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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of Decision: 19.09.2024***

- + W.P.(C) 6838/2016
- + W.P.(C) 11451/2016
- + W.P.(C) 12177/2016
- + W.P.(C) 489/2017
- + W.P.(C) 5987/2017
- + W.P.(C) 5996/2017
- + W.P.(C) 5997/2017
- + W.P.(C) 5998/2017
- + W.P.(C) 15378/2022

ARJUN DASS & ANR.
JUNG BAHADUR SINGH AND ORS
PAWAN KUMAR
PRADEEP KUMAR
SAT PAL AND ORS
SHAMLAL AND ORS
SOHINDER SINGH AND ORS
DES RAJ AND ORS
PRATAP SINGH

.....Petitioners

Through: Ms. Saahila Lamba and Mr. T. S. Dagar, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Tanveer Ahmed Ansari, Adv. in
W.P.(C) 6838/2016, W.P.(C)
5987/2017, W.P.(C) 5996/2017 &
W.P.(C) 5998/2017.
Mr. Bhagvan Swarup Shukla, CGSC
with Mr. Vinay Kumar Shukla & Mr.



Sharvan Kumar, Advs. for UOI in
W.P.(C) 5997/2017.

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

J U D G M E N T

REKHA PALLI, J (ORAL)

1. By way of the present batch of writ petitions under Article 226 of the Constitution of India, the petitioners, who were serving in the Railway Protection Force (RPF) and have superannuated as Sub Inspectors (SI), have approached this Court, seeking the following reliefs:-

- “(i) Issue writ of certiorari quashing the speaking order dated 05.07.2016 rejecting the representations of the petitioners;
(ii) Issue a writ of mandamus directing the respondents to stepup/ upgrade the pay of the petitioners (5500-9000/9300-34800, Grade Pay of Rs.4,600/-) at par with the pay of their juniors with effect from the date the juniors of the petitioners were granted said pay ((5500-9000/9300-34800, Grade Pay of Rs.4,600/-) in terms of judgments dated 07.12.2009 and 03.01.2014 passed by this Hon’ble Court in W.P. (C) Nos.5867/2003 and 7840/2012 respectively.
(iii) Direct the respondents to pay the penal costs for compelling the petitioners to file the present petition and undertake unwarranted litigation.
(iv) Pass any such other orders as it may deem fit to this Hon’ble Court in the facts and circumstances of the case.”*

2. Before dealing with the rival submissions of the parties, the brief factual matrix, as is relevant for the adjudication of the present petitions, may be noted.
3. The petitioners joined the RPF as Constables (erstwhile Rakshaks) on different dates between 1979 to 1984 and, were subsequently, promoted first



as Head Constables (HC) after qualifying in the Limited Departmental Competitive Examination (LDCE) and, thereafter, promoted as Assistant Sub Inspectors (ASI) either through LDCE or otherwise. It may be noted at this stage itself that as per the LDCE scheme followed by the respondents, a Constable was eligible to appear in the LDCE both for the post of HC as also for the post of ASI, with eight years of service as Constable required for appearing in the LDCE for promotion to the post of HC and ten years of service as Constable required for being eligible to apply for the post of ASI through LDCE.

4. After the petitioners were promoted as ASI, they were, with passage of time, promoted as Sub Inspectors (SI) at which stage, they realized that their erstwhile juniors, who had joined the RPF as Constables after they had been inducted as Constables, were drawing higher pay than them. This, they were informed on account of the fact that their juniors who had been promoted as ASI directly through LDCE, had been granted the benefits of the Assured Career Progression Scheme (ACP) on the premise that they had availed of only one promotion unlike the petitioners, who had availed of two promotions i.e., first to the rank of HC and second to the rank of ASI.

5. Being aggrieved, the petitioners made representations which were rejected compelling the petitioners to approach this Court by way of W.P.(C) 08/2016, which writ petition was disposed of by this Court on 09.03.2016 with a liberty to the petitioners to file a representation to the respondents. The petitioners, therefore, submitted a joint representation to the respondents seeking up-gradation of their pay at par with their juniors, which representation was rejected by the respondents on 05.07.2016, leading



to the filing of the present petitions.

6. In support of the petitions, learned counsel for the petitioners submits that the petitioners, who were more meritorious than their juniors as they were able to earn promotion to the post of HC by way of LDCE, which promotion their juniors could not be granted as they failed to clear the LDCE for promotion to the post of HC. She submits that it is later that both the petitioners and their juniors were promoted as ASIs, the petitioners from the post of HC and their juniors directly from the post of Constables. However, the respondents while granting the benefits of the ACP scheme to their juniors who had been promoted directly from the post of Constable to ASI though LDCE have failed to appreciate that the petitioners could not be discriminated and penalized for being more meritorious, unlike their juniors who failed the LDCE for promotion to the rank of HC.

7. She submits that the respondents were obliged to adopt a uniform policy and extended the benefits of ACP scheme to all ASIs, instead of excluding those ASIs who had been promoted from the post of HC. Even otherwise, once the petitioners' were senior to the persons at par with whom they are seeking up-gradation of pay, their claim for up-gradation was liable to be allowed as per the Fundamental Rules 22 of the Fundamental Rules and Supplementary Rules. She contends that a consequence of the arbitrary decision, of the respondents, despite being seniors and more meritorious the petitioners were all being paid lesser salary than their juniors.

8. Further, she submits that this anomaly was noticed by the respondents themselves in the year 2002 which is evident from the letter dated 03.06.2002 addressed by the Chief Security Commissioner, RPF to the



Director General, RPF but no corrective action was taken by them, leading to filing of a writ petition before this Court by one Mr. T.S. Dagar and others similarly placed persons. This writ petition being **WP(C) No. 5867/2003**, titled “*T. S. Dagar & Ors. vs. UOI & Ors.*” was allowed by this Court on 07.12.2009 by directing the respondents to upgrade the pay of petitioners therein from the date, persons junior to them were given a higher pay. This decision was followed by this Court in **WP(C) 7840/2012** titled *Sh. Tejbir Singh Dagar and ors v. Union of India* while allowing a similar claim for grant of benefit under MACP scheme on 03.01.2014. Further, the same course of action was adopted by this Court while allowing **WP(C) 8826/2014** titled *Yudhister Mudgal and ors v Union of India* on 06.04.2016. She, therefore, prays that the writ petitions be allowed and the respondents be directed to upgrade the pay of the petitioners from the date, persons junior to them were given higher pay.

9. Per contra, learned counsel for the respondents submit that the present batch of writ petitions deserves dismissal as the petitioners had admittedly availed of two promotions, first to the post of HC and then as ASI and, therefore, were rightly not granted any of the two financial up-gradations under the ACP scheme. On the other hand, the juniors of the petitioners, with whom they are seeking parity in pay, had directly been promoted to the rank of ASI pursuant to qualifying in the LDCE exam and had never served on the intermediate post of HC. Consequently, they had earned only one promotion and were, therefore, eligible for grant of one financial up-gradation under the ACP scheme, which was rightly granted to them. Their plea, thus, is that the petitioners having availed of two promotions could not



claim any financial up-gradation under the ACP scheme, which was extended to only those persons who had been directly promoted as ASIs.

10. After some arguments, they do not deny that all the three decisions of this Court relied upon by the petitioners, as noted hereinabove, have attained finality and have been duly implemented. They, however, contend that since the petitioners were not entitled to any financial up-gradation under the ACP scheme, which benefits were extended to their juniors as per the scheme, the petitioners' prayer for stepping up of pay, if accepted, would amount to extending the benefits of ACP scheme to them to which they are, otherwise, not entitled. They, therefore, pray that the writ petitions be dismissed.

11. Having considered the submissions of the learned counsel for the parties and perused the record, we find that the issue raised in the present batch of petitions is no longer *res-integra* as this Court has already allowed the claims of similarly placed persons in **WP(C) No. 5867/2003**, decided on 07.12.2009 titled as "***T. S. Dagar & Ors. vs. UOI & Ors.***", **WP(C) No. 7840/2012**, decided on 03.01.2014 titled as "***Sh. Tejbir Singh Dagar and Ors. vs. Union of India and Ors.***" and in **WP(C) No. 8826/2014**, decided on 06.04.2015 titled as "***Yudhister Mudgal & Ors. vs. Union of India & Ors.***".

12. We find that as in the case of ***Yudhister Mudgal and ors (supra)***, the petitioners, who earned promotion through the LDCE for the post of HC and for the post of ASI have been denied the two financial up-gradations under the ACP scheme, but their juniors who were directly promoted from Constable to ASI, despite having failed to qualify the LDCE for promotion to HC, have been granted one up-gradation under the ACP scheme.



Consequently, the petitioners in the present case like the petitioners in *Yudhister Mudgal and ors (supra)* continued to receive lesser pay than their juniors even after their further promotion to the rank of SI, on which rank also they were admittedly senior.

13. Taking into account that the factual matrix as set out by the petitioners is not being disputed by the respondents, we do not deem it necessary to refer to the facts of each individual case and are instead referring to the relevant extracts of the decision in *TS Dagar (supra)*, as contained in paragraph nos. 11, 12 and 13, wherein the Division Bench had succinctly summarized not only the issue arising for its consideration but also extracted the relevant parts of the letter dated 03.06.2002 written by the Chief Security Commissioner, RPF. The same read as under:

“11. One need not pen down much, for the reason, an anomaly, recognized by the respondents as per its letter dated 3.6.2002 has certainly arisen. The said anomaly has been pithily brought out in para 4 of the said letter. We need not reiterate the anomaly save and except to record that the anomaly brought out in para 4 of the letter dated 3.6.2004 has been correctly illustrated.

12. If this be so, one need hardly give reasons for the sequitur to follow. Remedial action has to be taken at the administrative level. Suffice it would be to state that it would indeed be arbitrary that persons who join the cadre earlier and are senior should be given less salary vis-à-vis their juniors on account of the seniors having passed a limited departmental examination within the first 12 years of their service and earned a promotion. Their juniors could not clear the examination resulting in the juniors being placed in the step up scale after 12 years. Further, while earning further promotions, the second promotion earned by the seniors being treated as disbarring them from being placed in the step up scale but the juniors who had earned only one promotion being granted the ACP benefit. The problem has arisen on account of the fact that the writ petitioners firstly on promotion to the post of Head Constable and thereafter to the post of Assistant Sub Inspector. Their counterpart juniors failed in the examination to fill up the post of Head Constable but cleared the examination for the post of Assistant Sub Inspector, in which examination their senior counterparts were also successful. The result is



that seniors are getting a lesser pay whereas juniors are drawing a higher pay. It is apparent that the result is an absurdity entitling itself to be classified as discriminatory.

13. We are pained to note that inspite of recognizing an anomaly as having come into existence in the year 2002 itself, evidenced by the letter dated 3.6.2002 noted herein above, till date, no remedial action has been taken by the respondents.”

14. We may also now refer to the relevant extracts of the decision in ***Yudhister Mudgal (supra)*** as contained in paragraph nos. 8 and 14 to 18.

“8. Those who earned promotion through the Limited Departmental Competitive Examination as a Head Constable and then as an Assistant Sub- Inspector were denied the two financial upgradations, but those who were directly promoted from Constable to an Assistant Sub-Inspector were granted a financial upgradation. The result is obvious. These Assistant Sub- Inspectors started drawing higher salary.

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14. Petition seeking Special Leave to Appeal against the decision dated December 07, 2009 was dismissed by the Supreme Court on May 12, 2010.

15. In Tej Sir Singh Dagar’s case same issue cropped up, but with the only difference that it concerned even the post of a Naik in the Railway Protection Force, which was abolished on December 04, 1997. The post of a Naik was in between that of a Constable and a Head Constable. Another additional issue which was decided related to the Modified Assured Career Progression Scheme which envisaged financial upgradation on the 10th, 20th and 30th year of service being completed if first, second or third promotion was not earned.

16. Adopting the principle of law declared in T.S.Dagar’s case, comparing Tej Bir Singh Dagar with his junior Ram Chander, an anomaly similar to the kind which was brought out by the Division Bench in its decision dated December 07, 2009 vis-a-vis T.S.Dagar, the first writ petitioner of said writ petition and one Sh.Ram Chander was illustratively brought out.

17. Learned counsel for the respondents fairly concedes that the law declared by the Division Bench in the decision dated February 07, 2009 followed by the Division Bench on January 03, 2014 is squarely applicable to the case of the petitioners. 18. Accordingly, we dispose of the writ petition granting relief to the petitioners as per prayer (i) made in the writ petition, requiring arrears to be computed and paid within 12 weeks from today failing which interest shall accrue at the simple rate of 8% per annum reckoned from 12 weeks from today.”

15. Following the same course of action as adopted by this Court in



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Yudhister Mudgal (supra), we allow the writ petitions by directing the respondents' to suitably upgrade the pay scale of the petitioners from the date their juniors were given the higher pay at the same rank at par as set out in each of the petitions. The exercise in terms of this order be carried out within a period of three months and arrears, in terms thereof be paid within three months thereafter.

16. The writ petitions are accordingly, disposed of in the aforesaid terms.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 19, 2024/ss