

GAHC010019382022



**THE GAUHATI HIGH COURT  
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/991/2022**

SHIV RAJ SINGH  
SON OF AMAR SINGH  
R/O 68BN, CRPF VEENER MILS MANKHOLI  
DIST. TINSUKIA, ASSAM  
PIN-78192

VERSUS

THE UNION OF INDIA AND 3 ORS  
REP. BY THE SECONDARY TO THE GOVT. OF INDIA, MINISTRY OF HOME  
AFFAIRS, NORTH BLOCK, CABINET SECRETARIAT, RAISINA HILL, NEW  
DELHI-110011.

2:THE DIRECTOR GENERAL

CENTRAL RESERVE POLICE  
BLOCK NO. 1  
CGO COMPLEX  
NEW DELHI-110003

3:THE INSPECTOR GENERAL OF POLICE  
(COMM AND IT)  
CENTRAL RESERVE POLICE FORCE  
BLOCK NO. 1  
CGO COMPLEX  
NEW DLEHI-110003

4:THE DIRECTOR

DEPARTMENT OF EXPENDITURE  
MINISTRY OF FINANCE  
GOVT. OF INDIA

NEW DELHI-11000

**Advocate for the Petitioner : MR. M K CHOUDHURY**

**Advocate for the Respondent : ASSTT.S.G.I.**

**BEFORE  
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

**ORDER**

**06-05-2024**

Heard Shri P. Bharadwaj, learned counsel for the petitioner. Also heard Shri S. S. Roy, learned CGC appearing for all the respondents, who has also filed affidavit-in-opposition on 09.09.2022.

- 2.** The issue is towards a claim for parity in pay.
- 3.** As per the facts projected, the petitioner was appointed as a Constable Tradesman/Driver for the CRPF on 23.07.1992. After serving in the said capacity after about 12 years, in the year 2004, the petitioner was promoted to the rank of Heard Constable/Driver. The grievance of the petitioner is with regard to the Basic Pay in the promoted post. While the petitioner is receiving his pay on the calculation of his Basic Pay as Rs.41,600/-, for the other similarly situated Head Constable/Driver, the Basic Pay is Rs.42,800/-.
- 4.** Shri Bhardwaj, the learned counsel for the petitioner has submitted that all such persons who are similarly situated *qua* the nature of posting and service are however junior to the petitioner. He however admits that such persons are direct recruits whereas the petitioner is a promotee.
- 5.** The learned counsel has also placed reliance on an Office Memorandum

dated 28.09.2018 and a further communication dated 29.11.2018 by the DIG (Admn) pursuant to the aforesaid Office Memorandum. He points out that there is a clarification in the communication dated 29.11.2018 that no persons are to be left out. The learned counsel accordingly submits that necessary directions are to be issued for giving the emoluments of the petitioner with the Basic Pay as Rs.42,800/- which would be at par with the other persons serving as Head Constable/Driver in the Organization.

**6.** Shri Roy, the learned CGC on the other hand has submitted that the claim of the petitioner may not be admissible inasmuch as the Office Memorandum dated 28.09.2018 as well as the letter dated 29.11.2018 pertains to the rank of Inspector (GD). The learned CGC submits that unless there is an explicit instruction for grant of an equal Basic Pay so far as the post of Head Constable is concerned, such OM or communication cannot be automatically be held to be applicable. The learned counsel for the Department has also submitted that the persons who are getting the Basic Pay on a higher rate are direct recruits whereas the petitioner is a promotee and there is a difference in the mode of entry in the service.

**7.** The rival contentions have been duly considered.

**8.** It is not in dispute that the emoluments given to the petitioners is calculated on a Basic Pay of Rs 41,600/- whereas for the other direct recruits who are also junior to the petitioner, their emoluments are calculated with the Basic Pay @ Rs.42,800/-. The Office Memorandum dated 28.09.2018 would have an immense bearing in the adjudication of the present claim and accordingly the relevant part is extracted herein below:-

*“8. Accordingly, the President is pleased to decide that in respect of those posts*

*where entry pay for direct recruits appointed on or after 1.1.2006, as per Section II of Part A of the First Schedule of CCS (TP) Rules, 2008, becomes applicable by virtue of the provision of the element of direct recruitment in the relevant recruitment rules, the pay of Central government employees who were appointed to such posts prior to 1.1.2006 and whose pay, as fixed in the revised pay structure under Rule 7 thereof as on 1.1.2006 turns out to be lower than the prescribed entry pay for direct recruits of that post, shall not be less than such entry pay w.e.f. 1.1.2006. Likewise, the pay of Central Government employees who were appointed to such posts by way of promotion on or after 1.1.2006 and whose pay, as fixed under Rule 13 of CCS (RP) Rules, 2008, happens to be lower than the said entry pay, shall also not be less than such entry pay from the date of their promotion taking place on or after 1.1.2006."*

**9.** The said Office Memorandum has further been clarified by the communication dated 29.11.2018 for its proper implementation with a further instruction that no persons are to be left out from the said benefit. The objection raised for denial of the said benefit is that the Office Memorandum in question only covers the post of Inspector (GD) and therefore the same cannot be extended to the post of Head Constable/Driver.

**10.** The claim of an incumbent who holds the same post with some others for getting the same Basic Pay cannot be held to be an unreasonable pay. On the contrary, this Court is of the opinion that considering that there is no dispute in the equality of the post/rank and the nature of duties performed, the payment of Basic Pay would not at all be dependent on the mode of entry into the said post that is whether such post was entered into by way of promotion or by direct recruitment.

**11.** This Court is also of the view that the Office Memorandum dated 28.09.2018 though only mentions the Office of Inspector (GD) the same cannot be restricted to the said post and such clarification would be applicable for other posts as well.

**12.** In view of the aforesaid discussion, this Court is of the opinion that a case

for interference is made out.

**13.** Accordingly, the writ petition stands allowed by directing payment of the emoluments of the petitioner by taking his Basic Pay as Rs.42,800/- which is at par with the other persons in the same post of Head Constable/Driver. Such benefit has to be given from the date when the Office Memorandum dated 28.09.2018 was implemented. Though the petitioner has made an additional claim for interest, the same is not inclined to be granted.

**14.** Writ petition accordingly stands allowed.

**JUDGE**

**Comparing Assistant**