

Vinod Rawat And Ors vs Union Of India And Ors on 9 January, 2019

Author: S. Muralidhar

Bench: S.Muralidhar, Sanjeev Narula

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 6044/2016

VINOD RAWAT AND ORS. Petitioners
Through: Mr. Ankur Chibber & Ms. Bhanu
Gupta, Advocate

versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. Sanjeev Uniyal with Mr. Jitendra
Kumar Tripathi with Mr. Dhawal Uniyal & Mr.
Vipul Agrawal, Advocates for Respondent Nos.1
to 5

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA
ORDER

% 09.01.2019

1. Six Petitioners have filed this writ petition for a mandamus to the Respondents to re-fix their pay in the revised pay structure as per the options exercised by them.

2. The six Petitioners are members of the Central Reserved Police Force („CRPF ") and are governed by the CCS (Revised Pay) Rules, 2008. Pursuant to the recommendations of the 6th Central Pay Commission („CPC "), a revised pay structure was proposed. Under Rule 11 of the CCS (Revised Pay Rules), where a Government servant opted to continue to draw his pay in the existing scale with effect from 1st January, 2006, and switch over to the revised scale from a date later than 1st January, 2006, his pay from the later date in the revised scale was required to be fixed in terms of Rule 11(i). The option for new fixation of pay was required to be exercised within a period of three months from the date of issue of the memorandum/orders as per Rule 6(1) of the CCS (Revised Pay Rules), 2008. Further, Rule 6(4) provided that the option so exercised shall be final. However, various representations were made that Government servants may be permitted to revise the first option exercised by them in view of the new system of pay band and grade pays.

3. Subsequently, the Department of Expenditure, Ministry of Finance, issued the Office Memorandum (OM) dated 5th June, 2010 which permitted Government servants to revise their

initial option of pay fixation by 31st December, 2010 as a one-time measure. This became necessary because it was not clear immediately to Government servants whether by opting for the revised pay structure, their actual emoluments would be more beneficial to them than the existing pay structure. Therefore, the aforementioned OM extended the time for submitting a revised option and to switch over to the new pay scale on a date later than 1st January, 2006 if that was more beneficial to the Government servant.

4. It is the case of the Petitioners that as far as the CRPF itself was concerned, none of its members were aware of the availability of these options since there was no intimation sent to the CRPF as such. Particularly in the case of the present Petitioners, who had been posted to UN Mission in Liberia from 9th August, 2010 till February, 2011, no such communication in terms of the OM dated 5th July, 2010 was conveyed. Even the first signal of the CRPF dated 8th October, 2010 was not known to the Petitioners and it is only after returning in the month of February, 2011 that the Petitioners were able to submit the option form on 12 th February, 2011 opting to stay in the existing pay scale.

5. The Respondents however refused to act on the said option on the ground that in terms of the OM dated 5th July, 2010 it had to be submitted by 31st December, 2010. Meanwhile, it appears that the CRPF itself acknowledged that a large number of its members were in the dark about the availability of the option and therefore could not exercise it. This became evident from a signal dated 5th March, 2012 which inter-alia acknowledged that the matter would be taken up with the Government of India for extending the date for submission of revised options in respect of left out cases.

6. It is not in dispute that even the Government of India acknowledged the lack of proper communication of the availability of the opportunity to submit revised options across the board.

7. On 19th March, 2012 an OM was issued by the Department of Expenditure, Ministry of Finance proposing that the stipulation under Rule 10 of the Rules would be relaxed and those Central Government employees who were due to get their annual increment between February and June during 2006 would be granted one increment on 1st January, 2006 in the pre- revised pay scale as a one-time measure and thereafter get their next increment in the revised pay structure on 1st July, 2006 as per Rule 10 of the Rules. The pay of eligible employees was to be re-fixed accordingly.

8. In terms of the said OM dated 19 th March, 2012 it became necessary to give one more opportunity to submit a revised option. Another OM dated 3 rd January, 2013 was issued inter-alia deciding as under-

"4. The matter has been considered by the Government and having regard to the fact that the provisions of the aforesaid OM dated 19.3.2012 bring about a material change in the basis for exercise of option to come over to the revised pay structure in terms of the CCS(RP) Rules, 2008 in respect of employees who are covered under the said OM dated 19.3.2012, the President is pleased to decide that all those employees who are covered under the provisions of the aforesaid OM dated 19.3.2012 may once again be permitted to re- exercise their option to come over to the Revised pay

structure.

5. The benefit under these orders for re-exercise of option shall be available for a period up to 31.3.2013. The revised option shall be intimated to the head of the office by the concerned Government employees in accordance with the provision of Rule 6 (2) of the CCS (RP) rules, 2008."

9. The net result is that revised options would be submitted by Government servants on whether they wish to be governed by the existing pay structure or switch over to the revised pay structure and the deadline for submitting such revised options was extended up to 31st March, 2013.

10. Consequently, as far as the Petitioners were concerned, since they had already submitted their revised options on 12 th February, 2011, those revised options had to be acted upon since it was well within the extended time i.e. 31st March, 2013.

11. Pursuant to the order passed by this Court on 11 th May, 2017 the additional affidavit has been filed by the Respondents stating inter-alia as under:

"Due to administrative reasons, the petitioner had failed to submit his option certificate within the stipulated time scheduled given by the GoI, for which PAO had returned the same. Initially the target date of exercise option to opt new pay scale was 31/12/2010, but the officer had submitted his option on dated 12/2/2011 to switch over pay which was received in PAO through 64 Bn, CRPF vide letter dated 14/3/2011. In this connection a large number of requests regarding submission of fresh option were received in this Directorate during 2011 and 2012. These cases were examined in this Directorate in the light of prevailing instructions and a case was moved to MHA for obtaining relaxation in time limit for exercising revised option with reference to GoI, MoF, OM No. F.No. 7/14/2010 E-III (A) dated 05/07/2010 to wipe out anomaly in pay fixation of left out cases of the Force personnel who could not exercise their option within the stipulated time frame i.e. upto 31/12/2010. But MHA did not agree with our proposal."

12. It is further acknowledged in para 2 of the additional affidavit that the OM dated 3rd January, 2013 "has given the permission to employees who are covered under the provisions of the MoF OM dated 19/3/2012 to re-exercise their option to come over the revised pay structure."

13. In view of the fact that even according to the Respondents, the failure by the Petitioners to submit their revised options was "due to administrative reasons" and not by any fault of the Petitioners themselves, there is no difficulty for the Court to allow the prayer of the Petitioners and issue the directions as prayed for.

14. Accordingly, the Court directs the Respondents to act upon the revised options already submitted by each of the Petitioners and treat them as having been submitted within time and proceed to issue the consequential orders for fixing of their pay and increments on the basis of such

options within a period of eight weeks from today. Needless to state, the Petitioners would be entitled to receive the arrears on the basis of such revised pay and these will be paid to them not later than within twelve weeks from the date of the issuance of the orders.

15. The petition is disposed of in the above terms.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

JANUARY 09, 2019 mw