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Union of India and Others Vs. Shri Anil Kumar Verma

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Court : Delhi

Decided On : Oct-27-2014

Judge : S.Ravindra Bhat

Appellant : Union of India and Others

Respondent : Shri Anil Kumar Verma

Judgement :

$~7 * IN THE HIGH COURT OF DELHI AT NEW DELHI Decided on :

27. 10.2014 + W.P.(C) 6137/2013, C.M. NO.13514/2013 UNION OF INDIA AND OTHERS ..... Petitioners Through: Sh. Vivek Kumar Standing Counsel, GNCTD. Tandon, versus SHRI ANIL KUMAR VERMA ..... Respondent Through: Respondent in person. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE VIPIN SANGHI MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT) % 1. The Union of India (UOI) claims to be aggrieved by two orders of the Central Administrative Tribunal (CAT) dated 21.08.2012, in O.A. No.3715/2011 (hereafter referred to as the main order) and the order in review proceeding - R.A. No.59/2013 dated 29.04.2013 (hereafter referred to as the review order). The issue concerns the pay fixation of the respondent (hereafter referred to as the applicant), who was initially recruited as Head Constable/AWO in the Communications Wing of the Delhi Police.

2. The brief facts are that the applicant was appointed as Constable (Exe) in the pay scale `3050-4590/- on 23.02.1998. He thereafter W.P.(C) 6137/2013 Page 1 successfully applied and was inducted as a direct recruit Head Constable/AWO in the pay scale `3200-4900/-. The CCS (Revised Pay) Rules, 2008 were framed on 29.08.2008; they sought to effectuate the recommendations of the Sixth Central Pay Commission report. The applicant as on 01.01.2006 was drawing basic salary of ` 3795/- per month and in terms of the interpretation of the rules and prevailing instructions, by applying multiplication factor of 1.86, his pay was fixed at `7060/- per month in the applicable pay band of `5200-20200/- with Grade Pay of `2400/-. The applicant represented for the grant of basic pay scale of `7510/- citing three instances of post-2007 promotees to the post of Head Constable/AWO. This was rejected by the GNCTD based upon a Ministry of Home Affairs (MHA) advice dated 14.09.2010. The essential purport of this communication of MHA was that stepping-up of pay of existing employees or seniors cannot be given to direct recruits appointed on or after 01.01.2006. In the light of the rejection of his representation, the applicant moved the CAT which allowed his claim. The petitioners review application was unsuccessful.

3. Learned counsel contends that the CAT fell into error in ignoring the MHAs clarification of 14.09.2010. The said clarification - which deals with stepping-up of pay of seniors, pertinently states as follows:

North Block, New Delhi Dated the 14th September, 2010 W.P.(C) 6137/2013 Page 2 To, Shri Mangesh Kashyap DCP, PHQ, I.P. Estate, New Delhi. Sub: O.A. No.1150/2010 - Anil Kumar Vs. GNCTD & Others. Sir, The undersigned is directed to invite your kind attention to PHQ letter no.14098/CR-II (PHQ) dated 27.8.2010 and to say that the parawise comments were referred to D/o Expenditure and they have advised to consider stepping up of pay of the applicant with reference to such of their directly recruited juniors who are recruited on or after 1.1.2006 and whose basic pay is more than that of the applicant, subject to the following conditions:Stepping up the basic pay of seniors can be claimed only in the case of those cadres which have an element of direct recruitment and in cases where a directly recruited junior is actually drawing more basic pay than the seniors. In such cases, the basic pay of the seniors will be stepped up with reference to the

basic pay of the directly recruited junior provided they belong to the same seniority list. Further, Government servants cannot claim stepping up of their revised basic pay with reference to entry pay in the revised pay structure for direct recruits appointed on or after 1.1.2006 as laid down in Section II of part a of First Schedule to the CCS(RP) Rules, 2008, if their cadre does not have an element of direct recruitment or in cases where no junior is drawing basic pay higher than them.

2. Parawise comments need to be modified accordingly and may be sent to this office for further vetting from D/o Expenditure and extension of time for filing counter reply may also be obtained from the Honble Tribunal. Yours faithfully, W.P.(C) 6137/2013 Page 3 Sd/(A.K. Saxena) Director & CPIO Telefax:23094387 E-mail: dirdehl@nic.in

4. Learned counsel relies upon the order made in the respondent/applicants case and submits that the higher pay was drawn by the other recruits, i.e. Sh. Nawal Kishore and Sh. Pawan Kumar, having regard to their existing pay scale and the benefits they were entitled to. It was further submitted that the said promotees opted to secure their increments in a particular manner, i.e. from the date of accruing of increments in the normal course which, in turn, meant that they were entitled to annual increments in the revised pay scale as well as the higher amount they were entitled to in the promotional grade. Since the applicant was not entitled to such treatment under the rules, especially in the light of the MHA advice dated 14.09.2010, he could not have claimed that benefit. Learned counsel also urged that the benefit of higher pay made available to the two incumbents, i.e. Sh. Nawal Kishore and Sh. Pawan Kumar could not have been claimed by the applicant, since he was part of another cadre.

5. The applicant, who represented himself in the proceedings, urged that the MHA advice dated 14.09.2010 is irrelevant; and in fact, a fair reading of that would support the claim for stepping-up. It was also submitted that the absence of any specific exclusion in the W.P.(C) 6137/2013 Page 4 recommendations of the Sixth Central Pay Commission with respect to Delhi Police personnel, either in the Constables or any other grade, bifurcating the force into Communications Wing and other Wings, negatives the Governments contentions.

6. In this case, the respondent-applicant was undeniably recruited - as a direct recruit - to the post of Head Constable/AWO on 09.11.1998. The pay fixation in respect of Sh. Nawal Kishore and Sh. Pawan Kumar was pursuant to their promotions as Head Constable/AWO on 19.02.2007. It is facially evident that the petitioner was considerably senior to those two officials - having entered the cadre of Head Constable/AWO as far back as in 1998. The petitioners contention that the Communications Wing differs from, or has to be treated as a separate cadre from other branches of the Delhi Police, in the light of the order of rejection dated 13.05.2011, is untenable. The said order itself states that Sh. Nawal Kishore and Sh. Pawan Kumar were promoted as Head Constable (AWO). The rejection letter, in fact, does not even refer to the Communication Wing being different from the general cadre of the Delhi Police. Furthermore, in our opinion, the applicants contention that the Sixth Pay Commission report made no such distinction has considerable force, in the light of para 7.19.50 of the said report which reads as follows:

7.19.50 The Commission has recommended higher pay scale of Rs.3200-4900 for Constables in CPMFs. A higher scale has also been recommended for the posts of Head Constable W.P.(C) 6137/2013 Page 5 and ASI. Complete parity exists at present between CPMFs and Delhi Police. This parity needs to be maintained. The Commission, accordingly, recommends the following scales for Delhi Police:Designation Present Pay Scale Recommen ded Pay Scale Corresponding Pay Band & Grade Pay Constable 30504590 3200-4900 PB-1 2000 Head Constable 32004900 4000-6000 PB-1 2400 Assistant Sub Inspector 40006000 4500-7000 PB-1 2800 Sub Inspector 55009000 650010500 PB-2 4200 Inspector 650010500 745011500 PB-2 4600 XXXXXX7 XXXXXX Pay Band Grade Pay XXXXXX As far as the MHA advice dated 14.09.2010 is concerned, we notice that the Central Government, in a very calculated manner, denied the claim of stepping-up of direct recruits, post 01.01.2006. Clearly, the applicant did not fall within that category since he had been recruited eight years previously. The Court is of the opinion that the applicants case was justified and well-founded. Considering the objectives of the prevailing instructions and the general purport of FR- W.P.(C) 6137/2013 Page 6 22 as well as FR-22-C, the overall effect of such circular is not to deny a senior the benefit of stepping-up of pay but rather to grant

it, in the light of the fixation of a junior in the promoted scale. The absence of such provision or benefit will most likely led to severe discontent in the concerned service which in the present case is a police force. For the above reasons, there is no merit in the petition; it is accordingly dismissed along with the pending application. S. RAVINDRA BHAT (JUDGE) VIPIN SANGHI (JUDGE) OCTOBER27 2014 ajk W.P.(C) 6137/2013 Page 7

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