

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 14301/2004

Shri P. Raman

...Petitioner through
Ms. Jyoti Singh with
Mr. Ankur Chibber,
Advs.

Versus

Union of India & Ors.

...Respondent through
Mr. S.K. Puri, Sr. Adv.
with Mr. Sachin Puri,
Ms. Majabeen & Mr.
Vikas Tomar, Advs.

Date of Hearing : August 23, 2007

Date of Decision : August 31, 2007

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE MR. JUSTICE S.L. BHAYANA

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Judgment should be reported in the Digest? | Yes |

: VIKRAMAJIT SEN, J.

J U D G M E N T

1. The Petitioner prays for the issuance of a writ of mandamus directing the Respondents to fix his pay in the revised scale of Rs.8000-275-13500 with effect from 5.12.1996 and grant the benefit of ten (10) advance

increments in addition to the pay with all consequential benefits. The prayer pertaining to payment of interest at the rate of twelve (12) per cent per annum has not been pressed.

2. The Petitioner was selected for the Short Service Commission in the Indian Army and was commissioned in the rank of Second Lieutenant on 25.8.1984. He served for ten years and was released from the Indian Army on 25.8.1994 as per the Scheme of the Short Service Commission. Thereafter, he was interviewed by the Union Public Service Commission and was selected for appointment to the post of Assistant Commandant in the Central Industrial Security Force (CISF) vide Appointment Letter dated 17.5.1995. After some delay attributable only to the Petitioner, he joined the services of the CISF pursuant to Office Memorandum dated 29.11.1996. It appears that the Petitioner assumed charge as Assistant Commandant on 5.12.1996 and was posted to CISF Unit DSP, Durgapur, West Bengal. The fixation of the Petitioner's pay as Ex-SSCO re-employed as Assistant

Commandant in the CISF is contained in the letter No. E-27015(3)/28/97-Entt/112A dated 10.4.1997. It, inter alia, records the length of service of the Petitioner in the Army from 24.10.1983 to 22.9.1994 and that his pre-retirement pay was Rs.3900/- (Basic pay of Rs.3300 plus rank pay of Rs.600). The said letter witnesses that the Petitioner's salary on re-employment with the CISF was Rs.3000/- with effect from 5.12.1996 in the pay scale of Rs.2200-75-2800-EB-100-4000. In so doing, as has been noted by the Assistant Director/Accts, the benefits of ten (10) years Army service were not made available to the Petitioner. A clarification was sought from the Ministry of Home Affairs. In the letter dated 18.12.2002 the Accounts Officer/Entt, Directorate General, CISF, had addressed a letter to the Sr. Administrative Officer, Indo-Tibet Border Police (ITBP) seeking opinion pertaining to the pay fixation of Ex.-Capt. Parminder Singh, Assistant Commandant, who was re-employed as an Assistant Commandant and whose service background was similar to that of the Petitioner. It records that the Department of Personnel and Training (DoPT) had commented that Captain Parminder Singh had been

allowed the benefits of 10 years advance increments. We may note that the present petition is predicated on the argument that the Petitioner should be treated on parity with Ex. Captain Parminder Singh, Assistant Commandant, ITBP. Eventually, despite comparisons and Representations made in this regard, the Assistant Director/Accts, Directorate General, CISF, by letter dated 13.7.2004, has confirmed that the Petitioner's pay at Rs.8000/- is in order and that "he cannot be allowed advance increments because even the minimum basic pay fixed on his re-employment is more than his basic pay plus rank pay which he was drawing at the time of retirement from Army". It is this decision that is under challenge before us.

3. The Petitioner indisputably is entitled to pay in accordance with Rule 8 of Chapter 2 of Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 circulated vide DoPT O&M dated 31.7.1986, which cannot and does not refer to any Pay Commission. The Rule reads as under:

Rule 8 - "ECO's and SSCO's who joined pre-

commission training or were commissioned after 10-1-1968, may, or their appointment in Government Service to unreserved vacancies, be granted advance increments equal to the completed years of service rendered by them in the Armed Forces on a basic pay (inclusive of deferred pay but excluding other emoluments) equal to or higher than the minimum of scale attached to the civil post in which they are employed. The pay so arrived at should not, however, exceed the basic pay (including the deferred pay but excluding other emoluments) last drawn by them in the Armed Forces”.

4. The rationale upon which Rule 8 rests is not difficult to comprehend and then compliment. The Armed Forces require to augment their strength from time to time, albeit not on a permanent basis. A person who dedicates his youth and best years to such service ought not to be discarded in a manner where his subsequent career is jeopardised. No citizen would be interested in the commission if after ten years he is to start his career anew, and that too at the junior-most stage. It is for this salutary reason that the ten (10) increments, which are substance of

this petition, are bestowed on persons such as the petitioner. Once given, the benefit cannot and should not be withdrawn or negated. The benefit has no linkage or connection with any Pay Commission. A pay revision can be implemented in at least two manners. Firstly, ten (10) increments can be given effect to in the new pay dispensation. Secondly, the erstwhile pay and other emoluments will have to be calculated in the new scale of pay.

5. As has already been noted above, the Petitioner's pay on his re-employment with the CISF was fixed at Rs.3,000/-, i.e., in the pay scale of Rs.2200-75-2800-100-4000 together with ten (10) increments [75x8 and 100x2] equal to Rs.800. As also noted above, the last pay drawn by the Petitioner in the Army was in the pay scale of Rs.2300-100--100-3900-EB-150-5100 and was Rs.3900. It is manifestly clear that the Petitioner's pay in the CISF, after receiving the benefits of 10 increments, did not exceed the basic pay last drawn by him in the Armed Forces. It is important to record, and keep in mind, that these scales were prescribed by the IVth

Pay Commission. The problem that has arisen before us is a consequence of the implementation of the Vth Pay Commission. We also record that it is not in dispute that the Petitioner has served in the CISF for a period of 11 years. If his 10 years service in the Army is taken into account, his total service is 21 years.

6. As noted above, the Petitioner's grievances have arisen consequent upon the implementation of the Vth Pay Commission. It seems to us that it is unexceptional that pay fixation must be carried out as per the Vth Pay Commission only and that it is illogical to refer back to salaries payable under the IVth Pay Commission. The Petitioner is entitled to ten (10) advance increments as per Rule 8, reproduced above, which continues to be in force even after the Vth Pay Commission. The basic pay as per the Vth Pay Commission commences at Rs.8000/- and when ten (10) increments are added thereto the Petitioner becomes entitled to a monthly pay of Rs.10750/-. As per the Respondent's computation the Petitioner's salary has been increased from Rs.3000 to Rs.8000 only by virtue of the

implementation of the Vth Pay Commission. It is wholly incongruent for the Respondents to take into reckoning the Petitioner's last drawn salary of Rs.3900/- as per the IVth Pay Commission. Rule 8 prescribes that ECOs and SSCOs (Emergency Commissioned Officers and Short Service Commissioned Officers), on their appointment in Government service, would be entitled to advance increments equal to the completed years of service rendered by them in the Armed Forces on basic pay (which in the Petitioner's case is 10 years) provided it does not exceed the last drawn pay, would have to be seen in the context of salaries payable under the Vth Pay Commission itself. In other words, apples cannot be compared with pears. Accordingly, what has now to be determined is what the Petitioner's last drawn pay would have been while he was serving in the Indian Army had the Vth Pay Commission come into operation. The basic pay payable in the Army is presently Rs.11,600, plus rank pay of Rs.1200, plus 10 increments (300x6 and 325x4) = Rs.3100, aggregating Rs.15900. It is this figure of Rs.15900/- which presently corresponds to the figure of Rs.3900/- in the IVth

Pay Commission. In other words, when pay fixation is to be carried out in the Vth Pay Commission, the last drawn pay, so far as the Petitioner is concerned, is not Rs.3900/- but Rs.15900/-. It is manifestly evident, therefore, that the Respondents have committed a calculation error in pegging the basic pay of the Petitioner at Rs.8000/- only. If the argument of the Respondents is to be accepted, the Petitioner would not be entitled to receive even in the Vth Pay Commission regime a salary beyond Rs.3900, which is the last salary drawn by him in the Army.

7. Mr. Puri, learned Senior Counsel for the Respondent, has laid emphasis on Rule 5 of CCS (Revised Pay) Rules, 1997 which reads as under:

“5. Drawal of pay in the revised scales--

Save as otherwise provided in these rules, a Government servant shall draw pay in the revised scale applicable to the post to which he is appointed.

Provided that a government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increments in the existing scale or until he vacates

his post or ceases to draw pay in that scale.

EXPLANATION 1 – The option to retain the existing scale under the proviso to this rule shall be admissible only in respect of one existing scale.

EXPLANATION 2 – The aforesaid option shall not be admissible to any person appointed to a post on or after the 1st day of January, 1996 whether for the first time in Government service, or by transfer or promotion from another post and he shall be allowed pay only in the revised scale”.

8. We are unable to appreciate the manner in which this Rule supports the fixation of pay presently carried out by the Respondents. This is evidently so since even after receiving ten (10) advance increments the Petitioner shall not draw salary in the revised scale contrary to the post which he is presently holding, since the maximum pay in the present post is Rs.13500.

9. Mr. Puri has eloquently contended that if the Petitioner receives benefits of 10 advance increments it will cause imbalances in the salaries payable to the personnel in the CISF and therefore heartburn and resentment in the

Force. One of the tests of this argument lies in comparing the salaries payable to the Petitioner with the persons who have put in the equal number of years of service, that is, 21 years. We may immediately note that the persons with 21 years of service in the CISF would presently hold the rank of Additional DIG, if not DIG and would be placed in a higher scale of pay. It is not that the Petitioner has been passed-over for promotion; so far as the rank is concerned the Petitioner has suffered a disadvantage because of his lateral movement from the Indian Army to the CISF. Arguably, had the Petitioner continued to serve in the Indian Army he could well be enjoying the rank of a Brigadier. Therefore, it is unfair to contend that in receiving ten (10) advance increments the Petitioner has stolen a march, so far as salary is concerned, over other officers in the CISF. Whereas the Petitioner would be entitled, as per the calculation made above, to Rs.10750, persons having served the CISF for 21 years would be drawing salaries in the pay scale of Rs.16400-18300. Furthermore, the Petitioner as well as other SSCOs, comprises a class of their own, incomparable to those who

had not joined the Army. It is the Policy of the Government to grant such persons certain benefits, and this Policy is not under challenge before us. Seen from any angle, therefore, the Petitioner has not been treated fairly and in accordance with law.

10. We would have appreciated the presence of the Deponent, Shri S.P. Selven, Assistant IG (Personnel), Directorate General of CISF during the hearings. We are certain that he would not have been as obdurate as Shri Ravinder Kumar, Accounts Officer, has been while instructing learned Senior Counsel for the Respondents before us. The Respondents were in a position to clarify the reasons, according to them, why disparate treatment is justified in the case of Captain Parminder Singh and the Petitioner.

11. In this analysis we are of the opinion that the Petitioner is entitled to receive ten (10) advance increments in the present scale of Rs.8000-275-13500 as per the Vth

Pay Commission as he was heretofore drawing in accordance with the IVth Pay Commission. Consequent relief be granted within ninety days failing which the Petitioner shall additionally be entitled to receive interest at the rate of twelve per cent per annum on arrears of pay.

12. Petition is well-founded and is allowed. Petitioner shall be entitled to costs which we quantify at Rs.10000/-.

(VIKRAMAJIT SEN)
JUDGE

August 31, 2007
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(S.L. BHAYANA)
JUDGE