

**(2022) 07 DEL CK 0121**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 7792 Of 2020

Devender Pal Singh And Ors.

APPELLANT

Vs

Union Of India And Ors.

RESPONDENT

**Date of Decision :** 29-07-2022

**Acts Referred:**

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

**Citation :** (2022) 07 DEL CK 0121

**Hon'ble Judges :** Suresh Kumar Kait, J;Saurabh Banerjee, J

**Bench :** Division Bench

**Advocate :** Ankur Chhibber, Avnish Singh

**Final Decision :** Allowed

## Judgement

Suresh Kumar Kait, J

1. The ninety one petitioners in the present petition, who are Assistant Sub-Inspectors (ASI) in Central Industrial Security Force (CISF), are seeking quashing of order dated 19.08.2020 or any other similar orders, whereby their representations seeking correct fixation of pay w.e.f. 01.01.2006, has been rejected. Petitioners claim that w.e.f. 01.01.2006, they were granted first financial upgradation to the pay scale of the ASI and, therefore, while seeking parity with petitioners in Vinoj V.V. Vs. Union of India & Ors. 2018 SCC OnLine Del 12714; W.P.(C) 4854/2020, titled as Krishan Kumar & Ors. Vs. Union of India & ors. and W.P.(C) No. 4905/2020, titled as Malkhan Singh & Ors. Vs. Union of India & ors. wherein by virtue of decisions dated 30.11.2018; 04.08.2020 and 05.08.2020 respectively, they are seeking a direction to the respondents to re-fix their pay with basic pay of Rs.8,560/- plus Grade Pay of Rs.2,800/- i.e. Rs.11,360 w.e.f. 01.01.2006.

2. It is averred in the petition that the factual matrix of the case with regard to all the petitioners is more or less similar, therefore, the facts pertaining to petitioner No.1- Shri Devender Pal Singh be considered in the present petition.

Thus, the present petition is being heard and decided on the facts contended on behalf of petitioner No.1- Devender Pal Singh.

3. According to petitioner, he had joined the services of CISF on the post of HC-DCPO in the year 1993 in the pay band of Rs.975-25-1150-30-1660. In the year 1999, by virtue of notification dated 01.08.1999, two financial up-gradations on completion of 12 years and 24 years were granted. In the year 2005, the petitioner was granted first financial upgradation under Assured Career Progression (ACP) in the rank of ASI and pay scale of Rs.4000-6000 was granted and with one notional increment and his basic pay was fixed at Rs.4,200/-. For the purpose of implementation of recommendations under the Sixth Pay Commission, petitioner's pay was counted as Rs.4,300/- which after applying multiplier of 1.86 was fixed to Rs.8,000/- plus Rs.2,800/- grade pay.

4. Petitioner has claimed that subsequent to implementation of recommendations under the Sixth Pay Commission, the entry grade for the rank of ASI was fixed at Rs.5200-20200 with grade pay Rs.2,800/- and was fixed at Rs.8,560/-. It is submitted that the salary of new entrants recruited in the force pursuant to recommendations of the Sixth Pay Commission was fixed at Rs.8560/- plus grade pay of Rs.2,800/- i.e. Rs.11,360/-; whereas after rendering service of 13 years, petitioner's salary was fixed with the basic of Rs.8,000/-. The grievance raised by petitioner in the present petition is that the entry pay for the rank of ASI is Rs.5,200-20200 with grade pay Rs.2,800/- and the entry grade pay is Rs.8560/-, however, his basic pay has been fixed at Rs.8000/- on the basis of entry grade pay, which is lower than the prescribed limit for rank of ASI. It is claimed that as per CCS(RP) Rules, 2008, the revised pay band of ASI is Rs.5,200-20200 with grade pay Rs.2,800 and therefore, the entry grade pay for the rank of ASI is Rs.8,560/-.

5. Petitioner has further averred that even pursuant to grant of 2nd MACP in the year 2014 in the pay band of Rs.35,400-1,12,400 for the post of SI, his fixation was incorrectly done and he was granted basic pay of Rs.50,500/- whereas the direct recruits were granted the pay band with basic pay of Rs.52,000/-. The petitioner claims to have raised the aforesaid grievance before the competent authority by filing a representation, which was rejected by the respondents vide order dated 19.08.2020 primarily stating that the petitioner was not directly recruited to the rank of ASI after 01.01.2006, so he is not entitled to entry level pay as per the provisions of OM No. 8-23/2017-E.III dated 28.09.2018.

6. During the course of hearing, learned counsel appearing on behalf of petitioners submitted that due to incorrect fixation of pay, petitioner No.1 as well as other petitioners, have suffered grave loss and by rejecting the representation of the petitioner due to which, they have been deprived of their legitimate right of getting their pay correctly fixed under the CCS Rules. Attention of this Court was drawn to decision of another Division Bench of this Court in Vinoj V.V. (Supra), which has further been relied upon in decisions in Krishan Kumar (Supra) and Malkhan Singh (Supra) in support of this case.

7. Reliance is also placed upon decision of Hon'ble Supreme Court in State of Uttar Pradesh and Others Vs. Arvind Kumar Srivastava and Others (2015) 1 SCC 347 to submit that all similarly situated should be treated similarly and the benefits granted vide aforesaid judgments of this Court, ought to be granted to the petitioners. Reliance is also placed upon decision of this Court in Shashi Ranjan Kumar Vs. Union of India 2019 SCC OnLine Del 7323 wherein while relying upon decision in State of Uttar Pradesh, this Court fixed the notional seniority with reference to the merit position as per the list in their respective examinations. Lastly, it was prayed that the impugned order dated 19.08.2020 rejecting petitioners' representation be quashed and his correct fixation of pay be done with basic pay of Rs.8,560 + Rs.2,800 i.e. Rs.11,360/- w.e.f. 01.01.2006, which is entry grade for the rank of ASI.

8. On the other hand, the stand of respondents in the counter affidavit is that petitioner had initially joined in the rank of Head Constable on 09.01.1993 in the pay scale of RS.975-25-1150-EB-30-1660 and his pay was fixed at Rs.3,285/- from the date of his appointment. Consequent upon implementation of CCS (RP) Rules, 1997, his salary was fixed in the corresponding pay scale of Rs.3200-85-4900. Further, he was granted pay scale of Rs.4000-100-6000 to the promoted post of ASI/Fire under ACP Scheme w.e.f. 09.01.2005 and his pay was fixed at Rs.4200/-, with date of 01.01.2006 for the next increment. Consequent upon implementation of the CCS (RP) Rules, 2008, the corresponding pay scale of PB-15200-20200 + GP Rs.2800/- was extended by up-grading the existing pay scale of Rs.4000-100-6000 to Rs.4500-125-7000 and accordingly, the pay of the petitioner was fixed at Rs.8000/- by multiplying the existing basic pay of Rs.4300/- with the factor of 1.86, rounding off the resultant figure to the next multiple of ten, was also granted grade pay of Rs.2800/- of the up-graded pay scale of Rs.4500-125-7000 as per the provisions.

9. It is further contended in the counter affidavit that in terms of provisions of Section-II of Part-A of CCS (Rules), 2008, the direct recruits appointed on or after 01.01.2006 in PB-1 were granted entry pay in the revised pay scale of Rs.5200-20200 + GP Rs.2800 and their entry pay were fixed as Rs.8560/- + GP Rs.2800/- from the date of appointment, whereas the Government servants who are in service prior to 01.01.2006 in the pay scale of Rs.4000- 100-6000/ 4500-125-7000 and drawing basic pay of less than Rs.4600/-, drew pay of Rs.8560/- w.e.f. 01.01.2006 in the revised pay scale. It is contended that though Govt. of India, Ministry of Finance (Dept. of Exp.) vide their Office Memorandum (OM) No.8-23/2017-E.III A, dated 28.09.2018 decided to step up the pay of senior at the entry level pay stating that if the pay of Central Government employees who were appointed prior to 01.01.2006, their pay shall not be less than the prescribed entry pay as per the provisions of Section-II of Part-A of First Schedule of COS (RP) Rules, 2008, subject to the condition that there is provision of the element of direct recruitment in the recruitment rules. Since petitioner was not directly recruited the post of ASI and has been promoted under the Assured Career Progression Scheme w.e.f. 09.08.1999, therefore,

petitioner cannot be given benefit of OM dated 28.09.2008. It is further averred that Department of Personnel and Training, vide OM No.35034/3/2015-Estt(D) dated 08.09.2020 and OM dated 28.09.2008, on the aspect whether its benefit could be extended to cases where financial upgradation has been granted under ACP scheme till 31.08.2008 or MACP scheme on or after 01.09.2008 in the same grade pay, which is applicable for promotion post and has an element of direct recruitment and whether the employee has been subsequently promoted on or after 01.01.2006; the pay fixed under the ACP/MACP is final; has clarified the benefit of entry level pay prescribed for direct recruits, cannot be allowed at the time of financial up-gradation under the ACP scheme between 01.01.2006 to 31.08.2008 or MACP scheme from 01.09.2008 to 31.12.2015. Thereby, where promotion is between 01.01.2006 to 31.12.2015 with an element of direct recruitment, the benefit of re-fixation under OM dated 28.09.2018 shall be extended to the employees from the date of their regular promotion at the stage minimum equivalent to the minimum entry level pay.

10. Learned Senior Panel Counsel appearing on behalf of respondents submitted that the petitioner was granted financial upgradation in the pay scale of Rs.4000-100-6000 (Upgraded to Rs.4500-125-7000) w.e.f. 09.01.2005 and was promoted to the rank of Asstt. Sub Inspector/Fire w.e.f. 14.11.2014 (F.N.) and his basic pay was fixed at Rs. 11810 + GP Rs.4200/- w.e.f. 01.07.2014; and after the second financial upgradation under the MACP scheme i.e. on completion of 20 years, his salary was fixed in PB-2 Rs.9300-34800 + Grade Pay Rs.4,200/- and since the petitioner was drawing basic pay over and above the entry pay of Rs.8,560/- on the date of his promotion, the petitioner is not entitled to any benefit under the OM dated 08.09.2020.

11. Learned Senior Central Government Counsel also submitted that since the petitioner was already drawing basic pay over and above the entry pay of Rs.8560/, the decisions in Vinoj V.V. (Supra) is of no assistance to the case of petitioner, as the petitioner was drawing the pay scale of ASI/Fire under the ACP Scheme and he is only entitled for entry pay of Rs.8,560/- plus Grade Pay of Rs.2,800 from the date of his promotion in November, 2014, so he is not entitled to benefit of OM dated 08.09.2020. Thus, dismissal of the present petition is sought.

12. In rebuttal, learned counsel for petitioner submitted that the petitioners pay ought to have been fixed at the entry level basic pay for the rank of ASI as per recommendation of the Sixth Pay Commission i.e. Rs.11,360/- in the pay scale Rs.5200-20200+ Grade Pay of Rs.2800/- since the entry grade for the said pay scale is Rs.8560/-. However, the pay of the petitioner was fixed by wrongfully applying the 1.86 multiplier, which led to fixation of his basic pay at Rs.4300 x 1.86= Rs.10,800/- which was less beneficial than it would have been fixed at Rs.11,360/- w.e.f. 01.01.2006 for all future intents and purposes/consequential benefits.

13. Learned counsel for petitioner submitted that in terms of Para-8 of OM dated

28.09.2018, even those Central Government employees who were appointed to the post in question on or after 01.01.2006 and whose pay was fixed under Rule 13 is lower than the entry pay for the post in question, shall also not be less than the said entry pay and shall be brought at par with such entry pay which has not been done in the present case. It is contended pursuant to decision of this Court dated 23.03.2017, in W.P.(C) No. 2634/2017, titled as "Government of NCT of Delhi Vs. Somvir Rana", the aforesaid Para-8 of OM dated 28.09.2018 was included to deal with the anomaly that has arisen in the present writ petition. With regard to contention of respondents that the relief sought in the present petition is not tenable since the post in question i.e Assistant Sub Inspector is not a direct entry post, is wholly misconceived, as it is the question which has already been determined by this Court in Somvir Rana (Supra) as well as Vinoj V.V. (Supra).

14. The learned counsel representing both the sides were extensively heard and the material placed on record as well as decisions cited have been carefully perused.

15. It is settled position of law that the personnel holding the similar posts and responsibilities, cannot be discriminated and are entitled to get similar pay and allowances. However, at the same time it has to be ensured that sufficient material is placed on record to establish that all other relevant facts are fulfilled. Pertinently, the grounds urged in the present petition are identical to the one raised in Vinoj V.V. (Supra).

16. In Vinoj V.V. (Supra), due to restructuring of posts in CISF, post of Constable being an entry level post, the post of Head Constable became a promotional post and the Head Constables were granted basic pay of Rs.7,510/- with grade pay Rs.2,400/- across all the branches w.e.f. 01.01.2006. The petitioners therein had raised grievance that the directly recruited constables, who were granted MACP were getting basic pay of Rs.7,510/-, whereas the petitioners who were senior were getting the basic pay of Rs.6,750/- instead of basic of Rs.7,510/- and thus, there were two classes of employees. In the said case, the stand of respondents was very much similar, which is noted as under:-

"8. Learned counsel for the Union of India, on the other hand, refers to the Office Memorandum dated 28th September, 2018 issued by the Department of Expenditure, Ministry of Finance, Government of India with regard to a similar issue arising in the context of the Revised Pay Rules where it is clarified that the stepping up of a pay would not be available where there is no element of direct recruitment in the post is concerned. Reference is also made to a corresponding circular dated 5th November, 2018 issued by the Director General, CISF where again, with the approval of the Ministry of Home Affairs ('MHA'), a similar rider was added. He submitted that since in the present case, the post of HC was a promotional post and no longer had an element of direct recruitment. Further, after 1st January 2006, no HC was directly recruited. Therefore, according to him, the benefit of stepping up of pay scales would not be available."

17. The court in Vinoj V.V. (Supra), in answer to the above, had referred to Paras-2, 3 & 8 of the OM dated 28.09.2018 and held that by the said OM, the decision in Somvir Rana (Supra) was accepted and so, "the pay of Central Government employees, who were appointed to their posts by way of promotion on or after 01.01.2006 and those, whose pay as fixed by the revised pay rules happens to be lower than the entry pay, shall also not be less than such entry pay from the date of their promotion taking place on or after 01.01.2006."

18. Moreover, it is not disputed by either side that the decision in Vinoj V.V. (Supra) has already attained finality, as the Special Leave Petition filed against it stands dismissed by the Hon'ble Supreme Court.

19. In the case in hand, the petitioner had initially joined in the rank of Head Constable and was granted pay scale of Rs.4000-100-6000 to the promoted post of ASI/Fire under AGP Scheme w.e.f. 09.01.2005. In the year 2006, subsequent upon recommendations of Sixth Pay Commission, the pre-revised basic pay of petitioner was taken as Rs.4,300/- which was multiplied with 1.86 i.e. Rs.7,998/- and hence, his pay was fixed at Rs.10,800/-. According to CCS (RP) Rules, 2008, the revised pay band of ASI in CPMFs is Rs.5200-20200 with grade pay being Rs.2,800/-, for which entry pay is Rs.8,560/-, however, petitioner's basic pay was fixed at Rs.8,000. Consequentially, pursuant to grant of 2nd MACP in the year 2014 in the pay band of Rs.35,400-1,12,400 for the post of SI, his fixation was incorrectly done and he was granted basic pay of Rs.50,500/- whereas the direct recruits were granted the pay band with basic pay of Rs.52,000/-.

20. For the afore-going reasons, the present petition is allowed. The respondents are directed to fix the basic pay of petitioners at par with direct recruits w.e.f. 1.01.2006 within six weeks and further to pay the arrears with interest @6% p.a. within four weeks, failing which the respondents shall be liable to pay interest @9% p.a. on the delayed payment.

21. The writ petition is allowed with aforesaid directions and is accordingly disposed of.