

**(2018) 03 DEL CK 0226**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 8135, 8138, 8139, 8142, 8149, 8158, 8559, 8600, 8602 Of 2017

Asi/Clerk Devi Ram Tiru & Anr

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

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**Date of Decision :** 15-03-2018

**Acts Referred:**

Central Civil Services (Revised Pay) Rules, 2008 — Rule 13

**Citation :** (2018) 03 DEL CK 0226

**Hon'ble Judges :** Hima Kohli, J;Pratibha Rani, J

**Bench :** Division Bench

**Advocate :** Ankur Chhibber, Dev P. Bhardwaj, Anubha Bhardwaj

**Final Decision :** Allowed

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## **Judgement**

1. The petitioners herein joined CISF in the rank of Constable (GD). In the year 2005, CISF published an advertisement for filling up the post of Head Constable (Clerk) and ASI (Stenographer) in the pay scale of Rs. 3200-85-4900, for which 70% vacancies were to be filled up by way of direct recruitment and 30% vacancies were to be filled by way of Limited Departmental Competitive Examination (LDCE), for which the departmental candidates having rendered 3 years service were eligible.

2. The petitioners successfully qualified the LDCE along with the direct recruits and received offers of appointment. The petitioners completed the training as freshly recruited Head Constables along with the Head Constables who were directly recruited and a seniority list of the Head Constables (Clerks) who had qualified in the year 2005, was also published on 18.03.2008, depicting the respective seniority number of the petitioners and the direct recruits.

3. The grievance of the petitioners is that as per clarification issued by the Department of Personnel & Training, such candidates who had appeared in the open competitive examinations would be direct recruits consequent to their

selection to the subject post. Hence, the petitioners who have competed with the direct recruits by participating in the LDCE, cannot be treated as promotees and their pay cannot be less than Rs. 9,910/-, which is payable to the direct recruits at the entry level.

4. As per the recommendations of the 6th Pay Commission, as reflected in the CCS(Revised Pay) Rules, the entry pay in the revised pay structure for direct recruits appointed to the subject post on or after 01.01.2006, in Pay Band-I was fixed at Rs. 7,510/-, with Grade Pay of Rs. 2,400/- totalling to a sum of Rs. 9,910/- and the pay of the petitioners herein was also fixed in terms of the above recommendations.

5. The petitioners felt aggrieved when on 05.09.2013, respondent issued a clarification that the pay of the Constables on appointment to the rank of Head Constable (Clerk) against the vacancies of the departmental candidates, will be fixed by one notional increment @ 3% of the basic pay of the lower post.

6. Pursuant to the above clarification dated 05.09.2013, without issuing any show cause notice, the respondents issued an order dated 20.01.2014, impugned herein, fixing the pay of the petitioners as Rs. 6,490 + Grade Pay of Rs. 2,000/- w.e.f. 01.07.2006 and thereafter on promotion to the post of Head Constable (Clerk) as Rs. 6,750/- + Grade Pay of Rs. 2,400/-, w.e.f. 30.07.2006. As a result of the above clarification and re-fixation, the petitioners' pay has been fixed as Rs. 6750 - Rs. 2,400/-, totalling to a sum of Rs. 9,150/- w.e.f. 30.07.2006 whereas the entry pay for the directly recruited Head Constables in the revised pay structure had been fixed at Rs. 9,910/-.

7. The details of the order by which the benefit of stepping up was given to the petitioners and the orders by which the said benefits have been withdrawn and the orders impugned in each of these petitions have been compiled below in a tabulated form :-

Sr.No.

Name of the petitioner

Date of order vide which the benefit of stepping up was given to the petitioners.

Date of order vide which the benefit was withdrawn

Orders impugned in the writ petitions

1

ASI/Clerk Devi Ram Tiru (Petitioner in W.P.(C) No.8135/2017)

26.03.2010

05.09.2013, 20.01.2014 & 21.04.2017

05.09.2013, 20.01.2014, 21.04.2017

2

ASI/Clerk C.P Chakravarty (Petitioner in W.P (C) No. 8138/2017)

23.11.2009

05.09.2013, 20.01.2014 & 21.04.2017

05.09.2013, 20.01.2014, 21.04.2017

3

ASI/Clerk Vikram Singh Manral (Petitioner in W.P (C) No. 8139/2017)

15.12.2009

05.09.2013, 20.01.2014 & 21.04.2017

05.09.2013, 20.01.2014, 21.04.2017

4

ASI/Clerk Anil Yadav (Petitioner in W.P (C) No. 8142/2017)

20.01.2009

21.04.2017, 05.09.2013 & 28.05.2014

05.09.2013, 28.05.2014, 21.04.2017

5

ASI/Clerk Bitto Singh (Petitioner in W.P (C) No. 8149/2017)

19.09.2011

05.09.2013, 21.04.2017 & 20.01.2014

05.09.2013, 20.01.2014, 21.04.2017

6

ASI/Clerk Yogender Kumar (Petitioner in W.P (C) No. 8158/2017)

07.04.2009

20.01.2014, 21.04.2017 & 05.09.2013

05.09.2013, 20.01.2014, 21.04.2017

7

ASI/Clerk Sunil Kumar Sharma (Petitioner in W.P (C) No. 8559/2017)

26.03.2010

20.05.2014, 21.04.2017 & 05.09.2013

05.09.2013, 20.05.2014, 21.04.2017

ASI/Clerk Chhama Nath (Petitioner in W.P (C) No. 8600/2017)

02.06.2010

20.01.2014, 21.04.2017 & 05.09.2013

05.09.2013, 20.01.2014, 21.04.2017

8. Mr.Ankur Chhibber, learned counsel for the petitioners has submitted that the respondent had fixed the pay of the petitioners by giving an increment @3% of the basic pay of the lower post i.e. by treating their case as a promotion from the post of Constable (GD) to Head Constable (Clerk), whereas the post of Head Constable (Clerk) is not a promotional post, but an entry post in the ministerial cadre, for which the same method of recruitment is applicable as is applicable to direct candidates. It has been further contended that there is no provision in the Recruitment Rules for filling the post of Head Constable (Clerk) through promotion from Constable (GD) as both are different cadre posts. Despite the Department of Personnel & Training having made it clear that such candidates who had appeared in the open competitive examinations would be direct recruits consequent to their selection, post the examination, the respondents have treated the petitioners differently than the direct recruits and that their pay can in any event, not be less than Rs. 9,910/-.

9. Learned counsel for the petitioners has drawn the attention of this court to the seniority list for the year 2005, to show that the petitioners who are senior in the seniority list as compared to the Head Constables recruited directly, are getting lesser pay due to the above anomaly despite the fact that in various decisions of this Court, involving an identical question, the situation has been repeatedly clarified.

10. Mr.Ankur Chhibber, learned counsel for the petitioners has submitted that assuming without admitting the stand taken by the respondents that the petitioners cannot be treated as direct recruits but as promotees, even then the said issue is no more res integra and has been decided by Co-ordinate Benches of this Hon'ble Court in W.P.(C) No.2654/2014 entitled H.C./RO S.S.Suhag & Ors. vs. Union of India & Ors. decided on 20.05.2014, W.P.(C) No.1853/2015 entitled Lalit Kumar Choudhary vs. Union of India & Ors. decided on 02.03.2015, W.P.(C) No.8058/2015 entitled Union of India & Ors. vs. Malbika Deb Gupta decided on 04.11.2016, W.P.(C) No.5215/2016 entitled Xavier P.J.& Ors. vs. Union of India & Ors. decided on 01.05.2017 and W.P.(C) No.2634/2017 entitled Government of NCT of Delhi & Anr. vs. Somvir Rana & Ors decided on 23.03.2017. He has also submitted that the decision on the question involved in the above petitions, has attained finality in view of the judgment dated 01.09.2017 of the Supreme Court in Government of NCT of Delhi & Anr. vs. Somvir Rana (TGT ENG) & Ors. and Director General, ESIC & Ors. Vs. Sheeja Santosh & Ors. where the appeals preferred by the Government have not only been dismissed, directions have been

issued to the Government of India to look into the matter and issue appropriate orders for granting the pay scale so that people are not made to approach the Tribunals or the High Courts or the Supreme Court, time and again.

11. The fact situation in these petitions though not disputed by learned counsel for the Union of India, it has been submitted that since the petitioners were not direct recruits, they being promotees appointed as Head Constable through LDCE, their pay has been rightly directed to be re-fixed by allowing one increment @3% of the Basic Pay + Grade Pay of the Head Constable. The manner of fixation of pay on promotion from one grade pay to another in the revised pay structure was clarified in Rule-13 of CCS(RP) Rules, 2008 i.e. pay on promotion to a higher grade pay was fixed by adding one increment equal to 3% of the sum of the pay in the pay band and the existing grade pay and rounding it to the next multiple of ten + Grade Pay of the promoted post. But the manner of fixation of pay of the Government servants appointed to a higher post was not mentioned.

12. It was admitted on behalf of the respondents that the Entry Pay in the revised pay structure for direct recruits appointed on or after 01.01.2006, in the rank of HC/Clerk was fixed in PB-I Rs. 5200-20200 + Grade Pay of Rs. 2400/- at Rs. 7510/- + Grade Pay of Rs. 2400/-. Since the basic pay of Constables in the revised pay scale of Rs. 5200-20200 + Grade Pay of Rs. 2000/- was fixed by multiplying the existing basic pay with the factor of 1.86 and the same was less than the Entry Pay of Rs. 7510/- + Grade Pay of Rs. 2400/- admissible to direct recruits appointed on or after 01.01.2006, a proposal was taken up with the Ministry of Home Affairs which was examined in consultation with the Ministry of Finance and finally, the manner of fixation of pay by increasing the Basic Pay + Grade Pay of lower post by 3% was confirmed by the Ministry of Finance, Department of Expenditure vide UO No.16628/2013/E-II-A, dated 25.04.2013. Accordingly, the pay of the petitioners was re-fixed as above.

13. The issue agitated in these batch matters has already been considered in two rounds of litigations wherein the petitioners, Lalit Kumar Choudhary and Abhishek Yadav, in the first round of litigation had filed W.P.(C) Nos.2494/2014 and 2488/2014 claiming their pay had been re-fixed pursuant to the recommendations made by the 6th Central Pay Commission, to their detriment without even issuance of a show cause notice. Both the above writ petitions were allowed and the impugned order dated 09.01.2014 was quashed with a direction to the respondents that the petitioners would continue to draw pay and allowances in Pay Band-I in the pay scale of Rs. 5200-20200/- with Grade Pay of Rs. 2400/-, amounting to a sum of Rs. 9,910/-, with effect from 01.01.2006. It was also directed that if the respondents intend to take any action to re-fix the pay of the petitioners to their detriment, a show cause notice would be issued containing the reasons therefor and a decision would be taken thereon after giving an opportunity to the petitioners to be heard and till then, no recoveries shall be effected from them.

14. Both the petitioners, Lalit Kumar Choudhary and Abhishek Yadav (in W.P.(C) Nos.2494/2014 and 2488/2014) were issued show cause notices and after considering and rejecting their replies, vide order dated 20.01.2015 yet again, directions were issued to re-fix their pay as per schedule specified in the order and to also effect recoveries of the excess amount already paid to them.

15. In the second round of litigation, the petitioners, Lalit Kumar Choudhary and Abhishek Yadav filed W.P.(C) Nos.1853/2015 & 1854/2015 challenging the order dated 20.01.2015, which were allowed for the following reasons:-

"20. We note that the anomalous situation has resulted because in the First Schedule, Section II of the CCS Revised Pay Rules, 2008, 'Entry Pay in the Revised Pay Structure for Direct Recruits appointed on or after 1.1.2006' has been specified for various posts in various pay bands and grade pays. For the posts in PB-1 having scale Rs. 5200-20200 with grade pay Rs. 2,400/- the entry level pay in the pay band is Rs. 7,510/- and with the grade pay of Rs. 2,400/- the pay would be Rs. 9,910/-.

21. As per the revised pay rules, the salary of Head Constables directly recruited in PB-1 would thus be Rs. 9,910/-. But as regards promotees, the Rule envisages the pay to be fixed with reference to the previous basic pay multiplied by 1.8 and rounded off to the nearest 10. It results in an anomaly because the basic pay of direct recruits who joined later, and hence would be junior, to the promotees is more.

22. Taking analogy from the principle of stepping up of pay of a senior if the junior receives more pay, in the decision in Dashrath's case supra it was decided by this Court that wherever such anomalous situation exists, the basic pay of the promotees with effect from January 01, 2006 has to be at the minimum prescribed for direct recruitment to the post in question.

23. The writ petitions are accordingly allowed. Impugned orders are quashed. Recoveries if any made are directed to be restored. Pay of the petitioners as of January 01, 2006 when the petitioners were holding the rank of a Head Constable (Min.) would be fixed at the minimum prescribed in the CCS Revised Pay Rules i.e. basic pay Rs. 7,510/- and grade pay Rs. 2,400/-."

16. The issue raised in these batch petitions is no longer res integra. In the decision of the Supreme Court dated 01.09.2017 in the case Government of NCT of Delhi & Anr. vs. Somvir Rana (TGT ENG) & Ors. (vide Diary No.23663/2017) and in the case Director General, ESIC & Ors. vs. Sheeja Santosh & Ors. (vide Diary No.23440/2017), the issue has been finally set at rest by the Supreme Court and it was held as under:

"Delay condoned.

We find that there are several matters in which the aggrieved employees have been going to the Tribunal, then to the High Court and thereafter those matters are brought before this Court at the instance of the Union of India/NCT of Delhi.

Once the question, in principle, has been settled, it is only appropriate on the part of the Government of India to issue a Circular so that it will save the time of the Court and the Administrative Departments apart from avoiding unnecessary and avoidable expenditure.

The present situation is that the stepping up is available only to those who have approached the Court. But since the issue has otherwise become final, we direct the Government of India to immediately look into the matter and issue appropriate orders for granting the pay-scale so that people need not unnecessarily travel either to the Tribunal or the High Court or this Court.

With the above observation and directions, the special leave petitions are dismissed."

17. In view of the decision of Co-ordinate Benches of this Court referred to above as well the issue being finally settled by the Supreme Court vide judgment dated 01.09.2017 in Government of NCT of Delhi & Anr. vs. Somvir Rana (TGT ENG) & Ors. (vide Diary No.23663/2017) and in the case Director General, ESIC & Ors. vs. Sheeja Santosh & Ors. (vide Diary No.23440/2017), the orders impugned in these writ petitions are quashed and set aside. The pay of the petitioners in the rank of Head Constable (Clerk) shall be fixed at the minimum prescribed in the CCS Revised Pay Rules i.e. Basic Pay Rs. 7,510/- and Grade Pay Rs. 2,400/-. Recoveries, if any, effected from the salaries of the petitioners pursuant to the impugned orders, shall be restored within eight weeks from the date of passing of this order.

18. The petitions are accordingly allowed, with no order as to costs.