of CCS(RP) Rules, 2016, the Central Government employees, who have already exercised their option to come over to the revised pay structure as notified by the CCS(RP) Rules, 2016, shall be permitted another opportunity to revise their initial option in terms of Rules 5 & 6 thereof The revised option shall be exercised within a period of 3 months from the date of issue of these orders. The option once exercised in terms of these orders shall be final and shall not be liable to any further change under any circumstances. All other terms and conditions as laid down in the said Rules 5 and 6 shall continue to be applicable."*

13. From the above Notification dated 25.07.2016 and the O.M dated 12.12.2018, it emerges that the Central Civil Service (Revised) Pay Rules, 2016, provides for level of posts to be determined in accordance with the various Levels as assigned to the corresponding existing pay band and grade pay or scale, as specified in the pay matrix. The aforesaid Rules gives a government employee, the power to elect either to continue to draw pay in the existing pay structure until the date on which he earns his next or any subsequent increment in the existing pay structure or until he vacates his post or ceases to draw pay in the existing pay structure. The said option could be

exercised in writing in the form appended to the Rules, so as to reach the authority within three months of the date of notification of the Rules. The Notification further provided that the option once exercised, shall be final. However, *vide* the O.M dated 12.12.2018, the government employees who had already exercised their option to come over to the revised pay structure, were given another opportunity to revise their initial option, within a period of three months from the date of issuance of these orders, in terms of Rule 5 and 6 thereof. It is further provided that option once exercised in terms of the O.M, shall be final and shall not be liable to further change under any circumstances.

14. In the present case, it is not disputed that with reference to the notification dated 25.07.2016, the petitioner exercised his option by filing the Option Form in electing the revised pay structure with effect from 01.01.2016. He stated his existing pay band and grade pay as Rs. 11,160/- + grade pay Rs. 2,800/-, and that option attained finality. However, the petitioner neither made any representation to change his option nor re-stated the option in accordance with the aforementioned O.M. Needless to say, the petitioner did not choose to revise his initial option within the stipulated period of three months as provided under the O.M. dated 12.12.2018. It was only after a lapse of more than two years that he made representation to the respondents to refix his basic pay. He also sent a legal notice dated 16.12.2022 through his advocate, which was adequately replied by the respondents stating that he had not submitted the re-option certificate for his pay within the stipulated time frame. It is also not in dispute that the basic pay of the

petitioner has been correctly fixed as per the option exercised by him.

15. During the course of arguments, the petitioner for the first time took the plea that the O.M dated 12.12.2018 was never communicated to him, thus, he could not avail the benefit of changing his option to refix his pay. It is noteworthy that the petitioner has neither raised this issue in his representation/legal notice nor in the present petition before this Court.

16. The respondents, in their counter affidavit, have categorically mentioned the said O.M and stated that on checking the petitioner's service book, it was found that the petitioner had not submitted his re-option certificate for the revision of his pay. It is relevant to note that the petitioner did not even choose to file a rejoinder to claim that the O.M dated 12.12.2018 was not intimated to him, rather on 04.10.2023, before the learned Registrar, he gave up his right to file a rejoinder.

17. From a perusal of the O.M dated 12.12.2018, it emerges that it was circulated to all Force Personnel for their information. Thus, we find no force in the plea of the petitioner that he had no knowledge about the aforementioned O.M; therefore, he could not timely apply for the re-fixation of his pay.

18. The learned counsel for the respondents submits, and rightly so, that once the petitioner did not avail the benefit under the said O.M, it was clear that the petitioner was satisfied with his initial fixation and now, he cannot turn around and claim that his pay has not been correctly fixed and the same be rectified.

19. For the aforesaid reasons, we do not find any merit in the submissions made on behalf of the petitioner.

20. On due consideration of the above, we find no merit in the petition, which is hereby dismissed. The pending application(s) are also disposed of.

NAVIN CHAWLA, J

SHALINDER KAUR, J

NOVEMBER 4, 2024
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Click here to check corrigendum, if any