

(2012) 08 DEL CK 0069

In the Delhi High Court

Case No : Writ Petition (C) No. 7768 of 2011

Satyawir Singh and Others

APPELLANT

Vs

Union of India and Ors

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0069

Hon'ble Judges : J.R. Midha, J;Gita Mittal, J

Bench : Division Bench

Advocate : Yashpal Rangi, for the Appellant; Sunil Kumar and Mr. Rajiv Ranjan Mishra for UOI., for the Respondent

Judgement

1. The instant writ petition has been filed by the 44 Sub-Inspectors/Radio Operators and two Head Constables of the Indo Tibetan Border Police Force (ITBP). Learned counsel for the petitioners submits that in the year 1999, on the recommendation of the 5th Central Pay Commission, the Government of India had formulated the Assured Career Progression Scheme granting employees a next higher scale of pay on completion of 12 and 24 years of regular satisfactory service in one force. In terms of this scheme, the petitioners were conferred the first financial upgradation consequent upon their completing 12 years of regular satisfactory service in the period. They continued to enjoy the benefits of this financial upgradation between the period 2002 to 2008. The grievance of the petitioners is that the respondents were considering introduction of the rank of the Additional Sub-Inspector in the combatised cadre in the Central Para Military Force. In this background, an order was passed on 10th May, 2005 to allow the financial upgradation only to Head Constables in the rank of ASI (Rs. 4,000 - Rs. 6,000) in place of Sub Inspectors (Rs. 5,500 - Rs. 9,000). The respondents were under the impression that the force personnel had been given the financial upgradation from the scale of Head Constable to Sub-Inspector mistakenly. As a result of the order dated 10th of May, 2005, the ACP benefits given to Head Constables conferred earlier in the scale of Rs. 5,500 - Rs. 9,000 had been

withdrawn/readjusted and they had been given ACP benefits in the pay scale of Rs. 4,000 - Rs. 6,000 and their emoluments were readjusted.

2. Aggrieved by this action, the ITBP personnel approached various courts including this court by way of writ petitions.

3. The respondents have made the following disclosure of the previous litigation in this court in this regard in their counter affidavit:-

(i) WP(C)No. 12258/2009 titled Prem Singh & Others v. UOI & Others, decided on 9th October, 2009.

(ii) WP(C)No. 7231/2011 titled Parmal Singh & Others v. UOI & Others which was decided on 29th September, 2011.

4. The order of the court dated 29th September, 2011 in Parmal Singh (supra), which was filed in similar circumstances as the petitioners deserves to be considered in extenso and reads as follows:-

WP(C) 7231/2011

1. As far back as on 9.8.2005, allege the writ petitioners, that benefit of ACP granted to them was withdrawn. The result was salary being released to the petitioners in a lower pay-scale and threat of recovery of the stated excess amount paid.

2. Admittedly, the administrative decision taken by the respondents to withdraw the financial benefit was without putting the persons to a notice, much less granting them an opportunity of making a representation.

3. Way back on 9.10.2009, WP(C) No. 12258/2009 Insp. Prem Singh and Ors. vs. UOI and Ors., raising same issue as is raised in the instant writ petition was decided by us requiring respondents to issue a memorandum and serve the same upon the petitioners intimating the reasons on which the ACP granted had been withdrawn. The writ petitioners therein were required to submit a response and the respondents were cast with a duty to pass a reasoned speaking order and communicate the same to the petitioners therein.

4. In para 7 of the decision it was hoped and expected that the respondents would do likewise for all such officers qua whom ACP benefit granted had been withdrawn. It was so observed in para 7 of the order dated 9.10.2009, for the reason, the facts of the said petition made it clear to this Court that a large number of ITBP officers were affected by the action taken.

5. Painfully would we note that the decision on the file taken by the Cadre Controlling Ministry records as under:-

The case pertaining to grant of 1st upgradation to head constables (Rs. 3200-85-4900) and 2nd ACP to constables (Rs. 3050-75-3950-80-4590) in the pay scale of Rs. 5500-9000 in accordance with the then existing rank hierarchy and the provisions of original ACP scheme has been examined in MOF. MOF vide

their ID No. 50402-C/E-III(A) dated 11.04.2011 has agreed to extend the implementation of the courts judgment to only the applicants of the various court cases filed by ITBP personnel as well as other CAPF's where the intermediary rank of ASI in the pay scale of Rs. 4000-6000 (pre-revised) did not exist.

2. ITBP and BSF/CRPF/SSB/AR may please see for information and necessary action. File is returned to ITBP.

6. The note has been signed by Sh. Pritam Lal, Under Secretary (Pr-V).

7. We are pained to note the bureaucratic stand taken by Sh. Pritam Lal, Under Secretary (Pr-V).

8. If a general issue of law affecting large number of persons is decided by a Court and a specific reference is made that the department should consider extending the principle of law declared across the board to all so that others are not forced in litigation, it is expected that the bureaucrat applies himself properly and does not foist litigation on the others.

9. The note extracted herein above says that the Ministry of Finance has agreed to extend the implementation of the Court judgment to only those applicants who approach the Court and not the others.

10. The decision creates an artificial distinction not recognized by law for the reason it would be arbitrary to say that law means "A" for those who go to the Court, and it means "B" for those who do not.

11. While disposing of the writ petition and directing the respondents to treat the mandamus issued vide order dated 9.10.2009 passed in WP(C) No. 12258/2009 as the mandamus issued in the instant writ petition, we censure Sh. Pritam Lal, Under Secretary, (Pr-V), Government of India, Ministry of Home Affairs and direct that a copy of this decision would be placed in his service book and as and when his case is placed before a Departmental Promotion Committee, it be highlighted that this Court has censured Sh. Pritam Lal, Under Secretary (Pr-V).

5. We are informed that pursuant to the orders passed by this court in Parmal Singh (supra), the Ministry of Home Affairs has passed the order dated 22nd November, 2011 withdrawing its earlier order and is examining the cases afresh.

6. It appears that in the meantime, two other writ petitions bearing WP(C)No. 7393/2011 titled Naresh Kumar & Others v. UOI & Others and WP(C)No. 7478/2011 titled T.L. Pyli & Others v. UOI & Others on the same issue have been filed by the ITBP personnel which were also disposed of on 10th October, 2011 and 14th October, 2011 in terms of the judgment in Parmal Singh (surpa).

7. The instant writ petition has been necessitated as the petitioner complains that the respondents are taking a view that the benefit of the withdrawal of the order and the judgments of several courts would be granted only to such persons who have filed the writ petitions. Such a stand is contrary to law and is violative of the directions made by this court on 29th September, 2011 in Parmal Singh

(surpa). In our view, unnecessary litigation, including the present writ petition, is being generated by the completely untenable stand of the respondents who are required to take a considered view of the matter as directed in Parmal Singh (surpa). In case the respondents had proceeded in accordance with law, and having failed to do so, complied with the directions of this court in the previous writ petitions, this writ petition would not have been required to be filed. Valuable judicial time has been caused to be expended in this matter without any justification.

8. We were inclined to impose heavy costs in the matter, recoverable from the officials concerned. However, learned counsel appearing for the respondents have urged that the respondents are taking urgent steps to comply with the directions and prayed that therefore a lenient view be taken. We accept this submission. This writ petition is disposed of with direction to the respondents to treat the mandamus issued by the order dated 9th October, 2009 passed in W.P.(C)No. 12258/2009 as the mandamus in the instant writ petition as well. The respondents shall ensure that the action in terms of the above is positively taken within four weeks from today.

Dasti to parties.