



2024:DHC:8780-DB



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

Reserved on: 24.10.2024

Pronounced on: 14.11.2024

+ W.P.(C) 13770/2018

ROSHAN KHAN AND ORS.

.....Petitioners

Through: Mr.Ankur Chhibber, Mr.Nikunj
Arora, Mr.Anshuman Mehrotra,
Mr.Prahil Sharma &
Ms.Muskaan Dutta, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr.Vivekanand Mishra, SPC.
Mr.Jivesh Kumar Tiwari, SPC
with Ms.Samiksha, Adv.
Mr.Ajay Pal-CRPF.

+ W.P.(C) 160/2019

BANWARILAL JAT AND ORS.

.....Petitioners

Through: Mr.Ankur Chhibber, Mr.Nikunj
Arora, Mr.Anshuman Mehrotra,
Mr.Prahil Sharma &
Ms.Muskaan Dutta, Advs.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr.Jivesh Tiwari, SPC &
Ms.Samiksha, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

NAVIN CHAWLA, J.

1. These petitions have been filed by the petitioners praying for the following reliefs:

*“i. Issue a writ of Certiorari for quashing the
Signals dated 17.09.2018, 27.09.2018 &*



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5.11.2018 whereby the petitioners have not been allowed to receive the minimum of the regular pay scale granted to the Sub Inspectors in CRPF and recovery of a sum of Rs.30,000/- for each month from the month of September to December/2018 have been made from the pay of the Petitioners

ii. Issue a writ of mandamus for directing to grant the benefit of 7th CPC in light of the law laid down in the case of State of Punjab Vs Jagjit Singh & Ors and fix the pay of the petitioner at minimum of regular pay scale of post of SI as per 7th CPC with all consequential benefits and refund the amount already recovered from the salary of the petitioners.”

Case of the petitioners

2. It is the case of the petitioners that the petitioners have superannuated from the Indian Army in various ranks and were offered engagement on a contractual basis by the Central Reserve Police Force (CRPF) for a period of five years *vide* different Appointment Letters, and one specifically, dated 07.10.2013, the relevant portion of which reads as under:

“As a result of selection process conducted by the Board of Officers, you have been selected for engagement in CRPF on contractual basis for the post of Sub-Inspector for a period of 5 years. You will be paid remuneration as under:

Post	Pay in the Pay Band	Grade Pay	Other allowances	DA	Total
SI	9300	4200	RM-2027	90%	27,677/-

3. The Pay Band and Grade Pay offered to the petitioners were in accordance with the 6th Central Pay Commission (in short, ‘CPC’).



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4. On the recommendation of the 7th CPC (which replaced the previous Pay Band of Rs.9300-34,800 for Sub-Inspectors with the Grade Pay of Rs.4200, with the Revised Pay Scale (Level-6) of Rs.35,400-1,12,400) being accepted and coming into force with effect from 01.01.2016, the respondents passed an order granting to the petitioners the Minimum of the Pay Scale under (level 6) of 7th CPC, that being Rs.35,400. The same was done by the respondents on their own and without any representations or request from the petitioners. However, by the Impugned Orders/Signals, the respondents not only tried to revise the pay of the petitioners to one being drawn under the 6th CPC and in terms of the Appointment Letter dated 07.10.2013, but also sought to make recovery, claiming that an excess amount has been paid to the petitioners and the same would be recovered with effect from September 2018. Aggrieved by the same, the petitioners have approached this Court *vide* the present petitions.

Submission of the learned counsel for the petitioners

5. The learned counsel for the petitioners submits that as far as the recovery is concerned, the issue was considered by the High Court of Punjab & Haryana in its judgment dated 01.02.2023 passed in CWP 5148/2019 titled ***Ex-SI/GD Bachittar Singh (Retd) v. Union of India & Ors.***, and applying the ratio of the judgment of the Supreme Court in ***State of Punjab & Ors. v. Rafiq Masih (White Washer) & Ors.*** (2015) 4 SCC 334, the High Court found the recovery to be inequitable, harsh and arbitrary and as not sustainable.



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6. The learned counsel for the petitioners submits that aggrieved of the above said judgment, the respondents challenged the same by way of an appeal, being LPA-706/2023 (O&M), which was dismissed by the Division Bench of the High Court of Punjab & Haryana *vide* its judgment dated 24.04.2024, titled ***Union of India & Ors. v. Ex-SI/GD Bachittar Singh***, Neutral Citation No.2024:PHHC:055344-DB. He submits that therefore, recovery of any amount due to revision of pay, cannot be made by the respondents.

7. On the claim of the petitioners that the petitioners were rightly granted the minimum of the Pay Scale of Level-6 under the 7th CPC, the learned counsel for the petitioners places reliance on the judgment of the Supreme Court in ***State of Punjab & Ors v. Jagjit Singh & Ors.***, (2017) 1 SCC 148, to submit that merely because the petitioners were working on a contractual basis, they cannot be denied the minimum of the Pay Scale applicable to the regular employees, when they are discharging similar duties as a regular employee.

Submissions of the learned counsel for the respondents

8. On the other hand, the learned counsels for the respondents submit that the appointments of the petitioners were on a contractual basis and the contract clearly stipulated their emoluments for the same. They were, therefore, not entitled to the grant of benefit under the 7th CPC, and these benefits were extended by mistake to the petitioners. They submit that the Impugned Orders/Signals were, therefore, passed revising the pay of the petitioners as also seeking



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recovery of the excess amount paid.

9. The learned counsels for the respondents also place reliance on the Central Civil Services (Revised Pay) Rules, 2016 [in short, ‘CCS (Revised Pay) Rules, 2016’] to submit that the persons who are employed on contract and persons who are re-employed in Government service after retirement, are expressly excluded from the application of the said Rules and, therefore cannot claim their placement in the Revised Pay Scale under the 7th CPC.

Rejoinder submissions by the learned counsel for the petitioners

10. Learned counsel for the petitioners, in rejoinder, placing reliance on the judgment of this Court in ***Government of NCT of Delhi & Ors. v. Kamal Kant Sharma & Ors.***, 2017 SCC OnLine Del 7781 and ***Sita Mundu & Anr. v. All India Institute of Medical Sciences***, Neutral Citation:2023:DHC:7219-DB, submits that under the CCS (Revised Pay) Rules, 2016, the petitioners would not be entitled to the benefits of other increments and benefits that are available to the regular employees, however, the petitioners would still be entitled to be placed in the minimum pay scale as per the 7th CPC.

Analysis and findings

11. We have considered the submissions made by learned counsels for the parties.

12. In ***Jagjit Singh & Ors.*** (supra), the Supreme Court has held that the principle of ‘*equal pay for equal work*’, as expounded through



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various decisions of the Supreme Court is also applicable to temporary employees performing the same duties and responsibilities as regular employees. Temporary employees possessing the requisite qualifications and appointed against posts which were also available in the regular cadre/establishment, performing similar duties and responsibilities as being discharged by regular employees holding the same/corresponding posts, are entitled to claim wages at par with minimum pay scale of regular employees holding the same posts. It further laid down the criteria to determine the situations where the principle of '*equal pay for equal work*' shall be applicable.

13. The above principle was followed by this Court in ***Kamal Kant Sharma & Ors.*** (supra), by observing as under:-

“10. In Jagjit Singh (supra), the Supreme Court emphasised that right to equality implies that even the contractual employees should be paid the minimum of the amount, which a regular employee would get on the post in question. This would ensure 'equal pay for equal work' and that the contractual employees are not paid less than what is granted to newly recruited regular employee. The aforesaid dictum, therefore, mandates that the contractual employee should not be paid monthly emoluments, which are less than what a newly recruited regular employee would get. If the newly recruited regular employee is entitled to entry pay in the pay band plus the Grade Pay, then the amount so quantified should also be taken as the minimum pay payable to the contractual employee doing the same work. This would ensure complete parity of pay scale of a contractual employee viz. the pay, which is payable to a regular appointed direct recruit.



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11. The distinction between regular and contractual employees is drawn with regard to the annual increments which are payable to a direct recruit or promotee over and above his initial pay, for the same are not taken into consideration and are not to be granted to contractual employees. This position will hold good, even after we have dismissed the present writ petition."

14. In the present case, there is no dispute that the petitioners perform the same work as is being performed by the regular employees in the CRPF. In fact, Rule 11(e) of the Central Reserve Police Force Rules, 1955 expressly provides for enlistment of ex-servicemen in the Force. It is also admitted that under the Rules, there is a 10% quota that has been fixed by the competent authority for filling up of the post of Sub-Inspector in CRPF through eligible ex-servicemen. It is under this quota that the petitioners were appointed, on their completing service in the Indian Army, with the CRPF, though on contractual basis.

15. Applying the ratio of the judgment of the Supreme Court in **Jagjit Singh & Ors.** (supra), therefore, the petitioners are entitled to claim wages at par with the minimum pay scale of regular employees holding the post of Sub Inspector with the CRPF.

16. The reliance of the learned counsels for the respondents on the CCS (Revised Pay) Rules, 2016, cannot be accepted. Rule 2(2)(vi) and (vii) provide that these Rules shall not apply to persons employed on contract, except where the contract provides otherwise, or to persons re-employed in Government service after retirement. The



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petitioners in the present case are not seeking the application of the said Rules to them. The said Rules, apart from the basic pay, also provide for increments in the pay matrix, etc. The petitioners do not claim the same. In terms of the judgment of the Supreme Court in **Jagjit Singh & Ors.** (supra), their entitlement is only to the minimum pay scale of regular employees. This Court in **Kamal Kant Sharma & Ors.** (supra) has also clarified the same by highlighting that the distinction between a regular and contractual employee is drawn with regard to the annual increments which are payable to a direct recruit or promotee over and above his initial pay, however, which cannot be taken into consideration and cannot be granted to a contractual employee.

17. The submission of the learned counsels for the respondents that the petitioners were appointed at fixed wages in terms of their appointment letters quoted hereinabove, also cannot be accepted. The entitlement of '*equal pay for equal work*', as explained by the Supreme Court in its judgment in **Jagjit Singh & Ors.** (supra), is a law binding on all and is a constitutional entitlement of the petitioners, which cannot be negated by way of a contract to the contrary.

18. In view of the above, the Impugned Orders/Signals dated 17.09.2018, 27.09.2018 and 05.11.2018, whereby the petitioners were held not entitled to receive minimum of the regular pay scale granted to the Sub-Inspectors in the CRPF and which sought recovery of the amount allegedly over-paid to them in this regard, cannot be sustained. The petitioners are held entitled to the benefit of the



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minimum of the regular pay scale applicable to the post of Sub-Inspector as per the 7th CPC.

19. Though in view of the above discussion, the issue of illegality of seeking recovery of the amount allegedly over-paid to the petitioners due to the respondents granting them the benefit of the minimum of the regular pay scale of a Sub-Inspector in CRPF in terms of the 7th CPC, does not survive for consideration. In any case, the same is also to be held in favour of the petitioners in view of the judgment of the High Court of Punjab and Haryana in ***Ex-SI/GD Bachittar Singh (Retd)*** (supra), wherein, applying the principles of the judgment of the Supreme Court in ***Rafiq Masih (White Washer) & Ors.*** (supra), similar direction of recovery was set aside by the High Court and it was further directed that the recovered amount shall be refunded to the petitioner therein along with interest at the rate of 6% per annum.

20. The submission of the learned counsel for the respondents that in the said case, the High Court of Punjab and Haryana did not grant the relief of minimum pay scale under the 7th CPC to the petitioner therein and therefore, the petitioners herein should also be denied this relief, cannot also be accepted. It is relevant to note that the judgment itself shows that this was not even the claim of the petitioner therein. In absence of any such prayer, there was no occasion for the High Court to consider the same and indeed the High Court in the said case has not considered the entitlement of the petitioner therein to the minimum pay scale of regular employee. It is not, therefore, true to



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contend that the High Court therein has rejected the prayer of the petitioner for grant of the minimum of the pay scale payable under the 7th CPC to the regularly appointed Sub-Inspectors.

21. In view of the above, the present petition deserves to succeed. The petitioners are held entitled to the minimum pay scale of Sub Inspector in the CRPF as per the 7th CPC. In case any recovery has been made from the petitioners pursuant to the Impugned Orders/Signals dated 17.09.2018, 27.09.2018 and 05.11.2018, the same shall be refunded to the petitioners along with interest at the rate of 6% per annum. The arrears of the differential amount shall also be paid to the petitioners within a period of eight weeks of this judgment, along with interest at the rate of 6% per annum.

22. The petitions are allowed in the above terms.

23. There shall be no order as to costs.

NAVIN CHAWLA, J.

SHALINDER KAUR, J.

NOVEMBER 14, 2024/rv/as

Click here to check corrigendum, if any