

Jas Ram vs.union of India and Ors

Jas Ram vs.union of India and Ors

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Court : Delhi

Decided On : Jan-12-2018

Appellant : Jas Ram

Respondent : Union of India and Ors

Advocate for Def. : Mr. Pushpender Singh, Mr. Vikas Mahajan, Mr. Farman Ali

Advocate for Pet/Ap. : Mr. Chhibber

Judgement :

\$~26 to 34. * IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) 332/2017, W.P.(C) 8361/2016, W.P.(C) 10895/2016, W.P.(C) 10896/2016, W.P.(C) 11803/2016, W.P.(C) 11805/2016, W.P.(C) 11848/2016, W.P.(C) 11888/2016 and W.P.(C) 2668/2017 JAS RAM SALAHUDDIN AND ORS JAGAN SINGH RAJBIR SYED SALIMUDDIN SHRI NIWAS SINGH DEORE LOTAL AMBADAS RAMANAND PRASAD YADAV R P DIVASE

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Through: Mr.Ankur Chhibber, Advocate. versus UNION OF INDIA AND ORS

... RESPONDENTS

Through:Mr.Thakur Virendra Pratap Singh Charak Advocate with Mr. Pushpender Singh, Ms.Shubhra Parashar and Mr.Vinod Tiwari, Advocates in W.P.(C) 8361/2016 Mr. Vikas Mahajan, CGSC with Mr.Shaym Sundar Rai, Advocate in W.P.(C) 10895/2016 and W.P.(C) 10896/2016 Mr.Ravi Prakash, CGSC with Mr. Farman Ali, Advocate in W.P.(C) 11803/2016, W.P.(C) 11805/2016, W.P.(C) 11848/2016 and W.P.(C) 11888/2016 Mr.Vikram Jetly, CGSC in W.P.(C) 332/2017 and W.P.(C) 2668/2017 CORAM: HON'BLE MS. JUSTICE HIMA KOHLI HONBLE MR. JUSTICE P.S. TEJI WP(C)332/2017& connected matters Page 1 of 6 1. %
The petitioners, who are presently working on the post of Sub

ORDER

1201.2018 Inspectors in the CRPF, have prayed for a common relief, which is for grant of the benefit of the second financial upgradation under the ACP Scheme, with all consequential benefits upon fixation of their pay. With the consent of the parties, W.P.(C) 332/2017 shall be treated as the lead matter, for the purposes of arguments.

2. For convenience sake, the facts of W.P.(C) No.332/2017 are being noted as below. The petitioner was enrolled in the CRPF on the post of Constable (GD) on 04.02.1983. He underwent a JCC course in the year 1991 and in the year 1997, he was promoted to the rank of a Sub-Inspector. The petitioner completed 12 years of service in the year 1995 and 24 years of service in the year 2007. However, he was not granted the second financial upgradation on completion of 24 years on the ground that he had not qualified the pre-promotional course, a mandatory condition for promotion to the next rank.

3. It is stated by Mr. Chhibber, learned counsel for the petitioners that earlier hereto, Force personnel similarly situated as the petitioner herein, had approached the High Court by filing W.P.(C) No.4258/2013 entitled Gaj Raj Singh & Ors. Vs. Union of India and W.P.(C) No.6550/2013 entitled Suraj Bhan & Ors. Vs. Union of India praying inter alia that they could not be blamed for non-completion of the pre-promotional course and it was due to the respondents fault that they had not been granted the second financial upgradation. Finding merit in the plea taken, the aforesaid writ petitions were allowed by the Division Bench vide judgments dated WP(C)332/2017 & connected matters Page 2 of 6 06.09.2013 and 11.10.2013. It is an admitted position that the aforesaid decisions have attained finality and were duly implemented by the respondents for all the Force personnel who had not been granted the second financial upgradation under the ACP Scheme on completion of 24 years of service only on the ground that they had not qualified the pre-promotional courses.

4. Pursuant to the aforesaid judgement, the petitioner herein was granted benefit of the second financial upgradation w.e.f. 04.02.2007, in the pre-revised pay scale of Rs.5500-175-9000 and his pay was re-fixed by the multiplying factor of Rs.1.86 i.e. $\text{Rs.}5500 \times 1.86 = 10230$, with grade pay of Rs.4200. Learned counsel submits that subsequently, the respondents took a stand that the petitioner had been wrongly granted the benefit of the second ACP Scheme and accordingly issued office orders dated 12.05.2015 and 17.10.2015, illegally amending/refixing his pay scale and arbitrarily revising it by reducing the petitioners pay and allowances from Rs.14130 + Grade Pay of Rs.4600 to Rs.12560 + Grade Pay of Rs.4600, w.e.f. 01.07.2014. Hence, the present petition.

5. We are informed that the legal issue raised in the present petitions is no longer res integra and squarely covered by a common judgment dated 11.10.2017 in W.P.(C) No.9359/2016 entitled SI/GD Shambhoo Vs. Union of India & Ors. and other connected cases. In the above case, the Division Bench had referred to the earlier decisions in the case of Gaj Raj Singh (supra) and Suraj Bhan (supra) and went on to interpret Rules 5, 6 and 7 of the Central Civil Services (Revised Pay) Rules 2008 enacted on 29.08.2008, but applied retrospectively from 01.01.2006. WP(C)332/2017& connected matters Page 3 of 6 6. The operative paras of the aforesaid judgment are reproduced herein below for ready reference :-

"15. We have already interpreted the two clauses of Rule 7(1)(A) of the 2008 Rules and do not find that the stand of the respondents is correct. Noticeably, the petitioners have been granted benefit of second financial upgradation under the ACP Scheme on the specified dates in 2007 with retrospective effect vide orders passed in 2015. The petitioners herein could not have exercised the option under the first proviso to Rule 5 to be governed by the existing pay-scales and not to be governed by the revised pay-scales under the 2008 Rules on or before 31st March, 2013. But for the said position, the respondents accepts that the petitioners were entitled to benefit of fixation of revised pay under clause (i) to Rule 7(1)(A) of the 2008 Rules. Of course, this would mean that the petitioners would have to refund the pay-scales received by them under the 2008 Rules from 1st January, 2006 till the grant of second financial upgradation. This would be necessary as the petitioners themselves are stating that they would be covered under the existing pay-scales i.e. pay- scales before the implementation of the 2008 Rules till grant of second financial upgradation. It is open to the respondents to carry out the said exercise and make adjustment if they deem appropriate and proper.

16. The respondents, it is appears that have rectified and granted benefit of clause (i) to Rule 7(1)(A) of the 2008 Rules in some cases. For example, in the case of Harkesh Tyagi, W.P. (C) No.341/2017, the respondents have granted benefit of exercise of option, though he was granted second financial upgradation with retrospective effect from 21st March, 2007 vide order dated 21st March, 2015.

17. Recording the aforesaid, the writ petitions are allowed and the impugned orders dated 12th February, 2016 and 30th October, 2015 in the case of Shambhoo, order dated 5 th January, 2015 in the case of Mundrika Shah, orders dated 30th April, 2016 and 28th February, 2015 in the case of Gaffar Khan and order dated 1 st June, 2016 in the case of Rajinder Singh are set aside. The petitioners, it is held, would be given benefit of WP(C)332/2017& connected matters Page 4 of 6 clause (i) to Rule 7 (1) (A) of the 2008 Rules, wherever it is more beneficial. Liberty recorded in paragraph 15 is also granted.

18. Directions given above would be complied within four months from the date a copy of this order is received. In case there is delay beyond the said period, the respondents would pay interest @ 8% per annum from the date of this order till payment is made. No costs. 7. We may note that in para 16 of the judgment dated 11.10.2017, in the case of SI/GD Shambhoo (supra), the Division Bench has observed that the respondents have rectified and granted the benefits of clause (i) to Rule 7(1)(A) of the Central Civil Services (Revised Pay) Rules, 2008, in some cases. In this regard, reference has specifically been made to the case of Harkesh Singh Tyagi Vs. Union of India and Ors. (W.P. (C) No.341/2017), where the respondents have granted the benefit of exercising the option to the petitioner therein, though he was granted the second financial upgradation with retrospective effect from 21st March, 2007, vide order dated 21st March, 2015.

8. On enquiring from learned counsels for the respondents as to whether the respondents have decided to implement the judgement dated 11.10.2017, they state on instructions that the said judgment is still being examined by the Nodal Ministry in consultation with the other Ministries. Learned counsels for the respondents state that the petitioners had not submitted their revised option in terms of the Government of India O.M. dated 05.07.2010 and therefore they were ineligible for extension of the benefit of pay fixation in the revised pay scale as claimed by them. They contend that the petitioners had already been granted the second ACP in the revised pay scale, which is the replacement scale of the pre-revised pay scale. WP(C)332/2017& connected matters Page 5 of 6 9. Having regard to the fact that a Co-ordinate Bench has already examined the issue in hand and decided the same in favour of the petitioners therein who are similarly

placed as the petitioners in the present petitions, we propose to allow all the nine petitions on the same lines, as decided vide judgement dated 11.10.2017, in the case of SI/GD Shambhoo (supra) 10. Accordingly, the present petitions are disposed of by holding that the petitioners herein shall be entitled to the benefit of clause (i) appended to Rule 7(1)(A) of the 2008 Rules, wherever it is more beneficial. Necessary compliances shall be made by the respondents within four months from today. In the event, compliance is made beyond the period granted above, the respondents shall pay simple interest @ 8% per annum to the petitioners from the date of passing of the order, till the payment is released.

11. The petitions are disposed of. No orders as to costs. JANUARY12 2018 na/rkb
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