

Vijay Kumar Srivastava vs Union Of India & Ors on 7 October, 2020

Author: Rajiv Sahai Endlaw

Bench: Rajiv Sahai Endlaw, Asha Menon

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 7622/2020

VIJAY KUMAR SRIVASTAVA

..... Petitioner

Through: Ms. Saahila Lamba, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Gigi C. George, Adv.

AND

+ W.P.(C) 7625/2020

BIJOY KUMAR PATRA

..... Petitioner

Through: Ms. Saahila Lamba, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Dhruv Pande, Adv. for Mr.

Manik Dogra, Adv.

AND

+ W.P.(C) 7626/2020

K APPALA NAIDU

..... Petitioner

Through: Ms. Saahila Lamba, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. G. Tushar Rao and Mr. Mayank

Sharma, Advs.

AND

+ W.P.(C) 7627/2020

K.P. GOWDA

..... Petitioner

Through: Ms. Saahila Lamba, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. K.V. Sreemithun, Adv.

AND

+ W.P.(C) 7628/2020

DAMODARA B. BANGERA

..... Petitioner

Through: Ms. Saahila Lamba, Adv.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. P.S. Singh, Adv.

W.P.(C) Nos.7622/20, 7625/20, 7626/20, 7627/20 & 7628/20

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CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% 07.10.2020
[VIA VIDEO CONFERENCING]

1. The petitioner in each of these petitions seeks mandamus, directing the respondents Border Security Force (BSF) to reckon the date of assumption of charge by each of the petitioners to the post of Sub-Inspector (Ministerial), with effect from 9th June, 2000 and consequently grant one increment on 1st January, 2006 in the pre-revised pay scale and thereafter in the revised pay structure on 1st July, 2006, in terms of paragraph 3 of the Office Memorandum (OM) dated 19th March, 2012.

2. It is the case of each of the petitioners, (i) that they enrolled in the respondents BSF as Constables (GD); (ii) that on 10th February, 1989, they were promoted/appointed as Assistant Sub-Inspectors, through the route of Limited Departmental Competitive Examination (LDCE); (iii) that on 9th June, 2000, they were promoted as Sub-Inspectors "with immediate effect", with financial benefits to be paid to them with effect from the date of taking over charge; (iv) that though the petitioners should have been immediately relieved from their respective places of posting at the time of promotion but owing to administrative exigencies were not relieved and consequently joining to their respective place of posting as Sub-Inspectors was delayed, for reasons attributable to the respondents BSF; (v) that the petitioners ultimately joined their place of posting as Sub-Inspectors on 18th August, 2000 and their emoluments as Sub-Inspectors were fixed with effect from 2nd September, 2000, with next date of increment as 18th August, 2001; (vi) that in accordance with the recommendation of the Sixth Central Pay Commission (CPC) made effective with effect from 29th August, 2008, the date of increment was uniformly fixed as 1st July of each year; (vii) that in accordance therewith, the petitioners got their first increment due on 18th August, 2006, with effect from 1st July, 2006; (viii) that the Ministry of Finance, vide OM dated 19th March, 2012 decided that those Central Government Employees who were due to get their annual increment between February to June during the year 2006 and whose increment was delayed to 1st July, 2006, may be granted one increment on 1st January, 2006, in the pre-revised pay scale, as a onetime measure (probably to compensate for the delay in grant of increment); (ix) that in accordance with the aforesaid OM, those promoted as Sub-Inspectors along with the petitioners on 9th June, 2000 and who were relieved with immediate effect and joined as Sub-Inspectors at their allocated posting in June, 2000 itself, got benefit of their additional increment conferred vide OM dated 19th March, 2012; and, (x) that the petitioners were deprived of the said increment and are now claiming the same.

3. The counsels for the respondents BSF appear on advance notice.

4. We have enquired from the counsel for the petitioners, how those to whom increment was due before 1st July, 2006 and payment of which increment was delayed to 1st July, 2006, can be treated as similarly placed to those to whom an annual increment was due post 1st July, 2006 and who rather got their increment sooner, with effect from 1st July, 2006.

5. In our prima facie view, the aforesaid classification between those whose increment in the year 2006 was delayed and those whose increment was preponed is a reasonable one, having nexus to the benefit conferred vide the OM dated 19th March, 2012 aforesaid of additional increment to only those whose increment had been delayed.

6. The counsel for the petitioners however refers to the judgment dated 1st April, 2019 of this Court in W.P.(C) No.4448/2016 titled Vijayan V.V. Vs. Union of India & Ors. and connected petitions and states that the petitioners are fully covered thereby.

7. Of all the counsels appearing for the respondents BSF, Mr. Dhruv Pande, counsel for the respondents in W.P.(C) No.7625/2020 states that the petitioners in the petitions have pleaded that though they were deprived of additional increment with effect from the year 2006, as far back as in the year 2012, but did not take any action, owing to the financial effect thereof being miniscule, but have now taken action, when the financial impact, owing to the cascading effect with effect from the year 2006, has become substantial. It is contended that the petitions are liable to be dismissed on this ground alone.

8. The counsel for the petitioners contends that this is a recurring cause of action and the effect of the delay can only be to deprive the petitioners of the arrears but not to deprive the petitioners of future increments in accordance with the judgment in Vijayan V.V. supra.

9. Though we have hereinabove expressed our prima facie opinion but since there is already a judgment of a Co-ordinate Bench of this Court, the petitions cannot be dismissed in limine, apprehending which the counsel for the petitioners during the dictation seeks to withdraw the petitions with liberty to pursue the representations.

10. Issue notice.

11. Notice is accepted by the counsels for the respondents BSF.

12. We may record that the dates given in the aforesaid narration are as per our notings of W.P.(C) No.7622/2020 and may vary in the other petitions.

13. Counter affidavits, if any be filed within six weeks.

14. Rejoinders thereto, if any be filed within further four weeks thereafter.

15. List on 2nd February, 2021.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

OCTOBER 7, 2020 'bs'..