

(2014) 05 DEL CK 0083

In the Delhi High Court

Case No : WP (C) No. 2615/2014 And CM No. 5422/2014

Gulshan Sharma

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : (2014) 144 DRJ 42

Hon'ble Judges : Reva Khetrapal, J;Pratibha Rani, J

Bench : Division Bench

Advocate : Ankur Chhibber, Advocate for the Appellant; Himanshu Bajaj, Advocate for the Respondent

Judgement

Reva Khetrapal, J.

WP(C) No. 2615/15

1. The present writ petition has been filed challenging the order dated November 28, 2013 passed by the Deputy Inspector General of Police, CRPF illegally and erroneously re-fixing the pay of the petitioner to his detriment; as well as the action of the respondents in seeking to recover amounts from his salary pursuant to the pay re- fixed vide the aforesaid order.

2. The relevant facts are that pursuant to the recruitment drive held in the year 2003, the petitioner joined the CRPF in the rank of Head Constable (Min.) on August 08, 2003 and upon joining the force, the petitioner was given a pay scale of Rs. 3200-85-4900 and accordingly the basic pay of the petitioner upon joining the force was fixed at Rs. 3200/-. Pursuant to the annual increments earned, the petitioner as on August 01, 2005 was drawing the basic pay in the sum of Rs. 3370/- per month. However, pursuant to the recommendations of the 6th Central Pay Commission notified vide Gazette Notification No. F.1/1/2008-IC dated July 21, 2009, Pay Band-I in the pay scale S-6 of Rs. 3200-85-4900 (i.e. petitioner's pay scale) was revised to Rs. 5200-20200 with Grade Pay of Rs. 2000/-. Resultantly, the pay in the post pertaining to the petitioner, that is, the post of

Head Constable in CPMFs was revised to Rs.4000-6000/- with Grade Pay of Rs. 2400/-. The afore-mentioned revised pay structure is set out in Part "C" of the First Schedule of the CCS (Revised Pay) Rules, 2008.

3. The pay of the petitioner was accordingly re-fixed by the concerned Group Centre and audited by IAP-III as Rs. 7510/- with Grade Pay of Rs. 2400/- thereby amounting to a sum of Rs. 9910/- (total Rs.7510+2400/-) with effect from January 01, 2006. Consequent to re-fixing of the pay and further in consequence to the increments earned by the petitioner and the promotion of the petitioner to the rank of ASI (Min.) , on July 01, 2009, the pay of the petitioner was fixed at Rs. 13,410 (Rs. 10610 + 2800) with effect from July 01, 2013.

4. Suddenly and arbitrarily, without giving any show cause notice, respondent No. 2 passed an order dated November 28, 2013, revising pay fixation of the petitioner as per memorandum dated October 07, 2013 and fixing the pay of the petitioner at Rs. 8670/- with effect from January 01, 2006.

5. Subsequent to the order dated November 28, 2013, once again without issuing any show cause notice to the petitioner, the respondent No.2 made deductions from the pay of petitioner in accordance with the revised pay structure detailed in the said order. Aggrieved by the order dated November 28, 2013 as well as the deductions from his salary, the petitioner has filed the present writ petition.

6. Learned counsel for the petitioner contended that the pay of the petitioner could not be fixed at less than Rs. 9910/- on account of the fact that pursuant to the recommendations of the 6th Central Pay Commission and as reflected in the CCS (Revised Pay) Rules, 2008, the Entry Pay in the revised pay structure for direct recruits appointed on or after January 01, 2006 in Pay Band-1 (Rs. 5200-20200/-) was fixed at Rs. 7510/- with Grade Pay of Rs. 2400/- totaling to a sum of Rs. 9910/-.

7. Learned counsel for the petitioner highlighted the fact that no request was ever made by the petitioner seeking re-fixation of pay nor was there any misrepresentation on his part at the time of the fixation of his pay and as such the respondents were bound to serve a notice upon the petitioner before again re-fixing the pay of the petitioner to the petitioner's detriment. Even otherwise, once pay had been fixed by the respondents, no recovery could have been made except in accordance with law, which necessitated serving a show cause notice before effecting any recovery.

8. On the aspect that recovery has generally been prohibited by Courts where there is no misrepresentation or fraud on the part of the employee and excess payment has been made by applying a wrong principle in calculating the pay/ allowance or on the basis of a particular interpretation of a rule/order, which is subsequently found to be erroneous, reliance was placed by learned counsel for the petitioner upon the decisions of the Apex Court reported as Syed Abdul Qadir

and Others Vs. State of Bihar and Others, ; and Col. (Retd.) B.J. Akkara Vs. The Govt. of India and Others, .

9. The learned counsel for the petitioner also contended that the present case is squarely covered by a Division Bench judgment of this court in WP(C) No. 4295/2011 titled B.D. Dubey and Ors. Vs. Union of India and Ors. wherein the Court observed that if any action was intended by the respondents to place the petitioner in a lower pay band, a show cause notice was required to be issued containing the reasons for the tentative decision taken by the respondents. Only after affording an opportunity of hearing could any decision be taken and no recovery could be effected till then. The relevant paragraphs of the said judgment read as under:-

"4. Be that as it may, the fact of the matter remains that having placed petitioners in a particular pay scale and having paid salary each month to the petitioners as per the pay scale, without any show cause notice being issued not only is the scale of pay in which the petitioners were placed downgraded but recoveries are sought to be made.

5. Two issues need to be adjudicated. Firstly, whether the petitioners' pay scale can be downgraded and secondly, if it is held that the pay scale can be downgraded, whether recoveries can be made.

6. The first requires an adjudication, post issuance of a show cause notice to the petitioners. The second issue requires a debate on the point:

Having paid salary to the petitioners at a pay scale higher than what was due to them and the petitioners not playing any fraud or making misrepresentation when the pay scale was fixed and having received salary on the assurance that it belongs to them and thus having spent the same, whether estoppel would bar the respondents from urging to the contrary and effect recoveries.

7. Noting that the respondents have not issued any show cause notice to the petitioners and also further noting that the Director General CRPF, the Highest Executive Authority of the CRPF is prima facie of a view which is being projected by the petitioner, we dispose of the writ petition quashing the impugned signals dated 20.5.2011 and 31.5.2011. We direct that petitioners would continue to draw pay and allowances in the Pay Band-I i.e. Rs.5,200-20,200/-with grade pay Rs.2,400/-.

8. If respondents intend to take any action to place the petitioners in a lower pay band, show cause notice would be issued containing the reasons for the tentative decision taken by the respondents. Petitioner would be given an opportunity of being heard. Decision would be taken. Needless to state no recoveries shall be effected till then."

10. The primal question for consideration in the present case is: Whether the pay of the petitioner having been re-fixed pursuant to the recommendations made by the 6th Central Pay Commission could have been revised by the respondents to

the detriment of the petitioner without even issuance of a show cause notice to the petitioner. The other question which requires consideration is: Whether the excess amount (if any) paid to the petitioner, not having been paid on account of any mis-representation or fraud on the part of the petitioner, but on account of mis-calculation of the pay of the petitioner, which was subsequently found to be erroneous, whether the respondents can recover the said amount unilaterally and even without issuance of show cause notice to the petitioner.

11. The answers to the aforesaid questions, in our considered opinion must be in the negative on both counts. The action of the respondents impugned in the present writ petition, in our view, cannot stand scrutiny and smacks of arbitrariness.

12. In the result, we allow the writ petition quashing the impugned order dated 28th November, 2013 with a direction to the respondents that the petitioner 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/- thereby amounting to a sum of Rs. 9910/-, with effect from January 01, 2006.

13. Needless to state that if the respondents intend to take any action to re-fix the pay of the petitioner to the detriment of the petitioner, a show cause notice would be issued containing the reasons therefor and a decision would be taken thereon after giving an opportunity to the petitioner to be heard. No recoveries shall be effected from the petitioner till then.

14. Writ Petition is allowed in the above terms.

15. No costs.

CM No.5422/2014 (for stay)

The application is dismissed being infructuous.