

(2014) 05 DEL CK 0095

In the Delhi High Court

Case No : WP(C) No. 2119/2014 and CM No. 4412/2014

Shyam Sunder Roy

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : (2014) 05 DEL CK 0095

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

Bench : Division Bench

Advocate : Asish Nischal, Advocate for the Appellant; Ruchir Mishra, Advocate for the Respondent

Final Decision : Allowed

Judgement

Reva Khetrapal, J.—The present writ petition has been filed for quashing the orders dated 23.10.2013, 04.01.2014 and 23.01.2014 passed by the respondents and for restoration of the pay of the petitioner in Pay Band-I (5,200-20,200) with Grade Pay of Rs. 2,400/- with the basic pay of Rs. 7510/- with effect from 01.01.2006.

2. The relevant facts are that the petitioner joined the CRPF as Constable (General Duty) in the year 1993. On 20.01.2005, the petitioner was appointed as Head Constable/X-Ray Assistant in the pay scale of Rs. 3200-4900.

3. On 25th August, 2009, the Central Reserve Police Force, as per recommendations of the Sixth Central Pay Commission, revised the pay structure of the employees, as a result whereof, the pay of the petitioner got revised from 4000-6000 to Pay Band-I (Rs. 5,200-20,200) with Grade Pay of Rs. 2,400/- with the basic pay of Rs. 7,510/-.

4. On 23.10.2013 and 04.01.2014, the respondents issued two Office Orders, wherein, the basic pay of the petitioner was reduced from Rs. 7,510/- to Rs. 6,910/- w.e.f. 01.01.2006. As a result thereof, the further basic pay of the petitioner was reduced accordingly.

5. On 15.01.2014, the petitioner made a representation to the respondents, against the reduction of his basic pay after more than seven and a half years of its fixation.

6. On 23.01.2014, the respondents rejected the representation of the petitioner on the ground that the person with whom the petitioner was claiming parity was a Ministerial employee. The respondents further stated that there was no person in the cadre of the petitioner with whom the petitioner can seek parity.

7. As a result of the aforesaid, the respondents started recovering the excess payment from the petitioner. The salary slip of the petitioner for the month of March, 2014 indicates the deduction of the excess amount recovered. Hence, the present petition instituted on 28th March, 2014.

8. Learned counsel for the petitioner contends that the pay of the petitioner was revised/fixed with effect from 01.01.2006, as per the recommendation of the Sixth Central Pay Commission and, thereafter, after about more than seven and a half years, the respondents have revised the basic pay of the petitioner, without even putting the petitioner to show cause and at any rate, no effective show cause notice was issued to the petitioner nor the petitioner was heard by the respondents before the re-fixation of his pay. This is against the principles of natural justice. Further, no instructions/rules have been cited by the respondents while reducing the pay of the petitioner.

9. Learned counsel for the petitioner further contended that in the impugned order dated 23.01.2014, though there has been a mention of Rule 7, Note 7 of Central Civil Services (Revised Pay) Rules, 2008, the said Rule is not applicable to the petitioner as the basic pay of the petitioner has been increased from time to time after adding annual increments and as on 01.07.2013, the petitioner was drawing basic pay of Rs. 10,190/- with Grade Pay of Rs. 2,400/-.

10. It was also contended on behalf of the petitioner that while rejecting the representation of the petitioner dated 15.01.2014, the respondents in their order dated 23.01.2014 erred in coming to the conclusion that the person with whom the petitioner had claimed parity being a Ministerial employee and the petitioner being a Combatant and holding the post of Head Constable/X-Ray Assistant, the petitioner cannot seek parity with the Ministerial employee.

11. Learned counsel for the respondents sought to rebut the aforesaid contentions of the petitioner but was unable to show that an effective show cause notice had been issued to the petitioner before the pay of the petitioner was re-fixed to his detriment and deductions from his salary were sought to be made consequent to the aforesaid re-fixation.

12. 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, .

13. 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.

14. 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.

15. The answer 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.

16. In the result, we allow the writ petition quashing the impugned orders dated 23.10.2013, 04.01.2014 and 23.01.2014 passed by the respondents and grant the prayer of the Petitioner for restoration of the pay of the petitioner in Pay Band-I (5,200-20,200) with Grade Pay of Rs. 2,400 with the basic pay of Rs. 7510/- with effect from 01.01.2006. We further direct that any recovery made pursuant to aforesaid office shall be reimbursed to the Petitioner immediately.

17. 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.

18. Writ Petition is allowed in the above terms.

19. No costs.

CM No. 4412/2014 (for stay)

The application is dismissed being infructuous.