

**Central Administrative Tribunal
Principal Bench, New Delhi**

TA No.30 /2015

New Delhi, this the 18th day of July, 2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

Babu Lal Mitharwal, Constable (Executive)
S/o Sh. Surja Ram Belt No.2789/DAP
3rd Bn Delhi Police
R/o Vill & PO –Sihodi,
Tehsil – Shrimadhopur
District –Sikar (Rajasthan) Applicant

(By Advocate : Mr. Gyanant Kr. Singh proxy for Mr. P.R. Kovilan)

Versus

1. Union of India
Through its Secretary
Ministry of Home Affairs,
North Block
New Delhi-110001.
2. Commissioner of Police
PHQ, M.S.O. Building, I.P. Estate
New Delhi-110002. Respondents

(By Advocate : Mrs. Rashmi Chopra)

ORDER (ORAL)

Hon'ble Mr. P.K. Basu, Member (A)

Heard the learned counsel for the parties.

2. First objection raised by the learned counsel for the respondents is that this TA is hit by principle of res-judicata as

the applicant on an earlier occasion also filed OA No.1924/2010 on the same cause of action, which was disposed of by the Tribunal vide its order dated 11.07.2011, the relevant part of which is quoted below:-

(7). In view of the above position, we dispose of this OA with direction to the respondents No.1 to obtain the options of the applicants within one month and issue orders refixing their pay taking into consideration of all the aspects raised by them within two months from the date of receipt of a copy of this order. The order thus issued shall be reasoned and speaking. If the applicants are still aggrieved, they are at liberty to challenge those orders through appropriate proceedings. There shall be no order as to costs.

3. Thereafter, the respondents issued a detailed order dated 13.09.2011, which was challenged by the applicant in OA No. 4155/2011. The said OA was disposed by the Tribunal vide its order dated 24.09.2012 with the following directions:-

12. After having gone through the impugned orders in detail, we do not find any illegality or infirmity in the impugned orders and for the interregnum period 01.01.2006 to 19.03.2006, the salary which the applicant had drawn for 2 ½ month with reference to the multiplication factor of 1.86 in the relevant new pay scale is held to be correct. The principles of res-judicata squarely hit the re-worded prayers of the applicant in this O.A., and the applicant cannot be allowed to re-open a decided issue one again. In the result, there is no merit in the present OA and the same is rejected. There shall be no order as to costs.

4. Learned counsel for the respondents has, therefore, submitted that the applicant has already raised the issue, as in the present case, on earlier occasions, in OAs

Nos.1924/2010 & 4155/2011 before this Tribunal and, hence, the applicant cannot be allowed to agitate the same issue once again in the instant OA by rewording the prayer, being hit by principle of res-judicata.

5. Learned counsel for the respondents further states that judgment dated 02.03.2015 passed by the Hon'ble High Court of Delhi in Lalit Kunar Choudhary vs. Union of India & Ors. in W.P © 1853 & 1854/2015 and decision of the Hon'ble High Court in W.P. (c) No. 727/2015 decided on 27.1.2015 titled as Dashrath & Anr. vs. Union of India & Ors, filed by followers in CISF in different trades such as Constable (Carpenters) Constables (Plumber), Constable (Painter), Constable (Electrician), Constable (Mason) cited by the applicants as precedent being on identical issue does not pertain to the applicant's organization at all. Therefore, these judgments does not suo moto apply to the applicant's case.

6. On the preliminary objection of principle of res-judicata, learned counsel for the applicant states that prayer made by the applicant in earlier OAs, i.e., Nos.1924/2010 and 4155/2011 pertains to a different issue, namely, fixation of applicant's pay by not granting benefit of bunch effect. The respondents have rectified this anomaly by granting stepping up pay of the applicant viz-a-viz his juniors from 20.03.2006. It is stated that present application is totally on a different claim, namely, applicability of para 7 (1) (A) (ii) read with Section II to the First Schedule of the Rules, in the revised pay structure which schedule lays down the minimum entry pay for direct recruitment, which is higher than the pay fixed for the applicant. It is, therefore, argued that this is

completely a different issue and nothing to do with the bunch effect.

7. We have gone through the judgment of Hon'ble High Court in Dashrath & Anr. vs. Union of India & Ors. (supra) The ratio laid down is that pre- 01.01.2006 incumbents would be entitled to the minimum pay to the Direct Recruits appointed on or after 01.01.2006 and this has been reiterated by the Hon'ble High Court in its Writ Petition (C) No. 1853/2015 judgment dated 02.03.2015 in para 22 of the judgment. We agree with the contention of the applicant's counsel that the issue for adjudication in the earlier OAs filed by the applicant and in the present one is clearly distinguishable and res-judicata would not apply. Hence, in view of the judgment of the Hon'ble High Court in the case of Dashrath (supra) and Lalit Kumar Choudhary (Supra), the applicant is entitled to the minimum pay at the entry grade w.e.f. 01.01.2006. The TA is, therefore, allowed and respondents are directed to refix the pay of the applicant accordingly. Time frame of two months, from the date of receipt of a certified copy of this order, is fixed for compliance of this order by the respondents. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member A)

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