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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 04.09.2024***

+ W.P.(C) 3549/2019
MUNIT DINKER @ MUNNA RAMPetitioner
Through: Mr.S.N.Pandey, Adv.

versus

UNION OF INDIA & ORSRespondents
Through: Mr.Subhrodeep Saha, Adv. for
Ms.Monika Arora, CGSC

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MS. JUSTICE SHALINDER KAUR

REKHA PALLI, J (ORAL)

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner, who is serving as an Inspector in the Indo-Tibetan Border Police (ITBP), has approached this Court seeking the following reliefs:-

“To direct the respondents to make the pay Fixation of petitioner w.e.f 16.01.2006 in place of 01.01.2006 in terms of 6th pay commission and CCS (RP) 2008 Rule- 11 with consequential benefits.

Any other or further order may also be passed, as this Hon'ble Court may kindly deem fit and proper in the interest of justice.”

2. The brief factual matrix, as emerging from the record, may be noted. The petitioner joined the ITBP as a Head Constable (RT) on 03.09.1994 and was thereafter promoted as an Assistant Sub Inspector (RT) (ASI) in the



year 2001 in the pay scale of Rs.4,600/-.

3. On 16.01.2006, the petitioner was promoted to the rank of SI in the pay scale of Rs.5,500/-. Soon thereafter, the recommendations of the 6th Central Pay Commission (CPC) were accepted by the Central Government and consequently, pay scales of Central Government employees were revised w.e.f. 01.01.2006 as per their respective entitlements.

4. Even though the petitioner now already stands promoted as an Inspector, it is his claim that after his promotion as a Sub-Inspector (SI) on 16.01.2006, his revised pay ought to have been fixed on the basis of his pay scale of Rs. 5,550/- as an SI. Representations dated 03.02.2009 & 05.07.2009 were therefore, made by him requesting the respondents to fix his revised pay in terms of the 6th CPC on the basis of pay scale being drawn by him as on 16.01.2006. However, the respondents vide their order dated 03.09.2009 fixed the pay of the petitioner w.e.f. 01.01.2006 by taking into account the scale of Rs. 4,600/- in the rank of ASI which he was holding on 01.01.2006 and ignored his promotion to the rank of SI in the scale of Rs. 5,500/- on 16.01.2006. As soon as the petitioner came to know about the aforesaid error committed by the respondents, he filed further representations to the respondents on 22.01.2010, 10.06.2010 & 16.06.2012 requesting that his pay may be re-fixed after taking into account the higher pay scale being received by him on account of his promotion as an SI on 16.01.2006. The respondents, however, did not accede to his request and continued to pay him by granting the pay revision w.e.f. 01.01.2006 on the basis of his salary as an ASI.

5. Though, the aforesaid representations of the petitioner were being duly forwarded through proper channels, the respondents chose not to reply



to any of them except for the representation dated 16.06.2012, which was rejected vide the impugned order dated 16.07.2012, whereunder the petitioner was informed that since he had not submitted the option form under Rule 11 of the Central Civil Services (Revised Pay) [CCS (RP)] Rules 2008, his prayer for re-fixation of his revised pay w.e.f. 16.01.2006 could not be accepted. He was further informed that in case, he had filled up his option under Rule 11, he should furnish a duplicate copy of the said option Form. The petitioner was compelled to move another representation dated 20.04.2013, when he was posted in a Naxalite affected area, again requesting for re-fixation of his pay offering waiver of arrears prior to 16.01.2006 in terms of Rule 11. As the respondents failed to take action even on this representation, the petitioner being aggrieved has approached this Court.

6. Learned counsel for the petitioner submits that once the respondents were well aware that the petitioner had specifically requested that his pay be re-fixed after taking into account the enhancement in his salary w.e.f. 16.01.2006, it was incumbent upon them to have informed the petitioner that he was required to submit a specific form in terms of Department of Personnel & Training's (DoPT) OM dated 05.07.2010 before 31.12.2010, which information was never provided to him.

7. As a result of the respondents' failure to re-fix the petitioner's revised pay on the higher rank of SI, many of his juniors have been drawing higher salary than him. He submits that as a consequence of the wrong fixation of his revised pay in 2009, the petitioner is continuing to draw lower pay ever after the implementation of recommendations of the 6th CPC. He, therefore, prays that the writ petition be allowed and the respondents be directed to re-



fix the pay of the petitioner by reckoning his pay as was being received by him w.e.f. 16.01.2006.

8. *Per contra*, learned counsel for the respondents supports the impugned rejection order dated 16.07.2012 by urging that the petitioner having not submitted the requisite form under Rule 11 of the CCS (RP) Rules within the time prescribed under the DoPT's OM dated 05.07.2010, has himself only to blame. He submits that though before the cut off date of 31.12.2010, provided under the DoPT's OM dated 05.07.2010, the petitioner had been making applications for re-fixation of his revised pay, he never submitted the requisite form and therefore, the respondents could not be faulted for not accepting his prayer for re-fixation of his revised pay w.e.f. 16.01.2006. He, therefore, prays that the writ petition be dismissed.

9. Having considered the submissions of learned counsel for the parties and perused the record, we may, at the outset, note that the respondents do not deny that the petitioner had submitted various representations before the cut off date of 31.12.2010 specifically praying that his revised pay be fixed w.e.f. 16.01.2006 after taking into account his pay as an SI. The only contention of the respondents to oppose the petitioner's claim is that as per the DoPT's OM dated 05.07.2010, he was required to submit a specific form under Rule 11 of the CCS (RP), before 31.12.2010, which form he, admittedly, never submitted. What thus emerges is that though the respondents were aware of the petitioner's prayer for re-fixation of his revised pay w.e.f. 16.01.2006, well before the cut off date of 31.12.2010, they have rejected the same only on account of his not submitting the requisite option form.

10. In the light of this factual position, when it is clear that the



respondents were always aware that the petitioner's wanted his pay to be revised with reference to his pay w.e.f. from 16.01.2006, the question before this Court, therefore, is as to whether the said claim could have been rejected merely on account of his not submitting the requisite form in time.

11. Having given our thoughtful consideration to this aspect and taking into account that it is not even the respondents' case that the petitioner was ever specifically informed that he was required to fill up an option form as per Rule 11 of the CCS (RP) Rules, we are of the view that the petitioner cannot be denied his rightful claim. It is evident that it was in the knowledge of the respondents, through the various representations made by the petitioner, that he had exercised his option to switch over to pay fixation on revised pay scale of promoted post of SI on 16.09.2008, which was much before the cut-off date prescribed in the OM dated 05.07.2010. The respondents cannot, therefore, escape from their responsibility of re-fixing the petitioner's pay by raising an objection that he had not opted for pay fixation on the basis of his revised pay scale as on 16.01.2006 by submitting the requisite option form.

12. From the record, it is clear that the respondents did not respond to the representations of the petitioner dated 03.02.2009 and 10.06.2010 through which the petitioner continuously requested them to fix his pay on the basis of his pay scale as on 16.01.2006 instead of 01.01.2006. Further, the respondents failed to inform the petitioner that his representations alone could not be treated as sufficient compliance with DoPT's OM dated 05.07.2010 and he must submit the requisite form before 31.12.2010. The respondents having failed to do so, cannot be now permitted to urge that the petitioner did not submit the requisite form within the prescribed time.



13. In the light of the aforesaid, we are of the view that the delay on the part of the petitioner in submitting the option form cannot be treated as fatal for accepting his prayer for re-fixation of his pay. The writ petition is, accordingly, allowed by setting aside the impugned order and directing the respondents to re-fix, within twelve weeks, the petitioner's revised pay in terms of the 6th CPC by taking into account the option already submitted by him for fixation of his pay w.e.f. 16.01.2006. All consequential arrears in furtherance thereto will be paid to him within six weeks' thereafter. It is, however, directed that in case the petitioner is required to submit any further documents/forms, he will do so immediately, upon receiving information in this regard from the respondents.

14. The writ petition is, accordingly, disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 4, 2024

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