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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A. NO. 464/2003

NEW DELHI THIS 30th DAY OF OCTOBER, 2003

HON'BLE SHRI JUSTICE V S AGGARWAL, CHAIRMAN  
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Shri Kanwar Pal Singh,  
S/o Late Sh. Kewal Ram,  
Aged about 58 years,  
R/o S-28, School Block,  
Shakarpur, Delhi - 110 092

.....Applicant

(By Shri A K Behra, Advocate)

VERSUS

1. Union of India through Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi
2. Government of NCT of Delhi  
through its Chief Secretary,  
Department of Home, Players Building,  
Near ITO, IP Estate,  
Delhi - 110002
3. Commissioner of Police,  
Delhi Police, Police Headquarters,  
MSO Building, IP Estate,  
New Delhi - 110002

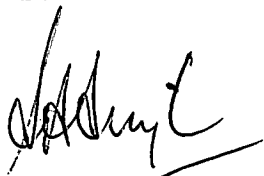
.....Respondents

(By Shri R N Singh, Advocate for Respondent No.1 and  
none for Respondents 2 and 3.)

**ORDER (ORAL)**

**BY HON'BLE SHRI S.A. SINGH, MEMBER (A)**

The grievance of the applicant is he has been denied the higher revised replacement pay scale of Rs.8000-275-13500, notified by respondents consequent to implementation of the 5th Pay Commission recommendations, on grounds of vigilance clearance and integrity certification. Further, this period of adhoc service rendered by him from 10.10.94 to 10.6.96 has not been counted towards approved service thereby



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postponing his eligibility for placement in the higher revised pay scale from 10.10.98 to 01.7.2001.

2. The applicant was appointed under Rule 24(1) of DANIPS Rules to the post of Assistant Commissioner of Police, in Delhi Police, vide Government of India, Ministry of Home Affairs order dated 10.10.1994 (Annexure A-III) on purely ad hoc basis for a period of one year or till the post is filled up by the Ministry, on regular basis, after encadrement of the same under DANI Police Service Rules, 1971, or whichever is earlier.

3. The applicant was subsequently appointed vide Government of India, Ministry of Home Affairs notification dated 12.6.2000 (Annexure A-IV) as Grade-II Officer, on probation, for a period of two years.

4. In pursuance of the judgement of the Hon'ble High Court in CWP No. 528/1999 the pay of the applicant was fixed in the revised pay scale of Rs. 8000-275-13500/- w.e.f. 1.1.96 as under:

Sl No.	Name of ACsP	Pay fixed w.e.f. 1.1.96	Annual increment with date
1 to 7	XXX	XXX	XXX
8	Sh Kanwar Pal Singh	@Rs.9100/-	Rs.9375/-wef 1.10.96 Rs.9650/-wef 1.10.97 Rs.9925/-wef 1.10.98

5. Government of India, Ministry of Home Affairs communicated vide their letter dated 30.10.2000 (Annexure A-VI) their decision concerning recommendation of the 5th Central Pay Commission deciding that taking into and considering the relevant factors including functional duties and responsibilities of the Members of the services have decided that:

- a) Such of those officers of the two services as have completed four years in the applicable pre-revised initial entry pay scale of Rs. 2000-60-2300-75-3200-100-3500 shall be placed in the revised pay scale of Rs.3000-275-13500 with effect from January 1, 1996.
- b) Other officers of the two services appointed in the initial entry pay scale but have not completed four years as on January 1, 1996 shall continue only in the normal replacement pay scale of Rs. 6500-200-10500 till the time they complete the prescribed total service of four years in the pay scales of Rs. 2000-60-2300-75-3200-100-3500/- & Rs.6500-200-10500/-. On completion of four years, however, they shall be extended the higher revised pay scale of Rs. 3000-275-13500/- from the date(s) on which they fulfil the residency requirement.

6. Accordingly the pay of the applicant vide order of Addl. DCP dated 28.11.2000 was fixed as under:

Sl No.	Name of the ACP	Pay drawn in the pay scale of RPS.6500-200-10500	Pay fixed & granted annual increment in pay scale Rs.8000-13500.
1 to 7	XXX	XXX	XXX
8.	Sh Kanwarpal Singh	@Rs.8700/-p.m. wef 1.1.96 @Rs.8900/-pm wef 1.10.96 @Rs.9100/-pm w.e.f.1.10.97 @Rs.9300/-pm wef 1.10.98	He was promoted as ACP wef 10.10.94 (Assuming Charge) and completed 4 years service as ACP wef 10.10.98 and pay is hereby fixed @Rs.9375/-pm wef 10.10.98. @Rs.9650/-1.10.99 @Rs.9925/-wef 1.10.2K.

7. However, this re-fixation was not given effect to by the respondents in respect of the applicant as his name was not included in the list issued vide order dated 01.11.2001 granting the new pay scale of Rs. 8000-275-13500/- to 30 officers. The applicant made a representation on

*Sh Kanwarpal Singh*

15.11.2001. In absence of a response from the respondents the applicant submitted another representation on 11.12.2001 which was followed up by a subsequent one on 10.01.2002.

8. Aggrieved, the applicant filed an OA No.2486/2002 which was disposed of by the Tribunal on 24.9.2002 with the directions that the "respondents after taking the facts mentioned in the representation of the applicant, the respondents should pass appropriate orders preferably within six months from the date of issue of the certified copy of this order." Subsequently in compliance with the directions of this Tribunal Respondent No. 1 issued Office Memorandum dated 23.1.2002, operative portion of which reads as under:

".....On the basis of a report furnished by Delhi Police, it has been observed that Shri Kanwar Pal Singh, Grade-II Officer, though eligible to be placed in the said scale of pay of Rs.8,000-13,500/- with effect from 1.7.2001, is not free from vigilance angle in as much as a criminal case (FIR No.294/87 registered at Vivek Vihar Police Station) against him is pending trial in the court. Shri Kanwar Pal Singh is accordingly informed that it is in the aforesaid circumstances that he has not been placed in the scale of pay of Rs.8000 - 13500/- so far. His case will be reviewed as and when he is found to be clear from vigilance angle and his integrity is certified."

9. Applicant has prayed that the Govt of India, Min. of Home Affairs order of 01.10.2001 appointing 30 officers to the pay scale of Rs.8000-13500/- be quashed/ set aside and also the OM No.23.01.2002 and direct the respondents to appoint him to the scale of Rs. 8000 - 13500/- w.e.f. 10.10.1998 i.e. when he completed four years service in the pre-revised entry scale of Rs.2000-60-2300-7500-3200-100-3500/- and other consequential benefits.



10. The respondents averred in their reply that though the applicant is eligible to be placed in the scale of Rs.8000-13500/- w.e.f. 1.7.2001 however he cannot be granted the scale asked for as he is not free from vigilance angle as a criminal case is pending in the Trial court.

11. With regard to the date of eligibility for grant of the revised higher scale of Rs.8000-13500/- the Respondents relied upon the concept of approved service defined under Rule 2(1) of the Service Rules 1998 which reads as under:

"Approved service" in relation to any grade means period or periods of regular service rendered in that grade, including period or periods of absence during which he could have held a post on regular basis in that grade but for his being on leave or otherwise not being available to hold such post, from the first day of July of the year."

12. There are two questions before the Tribunal namely :

- a) Whether granting of replacement pay scale as a consequence of 5th CPC recommendations is subject to vigilance clearance and certification of integrity;
- b) whether ad hoc service will count towards approved service for fulfilling the eligibility condition for granting the higher revised replacement scale of Rs.8,000-275-13500/-.

13. The applicant cited the case of G.P. Srivastava Vs. Union of India and Others (1992) 22 Administrative Tribunals Cases 372) where a Clerk of the Postal Department was alleged to have misappropriated Government money and an FIR

was lodged against him. a charge sheet was served and he was also placed under suspension. It was held that :

"16. ....There can also be no doubt that the applicant's pay must be revised in accordance with the accepted recommendations of the 4th Pay Commission applicable to him."

17. For the above reasons, the recovery proceedings against the applicant in Annexure A-39 and Annexure A-40 are quashed; no further recovery shall be made until and unless the disciplinary proceedings are completed. The respondents shall also revise the applicant's scale with effect from 1.1.1996 unless already done. ...."

14. The applicant also relied upon the case of Rohitashwa Kumar Vs State of Rajasthan ( 1989 (3)SLJ (CAT). In this case an IPS Officer was placed under suspension and he was denied pay scale (revised by the 4th Central Pay Commission) on the plea of being under suspension. It was held that suspension does not snap ties with the service and one being of the service is entitled to get the pay under new scales. The applicant thus urged that for grant of the higher revised pay scale integrity certification and vigilance clearance were not necessary. He pointed out that the letter of 30.10.2000 notifying the replacement scale does not require any vigilance clearance and or integrity certification. The respondents, were thus in error in refusing him the higher revised pay scale of Rs.8000-275-13500.

15. As regards the date of reference for calculating the four years eligibility requirement of approved service is concerned the correct date is 10.10.1998 because the appointment was under Rule 24(1) of DANIPS Service Rules.

Reliance was taken of the judgement in case of Union of India & Another Vs. Harish Chandra Bhatia & Others (1995 (2) SCC 48) where officers included in the select list under R-24 and whose appointment was not purely as a local arrangements for a period of not exceeding 06 months should be treated as regularly appointed from the date of officiating appointment. Para 6 in this regard reads as under:-

"6. This submission would not be correct if heart of the matter is looked into. To put it differently, the submission is not correct in substance, but is so only in form. We have taken this view because an examination of Rule 24 shows that the list prepared as required by that rule, has also to satisfy the requirement of provisions of sub-rules (3) and (4) of Rules 14 and 15. This shows that the incumbents whose names find place in the list prepared as contemplated by Rule 24 are also those who have been duly selected and consultation with the Commission has also been made and the list prepared has been forwarded to the Central Government as well for its doing the needful. There is thus no difference in substance between the list prepared as contemplated by Rule 14 read with Rule 15, and the one visualised by Rule 24. So, there appears to be no justifiable reason to regard Rule 24 selectees as in any way inferior to Rule 14 selectees. According to us, they stand almost at par. It is because of this that Clauses (a) and (b) of sub-rule (1) of Rule 25 have virtually made no distinction between these two categories incumbents.

11. According to us, the just and proper order to be passed would be to direct the appellants to treat the dates of officiating appointments of the respondents as the dates of their regular appointments and then to place them in the seniority list as required by Rule 29 i.e. to interpose a direct recruit in between two promotees as per their respective inter se seniorities, and we directly accordingly. The seniority would, therefore, be refixed of all concerned, not as per length of



(8)

service alone as ordered by the Tribunal but as indicated by us."

16. It is obvious that the higher revised pay scale of Rs. 8000-275-13500/- is a replacement scale resulting from the recommendations of 5th Central Pay Commission. It is not a scale which to be achieved through a promotion but purely on the basis of meeting the four years service requirement. Its admissibility therefore cannot be held captive to integrity certification and vigilance clearance. The cited cases above makes this clear. The order of the Govt. of India, Ministry of Home Affairs also does not stipulated any such condition that the higher revised pay scale of Rs.8000-275-13500/- is subject to vigilance clearance and integrity certification.

18. Turning now to the question of reference date for determining the four years approved service eligibility requirements for replacement in the higher revised pay scale of Rs.8000-275-13500. The case of **Union of India & Another Vs Harish Chander Bhatia & Others and Rudra Kumar Sain & Others Vs UOI & Others (supra)** clearly lays down that the list prepared under Rule 24 are those who have been duly selected. Though the appointment order dated 10.10.98 indicates that the applicant has been appointed as adhoc. However, the same order specifies that the appointment is under Rule 24(1) and with the intention of regularisation as and when vacancies arise. Accordingly, the date for calculating four years approved service eligibility for granting the revised higher replacement pay scale of Rs.8000-275-13500 has to be 10.10.94 and not 01.7.2001.

18. In view of the above we allow the present OA with following directions:

a) impugned orders i.e. Annexure



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(9)


A-1 & A-2 are quashed;

b) we direct that applicant is entitled to the scale of pay of Rs. 8000-13500/- from 10th October 1998;

c) consequential benefits shall be paid to the applicant. It should be so done preferably within three months from today.

There shall be no order as to costs.

  
(S.A. Singh)  
Member (A)

  
(V S Aggarwal)  
Chairman

Patwal/