

(2025) 03 DEL CK 0999

In the Delhi High Court

Case No : Writ Petition (C) No. 17364 Of 2024 and CAV 617 Of 2024, Civil
Miscellaneous Petition No. 73918, 73919 Of 2024

Commissioner Of Police And Anr

APPELLANT

Vs

Rohtash Kumar

RESPONDENT

Date of Decision : 04-03-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 226

Citation : (2025) 03 DEL CK 0999

Hon'ble Judges : C.Hari Shankar, J;Ajay Digpaul, J

Bench : Division Bench

Advocate : Ashish K. Dixit, Shivam Tiwari, Urmila Sharma, Venni Kakkar,
Deepika Kalra, Ritank Kumar

Final Decision : Allowed

Judgement

C. Hari Shankar, J

1. The Respondent joined the Delhi Police as a Constable and superannuated as a Sub-Inspector on 31 March 2022.

2. After superannuation, he addressed a representation to the petitioners on 20 May 2022 in which he submitted that Chandrabhan, one of his juniors, was drawing a higher basic pay than him. He, therefore, sought refixation of his pay so that he was not disadvantageously placed vis-à-vis the aforementioned Chandrabhan.

The respondent's representation was rejected by the Deputy Commissioner of Police "DCP" by orders dated 6 July 2022 and 14 July 2022, which endeavored to point out that the disparity between the respondent's pay scale and the pay scale of Chandrabhan was owing to the failure, on the part of the respondent, to exercise his option for being provided the benefit of second financial upgradation under the Assured Career Progression Scheme "ACP Scheme", which resulted in his being granted the ACP benefit from the date when the Scheme became

operational. To clarify, persons who were granted the benefit of the ACP Scheme had the right to exercise the option to avail the benefit of the scheme from the date of implementation of the scheme or, alternatively, from the date after they were granted their first annual increment. Naturally, where the latter option was exercised, as the ACP would be fixed on the total of the basic pay along with the annual increment earned in the interregnum, the employee would earn an additional financial benefit, as against the pay which he would earn if the ACP upgradation were to be granted on the basic pay alone.

3. Aggrieved by the aforesaid communications dated 6 July 2022 and 14 July 2022, addressed to him by the DCP, the respondent petitioned the Central Administrative Tribunal "the Tribunal" by way of OA 3371/2022, seeking quashing of the said letters and refixation of his pay with effect from 2006 by allowing him to exercise his option to be granted ACP benefit after he drew his first annual increment that year.

4. In other words, the respondent was seeking to have his pay refixed retrospectively after 16 years. This position is undisputed.

5. Before the Tribunal, the petitioners sought to contend that the respondent had the opportunity, at the time when he was granted his ACP benefit, to exercise the option to have his pay fixed under the ACP scheme after drawing his first annual increment. That option was, however, required to be exercised within one month from the date of grant of the benefit under the ACP Scheme. The order by which the pay of the respondent was refixed under the ACP Scheme was issued on 24 January 2006. As the respondent failed to exercise his option to have the benefit of the ACP Scheme extended to him after he drew his next annual increment, the benefit of the Scheme was made immediately available to him. It was because of this that the scale of pay of the respondent was below that of Chanderbhan.

6. Adjudicating the OA, the Tribunal has, by judgment dated 24 September 2024, observed and held as under :

"6.2. The only ground for denial of the higher pay scale to the applicant is non-submission of the Option. In such situation the respondents themselves should have taken steps to remove this anomaly when they came to know that the applicant has not submitted his Option due to unawareness of the policy in time and the applicant is going to get less pay than his junior in the same rank and service, due to which he will suffer heavy loss.

6.3. In *Bichitrananda Behera v State Of Orissa And Others* 2023 SCC OnLine SC 1307, decided on 11.10.2023, the Hon'ble Apex Court observed as under :-

"20. On an overall circumspection, thus, in the present case the Respondent No.5 should have been non-suited on the ground of delay and laches, which especially in service matters, has been held consistently to be vital, juxtaposed with the sign of acquiescence. To the mix, we add that the State has supported the factual circumstances concerning the appointment of the appellant, his

continuance in service as also the Respondent No.5 having worked during the said period in another school viz. the Sri Thakur Nigamananda High School, Terundia. Notably, the Respondent No.5 does not, from the record before us, appear to have approached the authorities in the interregnum.

21. Profitably, we may reproduce relevant passages from certain decisions of this Court:

(A) Union of India v Tarsem Singh (2008) 8 SCC 648:

"To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

(emphasis supplied)

(B) Union of India v N Murugesan (2022) 2 SCC 25:

"Delay, laches and acquiescence

20. The principles governing delay, laches, and acquiescence are overlapping and interconnected on many occasions. However, they have their distinct characters and distinct elements. One can say that delay is the genus to which laches and acquiescence are species. Similarly, laches might be called a genus to a species by name acquiescence. However, there may be a case where acquiescence is involved, but not laches. These principles are common law principles, and perhaps one could identify that these principles find place in various statutes which restrict the period of limitation and create non-consideration of condonation in certain circumstances. They are bound to be applied by way of practice requiring prudence of the court than of a strict application of law. The underlying principle governing these concepts would be one of estoppel. The

question of prejudice is also an important issue to be taken note of by the court.

Laches

21. The word "laches" is derived from the French language meaning "remissness and slackness". It thus involves unreasonable delay or negligence in pursuing a claim involving an equitable relief while causing prejudice to the other party. It is neglect on the part of a party to do an act which law requires while asserting a right, and therefore, must stand in the way of the party getting relief or remedy.

22. Two essential factors to be seen are the length of the delay and the nature of acts done during the interval. As stated, it would also involve acquiescence on the part of the party approaching the court apart from the change in position in the interregnum. Therefore, it would be unjustifiable for a Court of Equity to confer a remedy on a party who knocks its doors when his acts would indicate a waiver of such a right. By his conduct, he has put the other party in a particular position, and therefore, it would be unreasonable to facilitate a challenge before the court. Thus, a man responsible for his conduct on equity is not expected to be allowed to avail a remedy.

23. A defence of laches can only be allowed when there is no statutory bar. The question as to whether there exists a clear case of laches on the part of a person seeking a remedy is one of fact and so also that of prejudice. The said principle may not have any application when the existence of fraud is pleaded and proved by the other side. To determine the difference between the concept of laches and acquiescence is that, in a case involving mere laches, the principle of estoppel would apply to all the defences that are available to a party. Therefore, a defendant can succeed on the various grounds raised by the plaintiff, while an issue concerned alone would be amenable to acquiescence. Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis." (emphasis supplied)

(C) Chairman, State Bank of India v. M.J. James (2022) 2 SCC 301:

"36. What is a reasonable time is not to be put in a straitjacket formula or judicially codified in the form of days, etc. as it depends upon the facts and circumstances of each case. A right not exercised for a long time is non-existent. Doctrine of delay and laches as well as acquiescence are applied to non-suit the litigants who approach the court/appellate authorities belatedly without any justifiable explanation for bringing action after unreasonable delay. In the present case, challenge to the order of dismissal from service by way of appeal was after four years and five months, which is certainly highly belated and beyond justifiable time. Without satisfactory explanation justifying the delay, it is difficult to hold that the appeal was preferred within a reasonable time. Pertinently, the challenge was primarily on the ground that the respondent was not allowed to be represented by a representative of his choice. The respondent knew that even if he were to succeed on this ground, as has happened in the writ proceedings, fresh inquiry would not be prohibited as finality is not attached unless there is a legal or statutory bar, an aspect which has been also noticed in the impugned judgment. This is highlighted to show the prejudice caused to the appellants by the delayed challenge. We would, subsequently, examine the question of acquiescence and its judicial effect in the context of the present case.

38. In Ram Chand v. Union of India 1994) 1 SCC 44 and State of U.P. v. Manohar (2005) 2 SCC 126 this Court observed that if the statutory authority has not performed its duty within a reasonable time, it cannot justify the same by taking the plea that the person who has been deprived of his rights has not approached the appropriate forum for relief. If a statutory authority does not pass any orders and thereby fails to comply with the statutory mandate within reasonable time, they normally should not be permitted to take the defence of laches and delay. If at all, in such cases, the delay furnishes a cause of action, which in some cases as elucidated in Union of India v. Tarsem Singh (2008) 8 SCC 648 may be continuing cause of action.

The State being a virtuous litigant should meet the genuine claims and not deny them for want of action on their part. However, this general principle would not apply when, on consideration of the facts, the court concludes that the respondent had abandoned his rights, which may be either express or implied from his conduct. Abandonment implies intentional act to acknowledge, as has been held in para 6 of Motilal Padampat Sugar Mills Co. Ltd. v. State of U.P. (1979) 2 SCC 409 Applying this principle of acquiescence to the precept of delay and laches, this Court in U.P. Jal Nigam v. Jaswant Singh (2006) 11 SCC 464 after referring to several judgments, has accepted the following elucidation in Halsbury's Laws of England : (U.P. Jal Nigam v. Jaswant Singh),

"12. The statement of law has also been summarised in Halsbury's Laws of England, Para 911, p. 395 as follows:

'In determining whether there has been such delay as to amount to laches, the chief points to be considered are:

(i) acquiescence on the claimant's part; and

(ii) any change of position that has occurred on the defendant's part.

Acquiescence in this sense does not mean standing by while the violation of a right is in progress, but assent after the violation has been completed and the claimant has become aware of it. It is unjust to give the claimant a remedy where, by his conduct, he has done that which might fairly be regarded as equivalent to a waiver of it; or where by his conduct and neglect, though not waiving the remedy, he has put the other party in a position in which it would not be reasonable to place him if the remedy were afterwards to be asserted. In such cases lapse of time and delay are most material. Upon these considerations rests the doctrine of laches.'

13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent. Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?"

39. Before proceeding further, it is important to clarify distinction between "acquiescence" and "delay and laches". Doctrine of acquiescence is an equitable doctrine which applies when a party having a right stands by and sees another dealing in a manner inconsistent with that right, while the act is in progress and after violation is completed, which conduct reflects his assent or accord. He cannot afterwards complain. [See *Prabhakar v. Sericulture Deptt.*, (2015) 15 SCC 1. Also, see *Gobinda Ramanuj Das Mohanta v. Ram Charan Das* AIR 1925 Cal 1107]. In literal sense, the term acquiescence means silent assent, tacit consent, concurrence, or acceptance, [See *Vidyavathi Kapoor Trust v. CIT* 1991 SCC OnLine Kar 331, which denotes conduct that is evidence of an intention of a party to abandon an equitable right and also to denote conduct from which another

party will be justified in inferring such an intention. [See *Krishan Dev v. Ram Piari* AIR 1964 HP 34]. Acquiescence can be either direct with full knowledge and express approbation, or indirect where a person having the right to set aside the action stands by and sees another dealing in a manner inconsistent with that right and in spite of the infringement takes no action mirroring acceptance. [See "Introduction", U.N. Mitra, *Tagore Law Lectures — Law of Limitation and Prescription*, Vol. I, 14th Edn., 2016.] However, acquiescence will not apply if lapse of time is of no importance or consequence.

40. Laches unlike limitation is flexible. However, both limitation and laches destroy the remedy but not the right. Laches like acquiescence is based upon equitable considerations, but laches unlike acquiescence imports even simple passivity. On the other hand, acquiescence implies active assent and is based upon the rule of estoppel in pais. As a form of estoppel, it bars a party afterwards from complaining of the violation of the right. Even indirect acquiescence implies almost active consent, which is not to be inferred by mere silence or inaction which is involved in laches. Acquiescence in this manner is quite distinct from delay. Acquiescence virtually destroys the right of the person. [See *Vidyavathi Kapoor Trust v. CIT*] Given the aforesaid legal position, inactive acquiescence on the part of the respondent can be inferred till the filing of the appeal, and not for the period post filing of the appeal.

Nevertheless, this acquiescence being in the nature of estoppels bars the respondent from claiming violation of the right of fair representation."

(emphasis supplied)

22. For reasons aforesaid, the judgments of the High Court as also the Tribunal deserve to be, and are accordingly, set aside.

23. The appellant is held entitled to continuance on the post of PET in the School, with service counted from 14.05.1994. As a sequel thereto, all consequential benefits, to be determined as per records, shall flow.

24. The appeal stands allowed in the afore-mentioned terms. No order as to costs.

25. However, for complete justice, we cannot leave Respondent No.5 in the lurch, given the time taken by the adjudicatory process. As such, in exercise of power under Article 142 of the Constitution of India, we direct the State of Odisha to grant a lump-sum of INR 3 lakhs to Respondent No.5. Further, if any monies were paid to Respondent No.5, the same shall also not be recovered.

This paragraph shall not constitute precedent."

6.4. The re-fixation of pay is continuous wrong. (Ref: W.P.(C) 4294/2021 titled *Civil Audit Association, Category-I (Sr. Audit Officers And Audit Officers) & Ors. Versus Comptroller And Auditor General Of India & Ors* 2021 SCC OnLine Del 2697. decided on 07.04.2021 by the

Hon'ble High Court of Delhi.)

6.5. Reliance has been placed by the respondents on the decision rendered in OA No.1817/ 2019 (supra) wherein the issue pertained to stepping up of pay and the case was rejected on the ground that there was no challenge to the fact that the difference has arisen due to fixation of pay after 5th pay commission which had repelling effect on fixation of pay at the time of implementation of 6th pay Commission.

6.6. We find that even though the respondents have relied on the fact that the option was given to the applicant to be exercised at the relevant point of time, i.e. on 24.01.2006 and the applicant did not exercise such an option, however, no such option form has been brought on record by the respondents. Since, there is nothing on record to establish the factum of exercising the said option, even at a belated stage, the applicant cannot be denied his legitimate right on this ground only.

7. CONCLUSION:

7.1. In view of the aforesaid analysis, we allow the present OA and set aside the office order dated 14.07.2022. Accordingly, we direct the respondents to allow the applicant to exercise an option for re-fixation of his pay within a period of 30 days from the receipt of a certified copy of this order. Upon exercise of such an option by the applicant, the respondents shall pass appropriate orders for re-fixing his last pay and pension and, thereafter, also pass appropriate order(s) granting consequential relief(s) purely on notional basis. The applicant has since retired on 31.03.2022, therefore, he shall be entitled to revised pension and arrears thereto."

7. Aggrieved by the aforesaid order, the Delhi Police, through the Commissioner of Police and the DCP, have approached this Court by means of the present writ petition, under Article 226 of the Constitution of India.

8. We have heard Mr. Ashish Dixit, learned Standing Counsel for the petitioner and Mr. Ritank Kumar, learned counsel for the respondent, at some length.

9. Mr. Dixit reiterated the contentions advanced by the petitioner as the respondent before the Tribunal. He has drawn our attention to the order dated 24 January 2006, which we deem appropriate to reproduce in extenso :

"Order

In pursuance of Ministry of Personnel Public Grievances and Pension Department of personnel and Training , New Delhi's O.M. no, 35034-1/97-ESTT (D) dated 9.8.99, a Screening Committee was constituted under the Chairmanship of Addl Commissioner of police, Special cell/SB with Dy Commissioner of Police/SB and DCP/Special cell, Delhi as members to grant promotional scaled under the Assured Career Progression scheme to HCs/Constable (Ex./Dvr./ Min.) as empowered by the Commissioner of Police, Delhi vide memo. No. 18191-240/

P.Br.PHQ (ACP Scheme) dt.4.7.2002.

As per the recommendations of the screening Committee, the following HCs/ Constable(Ex./DVR/Min.) are hereby granted next higher pay scales as noted below W.e.f. 09.08.99 or from the date of completion of the eligibility period (i.e. 12/24 years of service) whichever is later under the guidelines/provisions as envisaged in para-3 of the Ministry of Personnel Public Grievances and Pension Department of Personnel and Training, New Delhi's O.M. NO. 35034-1/97- Estt.. (D) dt. 9.8.99:-

Head Constable(MIN)

GRANTED SCALE TO THE FOLLOWING RS. 4000-100-6000:-

Sl No.

Rank, Name & No.

PIS NO.

DATE OF ACP SCHEME GRANTED

1.

HC(Min.) Sunil Kr, 35/SB

27920053

2.11.204

Head Constable(Ex.)

GRANTED SCALE TO THE FOLLOWING RS. 4000-100-6000:-

Sl No.

Rank, Name & No.

PIS No.

Date of ACP Scheme granted

1.

HC DHARAMBIR, 263/SB

28800455

1.7.2004

2.

HC SURENDER, 318/SB

28800597

3.10.2004

3.

HC RAM JANAM SINGH 199/SB

28800722

3.10.2004

4.

HC NIRPAL SINGH 138/SV

28800785

16.10.2004

5.

HC WARYAM SINGH 125/SB

28800785

16.10.2004

6.

HC SHYAM SINGH 296/SB

28800805

1.12.2004

7.

HC ROHTASH KR. 284/SB

28800896

1.12.2004

8.

HC RAKESH KR, 293/SB

28800975

1.12.2004

9.

HC OMBIR SINGH 183/SB

28800909

1.1.2005

10.

HC SHIV KUMAR 119/SB

28810134

1.1.2005

11.

HC BALJIT SINGH, 116/SB

28810197

1.1.2005

12.

HC JAI PARKASH, 202/SB

28810810

1.1.2005

13.

HC JAGDISH CHAND, 232/SB

28810236

1.1.2005

14.

HC DHARAMBIR SINGH, 368/SB

28780172

26.9.2003

Head Constable(Ex.)

GRANTED SCALE TO THE FOLLOWING RS. 3200-85-4900:-

SI No.

Rank, Name & No.

PIS No.

Date of ACP Scheme granted

1.

Const. Jai Prakash, No.

369/SB

28891649

5.8.2003

2.

Const. Harish Kr, 226/SB

28930997

31.3.2005

3.

Const. RAM PRATAP MEENA, 418/SB

289318003

31.5.2005

4.

Const.

NARENDRA KR, 349/SB

28911173

17.3.2004

Constable(DRIVER)

GRANTED SCALE TO THE FOLLOWING RS. 4000-100-6000:-

Sl No.

Rank, Name & No.

PIS No.

Date of ACP Scheme granted

1.

Const. Krishan Kr, 448/SB

28893510

7.12.2001

The following Constables/HC (Ex.) who are not been found eligible/fit for promotional scale are not been granted the higher as they do not fulfill the required condition of Delhi Police (promotion and confirmation) Rules, 1980 due to their indifferent service records. Their names will be taken into consideration as and when their case become due for eligibility:-

1. HC Braham Pal,,No. 170/SB

2. HC Ranvir Singh,,No. 321/SB

3. Ct. Bijender Singh, 266/SB

The financial upgradation under the ACP Scheme shall be purely personal to the

employee and shall have not relevance to his seniority position, as such; there shall be not additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay scale under the ACP Scheme.

On upgradation under the ACP Scheme, pay of an employee shall be fixed after obtaining option under the Provisionals of FR-22(I)

(a) (I) subject to a minimum financial benefit of Rs. 100/- as per the department of personal and Training office memo, No, 1/6/97-Pay-I dt. July 5, 1999. The Financial benefit allowed under the ACP scheme shall be final and no pay fixation benefit shall accrue at the time to regular promotion i.e. posting against a functional post in the higher grade.

S/D

SHYAM SINGH

ADDL. DY. COMMISSIONER OF POLICE

SPECIAL BRANCH: DELHI

SIP/OB

NO. 510-540 / CR-III (SB) DATED, DELHI, THE 24/1/2006

Copy forwarded for information and necessary action to:-

1. DCP/Headquarters(Estt.), Delhi,
2. ACP/HQ/SB & Special Cell/SB,
3. ACsP/West, Central, North West, Y & S, North East/Zone/SB to inform their concerned staff.
4. ACP/Coml. to inform HC Nirpal singh, No. 138/SB.
5. S0s/PAs to Addl,CP/SB, DCP/S3 and Addl,DCP/SB to inform their concerned.
6. SOs/PAs to DCP/Special Cell to inform HC Ranvir Singh, no, 321/8B.
7. I/C M,T. to inform Constable(Driver) Krishan Kumar, No, 448/SB,
8. Inspr/NDR, NR/OC and CSS/Special Cell /SB to inform their concerned staff.
9. Accountant/SB to inform HC Ombir Singh, No, 183/SB.
10. Inspr/control Room/SB to inform HC Baljit Singh, No. 116/SB and HC Braham Pal, No. 170/SB.
11. Inspr/Political /SB to inform HC Shyam Singh, No, 296/SB.
12. Inspr/Admn./sB to inform Const, Bijender singh, 266/SB.
13. I/C Photo section/SB to inform HG Dharambir Singh, 368/SB. 14. I/C NGO/SB

to inform HC Ram Janam Singh, No. 199/SB.

15.I/C /Microfilm section/SB to inform HC shiv Kumar, No, 119/SB.

16.I/C General Branch/Special Cell to inform HC Sunil Kr., No, 35/SB.

Note:

All the Police personnel to whom ACP Scheme granted may be informed accordingly and asked them to send their option for fixation of pay whether they want to get their pay fixed after granting the annual increment or on the date of granting ACP Scheme. The option may be sent to this office within one month."

10. Mr. Dixit's submission is that the requirement of the Note towards the end of the aforesaid order was satisfied once the order itself was communicated to the Heads of the Officers where the concerned officers were posted. He draws our attention to the fact that the office where the respondent was posted was mentioned at S. No. 5 of the list of offices to which copies of orders had been marked and with a direction to inform the concerned officials in that office. He submits that there were 14 persons similarly situated to the respondent who were in the said office and there was a presumption that all of them had been informed of the order.

11. Mr. Ritank Kumar has pointed out that, in the list of persons to whom copies of the aforesaid order dated 24 January 2006 had been marked, names of eight of the officers whose pay had been refixed by the said order individually find place towards the conclusion of the order where the copies of the order have been marked to various Branches.

12. Mr. Dixit points out that this was because those eight officers were posted in cells in which they were the only officers who had been extended the benefit of pay fixation under the ACP Scheme by the said order. Where there was more than one officer in a particular Cell, the copy of the order had been marked to the Head of that particular Cell.

13. Mr. Ritank Kumar, on the other hand, submits that no such presumption can exist in law. He submits that in fact his client was never informed of the aforesaid orders. He has also placed reliance on the judgment of a Division Bench of this Court in *SI Daya Chand v State* (2022) SCC Online Del 3993. We deem it appropriate to reproduce paras 14 to 18, 27 to 30 and 34 of the said decision :

"14. Learned counsel for the petitioner refers to the O.M. dated 12.12.1997 of the DoP&T, which is extracted hereunder: —

"The undersigned is directed to invite a reference to this Department Office Memoranda cited in the margin and the saving clause of F.R. 22(I)(a)(i) on the above subject. In terms of these orders and the rule quoted above, in all cases except in cases of appointment on deputation to an ex-cadre post or to a post on ad hoc basis, the Government Servant subject to the fulfilment of the eligibility conditions as prescribed in the relevant recruitment rules, on his appointment to

another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, has an option from the date of promotion or appointment as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage on a time scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be re-fixed in accordance with this rule on the date of accrual of next increment in the scale of lower grade or post. In the order of appointment or promotion a clause to this effect is required to be incorporated. Some instances have, however, come, to the notice of the Department where the administrative Ministries/Departments etc. have failed to incorporate such a clause in the promotion order resulting in the requests from the promoted officers at a subsequent stage for condonation of delay in exercise of option for fixation of pay. It has, therefore, been decided to reiterate these instructions to ensure that in the order of promotion/appointment covered by F.R. 22(I)(a)(i) clause should invariably be incorporated to this effect with a view to avoiding undue hardship to the officials as well as unnecessary references to this Department."

(emphasis supplied)

15. Learned counsel submits that the aforesaid O.M. mandates that a clause in the appointment or promotion order regarding option for fixation of pay is to be incorporated. He further submits that the respondents not having offered the aforesaid option to the petitioner committed infraction of the aforesaid O.M., warranting judicial interference.

16. Learned counsel for the petitioner also refers to the letter dated 06.06.2014, emanating from the Office of the Commissioner of Police, whereby 72 Inspectors were offered the option of re-fixation of pay at the time of their respective promotions. In particular, learned counsel refers to para 3 as well as the penultimate paragraph of the letter dated 06.06.2014, which is extracted hereunder:

"3. At present 72 similarly placed Inspectors (18+54) have intended for the benefit of fresh option to re-fix their pay.

It is, however, requested that the opportunity of exercising fresh option may kindly be granted to all such Inspectors either retired or in service but has not availed the benefit of option at the time of promotion in the rank of Inspectors (Exe) i.e. 18.08.1994"

17. Respondents have not denied this letter. On the basis of this, learned counsel submits that the option was given to the Inspectors even after the passage of 20 years. He, therefore, contends that the discrimination is apparent and it is incumbent upon the respondents to rectify the mistake committed at the time of promotion of the petitioners to the rank of Head Constable by now giving him an

option to seek re-fixation of pay in terms similar to that given to the Inspectors by the above letter.

18. Learned counsel for the petitioner referred to other documents and correspondences including replies to the RTI application submitted by the petitioner to the respondents to buttress his case that petitioner had been continuously following his case for re-fixation of pay with the respondents.

27. The facts as capitulated above are not in controversy. In paras 5.2 and 5.8 of the grounds as raised in the Original Application, petitioner has specifically stated that option was given to others and was not given to the petitioner. This averment has not been denied by the Respondents. Paras 5.2 and 5.8 of the grounds as raised in the Original Application before the Tribunal are extracted hereunder for clarification:

"5.2 Because the impugned action/order passed by the respondents is discriminatory and in violation of Article 14 of the Constitution of India. Admittedly, the respondents have asked for the option with regard to pay fixation from the batch mates/juniors of the Applicant (viz. Prem Prakash) on their promotion to the rank of Head Constable (Exe.) but the Applicant was not given the above mentioned option for his pay fixation on his promotion to the rank of Head Constable. It is submitted that because of the abovementioned inaction on the part of respondents the Applicant could not tendered similar option as was tendered by ASI Prem Prakash wherein he got his pay fixed in the rank of HC (Exe.) after acquiring additional annual increment of the lower rank of Constable. It is again reiterated at the cost of repetition that the respondents have asked option from Prem Prakash for pay fixation and not from the Applicant. It is pertinent to mention that the respondents failed to appreciate if they would have asked for an option from the Applicant as they did in the case of Prem Prakash, then the Applicant definitely awaited to fix the pay of higher post from later date of his actual promotion and drew increased pay of higher post from later date. Therefore, putting the Applicant to financial loss for no fault of his is not only arbitrary but also whimsical. Hence, on this ground alone the impugned order is liable to be quashed and set aside.

5.8 Because the respondents did not appreciate that their action is discriminatory in as much as that they have asked for an option from the batch mates/juniors of the Applicant and not from the Applicant w.r.t. pay fixation on their fixation on their promotion to the rank of Head Constable (Exe.)."

(emphasis supplied)

28. The corresponding para 5.2 and 5.8 of the counter affidavit filed by the Respondents is extracted hereunder:

Reply to 5.2 : That the contents of corresponding para need no comments, as the pay of the applicant was fixed by DCP/2nd BN DAP.

Reply to 5.7 : That the contents of corresponding para are wrong, misleading, misconceived and hence vehemently denied, pay of the applicant on promotion to the rank of HC was fixed by DCP/2nd BN DAP."

Reply to 5.8 : That the contents of corresponding para need no comments, in view of para 5.7 above."

29. It is clear from the above that there is no specific denial to the averments made in the grounds of the Original Application. Moreover, Respondents failed to bring on record anything to substantiate that the option of pay fixation was to be exercised by the Petitioner on his own volition and was not required or mandated to be offered by the Respondent to the Petitioner at the time of promotion to the rank of Head Constable. Having regard thereto, we are of the opinion that no option for fixation of pay was ever offered to the Petitioner. The discrimination is thus apparent.

30. The contention of the Respondents that there was neither any requirement nor mandate to offer option of pay fixation at the time of promotion as Head Constable is fallacious and is without any substance. This contention is contradicted by the letter dated 06.06.2014, issued by the office of the Commissioner of Police, whereby 72 Inspectors were permitted to exercise fresh option to re-fix their pay subsequently, though the promotions were effected many years ago. Interestingly, the same letter also refers to such option to be made available to all Inspectors, either retired or in service, but have not availed the benefit of the option at the time of promotion to the rank of Inspectors (Exe.) i.e. 18.08.1994.

34. From a perusal of the facts arising in the present case, it is clear that, all that the Petitioner had sought from the Respondents was to make available the option to re-fix the pay scale at the time of his promotion to the rank of Head Constable (Exe.). It was only as a matter of fact and to show apparent discrimination, that the Petitioner referred to the case of Sh. Prem Prakash, who also happened to be his junior."

14. To our mind, the position in Daya Chand is clearly different from that which applies in the case before us. Daya Chand was a case in which the right to exercise the option was not incorporated in the order of re-fixation of pay under FR 22, despite there being a specific requirement of incorporation of the said option. It is essentially on this ground that the Coordinate Bench has found that the right to exercise the option was never communicated to the concerned officials.

15. As against that, in the present case, the option to avail the benefit of the ACP Scheme after the drawing of the next annual increment was made known to the respondent by way of marking of the copy of the aforesaid order of refixation of pay to the Head of the Branch where the respondent was posted. We are unable to accept the plea that each individual officer had to be informed.

16. Besides, with the assistance of Mr. Ritank Kumar, we have gone through the pleadings before the Tribunal. There is no averment, anywhere in the pleadings before the Tribunal by the respondent, to the effect that the order dated 24 January 2006 whereby the respondent's pay was refixed after granting him ACP benefit was never made known to the respondent or that he was unaware of the said order. Awareness of the said order would, needless to say, include, within it, awareness of the option that was provided therein. Moreover, it is difficult for us to believe that, for 16 years after the order was passed, and during which period the respondent continued to draw higher pay on the basis of the grant of the ACP benefit to him in 2006, the respondent remained unaware of the Order by which the benefit was granted.

17. In any event, in the absence of any pleading before the Tribunal that the respondent was unaware of the Order dated 24 January 2006, we are of the opinion that the respondent could not, 16 years after that Order was passed, seek to avail the benefit of the option which was provided in the said Order, having initially failed to avail that benefit within the period of one month which was permitted in that regard.

18. In our opinion, the respondent was not justified in belatedly, after he had retired from service, seek the benefit of the option, which was made available to him 16 years prior thereto, to advance the ACP benefit after the next annual increment had been granted to him. The respondent clearly missed the bus, and 16 years have passed since then.

19. Besides, we find that the Tribunal has also acted in excess of the jurisdiction in extending the date for exercise of the aforesaid option. The choice of exercising the option was made available in 2006. The option was required to be exercised within one month thereof. The Tribunal could not, 18 years thereafter, have extended the time for grant of said option.

20. We, therefore, are of the opinion that the Tribunal erred in allowing the respondent's OA. The respondent was clearly not entitled to his belated claim for being permitted to exercise the option for availing the ACP benefits after drawing of his next annual increment, which was made available to him in 2006, 16 years thereafter.

21. Accordingly, the impugned judgment dated 24 September 2024 passed by the Tribunal in OA 3371/2022 is quashed and set aside.

22. The writ petition is allowed in the aforesaid terms, with no orders as to costs.