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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: February 15, 2011*

+ **W.P.(C) 6973/2010**

HARGOVIND SINGH Petitioner
Through: Mr.R.B.Bansal, Mr.S.Mohanty and
Mr.Bipul Kumar, Advocates

versus

CENTRAL INDUSTRIAL SECURITY
FORCE Respondent
Through: Mr.Ankur Chhibber, Mr.R.V.Sinha and
Mr.A.S.Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.(Oral)

1. Heard learned counsel for the parties.
2. Petitioner seeks restoration of the 2nd financial upgradation under the ACP Scheme with effect from 3.11.1999

and seeks further 3rd financial upgradation with effect from 1.9.2008.

3. As per the counter affidavit filed, 3rd financial upgradation benefit has been granted to petitioner with effect from 1.9.2008 and to this extent learned counsel for the petitioner states that a part from the cause pleaded in the writ petition has resolved itself in favour of the petitioner and thus this Court need not bother about said facts pleaded in the writ petition.

4. As regards the first claim of the petitioner i.e. to be granted 2nd financial upgradation with effect from 3.11.1999, as per counter affidavit filed benefit thereof has been accorded but with effect from 15.2.2006.

5. The undisputed position is that the petitioner was granted the benefit of the 2nd upgradation under the ACP Scheme with effect from 3.11.1999 but the same was withdrawn without notice to the petitioner; and thus the claim in the writ petition.

6. As per the counter affidavit filed, the 2nd ACP upgradation benefit was granted to the petitioner on 3.11.1999 in ignorance of the fact that the Mandatory Promotion Course was not successfully undertaken by the petitioner and when this was realized, petitioner was required to attend the Promotion Course commencing on 15.11.2009 for which he expressed his unwillingness to attend the course on 29.10.2004.

7. Justifying restoration and grant of the second ACP benefit with effect from 15.2.2006, it is pleaded in the counter

affidavit that the petitioner successfully cleared the Promotion Course held between 7.3.2005 to 14.5.2005 and thus regained the second ACP benefit; but with effect from 15.2.2006.

8. Learned counsel for the respondent would urge that the issue at hand is squarely covered against the petitioner as per the judgment and order dated 30.9.2010 disposing of W.P.(C) No.8631/2009 Bhagwan Singh Vs. UOI & Ors.

9. A perusal of the decision in Bhagwan Singh's case (supra) would reveal that the petitioner therein was working as a Head Constable and was denied the second upgradation under the ACP Scheme on account of the fact he had consciously refused to undergo the mandatory promotional courses which would have made him eligible to be promoted as an Assistant Sub-Inspector and, in writing, had given that he foregoes the right to be promoted.

10. The Division Bench noted paragraph 10 of the ACP Scheme which reads as under :-

“10. Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. IN regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribe din the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For

example, if a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refused regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+12+1) of regular service, he shall be eligible for consideration for the second upgradation under the ACP Scheme only after rendering ten more years in addition to two years of service already rendered by him after the first financial upgradation (2+10) in that higher grade i.e. after 25 years (12+2+1+10) of regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in that higher grade."

11. In the instant case, facts noted hereinabove, would show that the respondents offered to detail the petitioner for the mandatory PCC course to be held with effect from 15.11.2004. We shall deal with the effect of the petitioner not joining the said course, but relevant would it be to note that the petitioner's entitlement to the ACP benefit accrued with effect from the month of November 1999 and it is not the case of the respondents that till they offered petitioner the chance to clear the PCC course commencing with effect from 15.11.2004, any earlier opportunity was granted to the petitioner to attend the course.

12. It is an admitted position that the department has to detail persons for undertaking the promotion cadre course and attending said courses is not at the option of the officers concerned.

13. If that be so, the respondents cannot take advantage

of not discharging their obligation which precedes the obligation of the incumbent to clear the promotion cadre course. The prior obligation of the department is to detail the person concerned to undertake the promotion cadre course.

14. As regards petitioner's unwillingness to undergo the promotion cadre course commencing from 15.11.2004, it may be noted that the use of the word '*unwilling*' would be a misnomer. What has happened is that prior to the petitioner being intimated that he would be detailed to undertake the promotion cadre course commencing with effect from 15.11.2004, on account of the extreme ill medical condition of the wife of the petitioner he had sought for and was granted leave to proceed to his native village.

15. Suffice would it be to state that the position therefore would be that the respondent is in greater default by not detailing the petitioner to undertake the promotion cadre course till an offer to this effect was made somewhere a few days prior to 15.11.2004. Surely, petitioner cannot be denied his rights till said date.

16. As regards the technical default committed by the petitioner in not undertaking a promotion cadre course with effect from 15.1.2004, suffice would it be to state that he has a reason for so doing.

17. The matter can be looked at from another angle. Having successfully cleared the PCC course the respondents have themselves restored the 2nd ACP benefit with effect from 15.2.2006. We note that as per the respondents, they

erroneously released the 2nd ACP benefit in November 1999 and continued to pay the same till it was stopped in the month of May 2005; when recoveries were sought to be made.

18. Now, having tendered the extra money to the petitioner there would be an implied assurance to the petitioner that the money being paid to him is his and he could spend it as he likes. Having believed that the extra money being handed over to him was his due, the petitioner was justified in spending the money and noting that it is not the case of the respondent that the petitioner played any fraud, recovery of the extra amount paid to the petitioner can be prohibited under the law of estoppel.

19. What we intend to convey is that the benefit granted to the petitioner in November 1999 till May 2005, when it was sought to be withdrawn can be directed to be retained by the petitioner on aforesaid legal reasoning also.

20. That would leave the short period between May 2005 and 15.2.2006 to be settled.

21. Noting the peculiar facts of the instant case; the equities in favour of the petitioner; and the fact that the greater fault lies with the respondents in not detailing the petitioner to undertake the PCC course till the offer to this effect was made in the month of November 2004, we dispose of the writ petition declaring that the petitioner would be entitled to the 2nd ACP benefit with effect from 3.11.1999. We note that there is no dispute pertaining to the 3rd ACP benefit which, consistent with the claim of the petitioner, has been sanctioned by the

respondents with effect from 1.9.2006.

22. Recoveries effected from the petitioner would be refunded to him within a period of 12 weeks from today.

23. No costs.

24. Dasti.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

FEBRUARY 15, 2011

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