

(2014) 05 DEL CK 0185

In the Delhi High Court

Case No : WP(C) No. 2654/2014 and CM No. 5521/2014

S.S. Suhag

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : (2014) 144 DRJ 639

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

Bench : Division Bench

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

Final Decision : Dismissed

Judgement

Reva Khetrapal, J.—The present writ petition has been filed challenging the signal dated April 2, 2014 and the un-communicated signal dated 7th April, 2014 whereby the respondents have illegally and erroneously re-fixed the pay of the petitioners to their detriment as per fitment table pursuant to the recommendations of the 6th Central Pay Commission; as well as the action of the respondents in seeking to recover amounts from their salary pursuant to the pay re-fixed vide the aforesaid signals.

2. The relevant facts are that pursuant to the recruitment drive held in the year 2003, the petitioners were directly recruited in the CRPF to the ranks of Head Constable (R.O.), Grade-III. Upon joining the force, the petitioners were given a pay scale of Rs. 3200-85-4900. 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 petitioners, (i.e. the post of H.C. 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. Pertinently, the Director General, CRPF, New Delhi got issued an order dated August 25, 2009 on the subject of notification of rank-wise revised pay structure in respect of CRPF personnel, wherein the pay scales of all the Head Constables of CRPF irrespective of any trade, including HC (RO) who were earlier placed in the existing pay scale of Rs. 3200-85-4900 were upgraded to the pay scale of Rs. 4000-6000 in PB-I along with grade pay of Rs. 2400/-.

4. Thereafter vide an order of even date, i.e. 25th August, 2009, the pay of the Head Constables in CRPF was fixed by the DTE Office at Rs. 7510/- with Grade Pay of Rs. 2400/- thereby amounting to a sum of Rs. 9910/- with effect from January 01, 2006 and accordingly all Head Constable including the petitioners were paid arrears in respect thereto. The pay of the petitioners, as well as the pay of Head Constables (Min.), was accordingly re-fixed by the concerned Signal Units and audited by IAP-III as Rs. 7510/-, with grade pay of Rs. 2400/- thereby amounting to a sum of Rs. 9910/- (total 7510-2400) w.e.f. January 01, 2006 vide signal dated September 18, 2008 issued by the Dy. Financial Advisor, CRPF.

5. Subsequently, however, the respondents got issued two signals dated May 20, 2011 and May 31, 2011 fixing the pay of Head Constable (Min.) as per Section-II, Part "A" of the CCS (Revised Pay) Rules, 2008, but the same was denied to the petitioners on the ground that there was no direct entry in the grade after January 01, 2006. Pursuant to the aforesaid Signals, the recoveries were also got effected.

6. Aggrieved by the aforesaid signals, the Petitioners filed Writ Petition No. 4295/2011 titled as B.D. Dubey and Ors. Vs. Union of India and Ors. wherein a Division Bench of this Court vide order dated July 14, 2011 observed that if any action was intended 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. 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.

7. Allegedly, pursuant to the order passed in the Writ Petition No. 4295/2011, the respondents got issued a pre-determined show cause notice dated 23rd August, 2011 to the petitioners. A bare perusal of the aforesaid show cause notice would show that the same was a mechanical reiteration of what was already stated in the impugned signals dated May 20, 2011 and May 31, 2011 with a simple addition that the same was being issued pursuant to the Court's order dated 14th July, 2011. The Petitioners submitted their representation dated 8th September, 2011 to the said show cause notice stating, inter alia, that the initial pay of all Head Constables in all paramilitary forces (including CRPF) was fixed at Rs. 7510 plus Rs. 2400 Grade Pay and during fixation it was necessary to give the same basic pay to an officer of a particular rank irrespective of whether he was a promote or a direct recruit. To do otherwise would result in an anomaly as the pay of Constables recruited post 2003 would be resultantly higher, being junior in rank as well as being in a lower pay scale; and the pay of Head Constable (Min) was fixed at Rs. 7510 plus Rs. 2400 Grade Pay but still artificial discrimination was being carried out against the petitioners.

8. Pursuant to the representation, the respondents once again acted in a mechanical manner and issued the impugned signal dated April 02, 2014 as well as the uncommunicated Signal dated April 07, 2014 once again reiterating their earlier stand and re-fixing the pay of the petitioners.

9. Learned counsel for the petitioners vehemently contended that the pay of the petitioners 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/-.

10. Learned counsel for the petitioners highlighted the fact that no request was ever made by the petitioners seeking re-fixation of pay nor was there any misrepresentation on their part and as such the respondents were bound to serve a

notice upon the petitioners before again re-fixing the pay to the petitioners" detriment. Even otherwise, once pay has been fixed by the respondents, no recovery could have been made except in accordance with law, which necessitates serving a show cause notice before effecting any recovery.

11. Reliance was placed by learned counsel for the petitioners in the aforesaid context 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, .

12. The counsel for the petitioners state that the respondents have acted in arbitrary manner and also not adhered to the directions passed by this Court in B.D. Dubey's case (supra).

13. The primal question for consideration in the present case is: Whether the pay of the petitioners 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 petitioners without even issuance of show cause notice in terms of the judgment dated July 14, 2011 passed in W.P. (C) No. 4295/2011 "containing the reasons for the tentative decision taken by the respondents." The other question which requires consideration is: Whether the excess amount (if any) paid to the petitioners, not having been paid on account of any misrepresentation or fraud on the part of the petitioners, but on account of miscalculation of the pay of the petitioners, which was subsequently found to be erroneous, whether the respondents can recover the said amount unilaterally and even without issuance of a proper show cause notice to the petitioners.

14. 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.

15. Needless to state that if the respondents intend to take any action to re-fix the pay of the petitioners to the detriment of the petitioner, a show cause notice containing the reasons for the tentative decision ought to have been issued to the petitioners and a decision taken thereon after giving an opportunity to the petitioners to be heard. Despite specific directions, the respondents, contrary to the judgment given by this Court in B.D. Dubey's case (supra), issued a show cause notice on 23.8.2011 wherein they in the show cause notice did not give any reasons for the tentative decision for withdrawal of the Grade Pay and Pay Band paid to the petitioners. Rather, in the show cause notice it was stated by the Competent Authority that it has been decided that the petitioners' salary is to be fixed as per fitment table by applying multiple of 1.86. The said show cause notice was itself bad apart from being contrary to the judgment dated 14.7.2011, which categorically ruled that if the respondents intended to take any action to place the petitioners in lower pay band then the show cause notice issued to the petitioners would contain reasons for tentative decision. Then again, despite

detailed replies dated 19.09.2001 and 8.9.2001 submitted by the petitioner, the respondents without considering the same had issued the impugned letter dated 2nd April, 2014 directing fixation of pay of the petitioners as per fitment table and ordering for excessive recoveries without giving any reason or dealing with any of the submissions submitted by the petitioners in their reply. Since, the impugned order is a non-speaking order and does not deal with the submissions submitted by the petitioners, the same is contrary to the law laid down by the Apex Court and needs to be set aside on this ground alone.

16. In the result, we allow the writ petition quashing the impugned order dated 2nd April, 2014 and the uncommunicated order dated 7th April, 2014 with a direction that the petitioners would continue to draw pay and allowance 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.

17. No costs.

CM No. 5521/2014 (for stay)

The application is dismissed being infructuous.