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

Date of Decision : September 06, 2013

+ W.P.(C) 5539/2013

JAIPAL SINGH AND ORS Petitioners
Through: Mr.Ankur Chibber, Adv.

versus

UOI AND ORS Respondents
Through: Mr.Neeraj Chaudhari, CGSC
for UOI

+ W.P.(C) 4258/2013

GAJRAJ SINGH & ORS Petitioners
Through: Mr.Ankur Chibber, Adv.

versus

UNION OF INDIA & OTHERS Respondents
Through: Mr.Yogesh Yogi, Adv. for
Mr.Joginder Sukhija, Adv. for
R-1 to R-4

+ W.P.(C) 5059/2013

RAJ KANWAR & ORS Petitioners
Through: Mr.Ankur Chibber, Adv.

versus

UNION OF INDIA & OTHERS Respondents
Through: Mr.Jatan Singh, CGSC and
Mr.S.Qureshi, Adv. for UOI

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE V. KAMESWAR RAO

GITA MITTAL, J. (Oral)

W.P.(C) 4258/2013

It is to be noted that by an error, presence of counsels on the 9th July, 2013 and 3rd September, 2013 has been erroneously recorded. Mr. Ankur Chibber, Advocate represents the petitioner while Mr. Joginder Sukhija appears for the respondents in this matter.

The presence of counsels on the 9th July, 2013 and 3rd September, 2013 shall stand corrected.

W.P.(C) 5539/2013, W.P.(C) 4258/2013 & W.P.(C) 5059/2013

1. The petitioners in these cases seek quashing of Signals dated 28th May, 2013 and 3rd July, 2013 whereby the respondents have denied benefit to the petitioners under the ACP Scheme on the ground that if they have qualified SUOCC Course after completion of 24 years of service then they will be eligible for the 2nd financial upgradation under the ACP Scheme from the completion of said promotional course and not from completion of 24 years of regular service. The petitioners have further sought for directions to the respondents to grant 2nd financial upgradation to the petitioners as provided under the ACP Scheme on completion of 24 years of regular service.

2. The undisputed facts in the instant case necessary for

adjudication of the writ petitions are noticed herein after. As per the ACP Scheme in order to be eligible for grant of 2nd financial upgradation, an employee is required to have completed 24 years regular service from the date of his appointment to a post without any promotion in the last 12 years and he should have successfully undertaken the pre-promotional cadre course.

3. Admittedly all the petitioners had completed their 24 years of regular service without there being any promotion in the last 12 years. However, the respondents did not grant the 2nd financial upgradation to the petitioners on the ground that under the ACP Scheme a person was required to fulfill all the norms required for a normal promotion and unless and until the same were fulfilled the said financial benefits could not be given to the individual. In the instant cases, the respondents took the plea that the petitioners had not undertaken the pre-promotional cadre course despite completion of 24 years of service and thus, the 2nd financial benefit could not be granted to them. It is worth while mentioning that the said pre-promotional cadre course could not be undertaken by the petitioners for no fault of theirs but for the reason that the respondents for their

own fault did not detail the petitioners to undergo the said pre-promotional courses.

4. The petitioners aggrieved by the illegal acts of the respondents made various representations to the respondents. The respondents after considering the above representations of the aggrieved persons and after analyzing the said issue, passed an order dated 6th March, 2012 issued by the office of Directorate General, CRPF which reads as under:

“Sub: Grant of Financial Benefits under ACP/MACP Scheme-Clarification.

A case was referred to the MHA seeking clarification in connection with grant of financial up-gradation under MACP scheme to the Constables and fixation of pay thereupon. The issue was examined in MHA, DoPT and Department of Expenditure (MoF). After due examination the Ministries have clarified the position as under:

A) The case of Cts who have qualified promotional course (i.e. SCC) and allowed 1st ACP benefit from the next date of termination of SCC qualified by them may be reviewed and they may now be granted financial up-gradation under ACP and MACP schemes as

under:

Sl. No.	Categories of CTs	Modalities for Grant of Financial up-gradation benefits under ACP/MACP Schemes
1)	CTs who qualified promotional course within maximum permissible three chances.	Since these CTs were detailed on promotional course after completion of more than 12 years of service, they may be allowed 1 st financial up-gradation under ACP Scheme (of August 1999) from the date of completion of 12 years of service subject to fulfillment of other eligibility conditions, as there is no fault on their part for late detailment on promotional course. Financial up-gradation under MACP will be admissible to such CTs wherever they complete 20/30 years of

		continuous regular service or spent 10 years continuously in the same Grade Pay whichever is earlier.”
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5. That pursuant to the said clarification issued by the Directorate General office in consultation with Ministry of Home Affairs, the respondents passed an order dated 1.2.2003 whereby the 2nd financial up-gradation was granted to petitioners from the date they had completed 24 years regular service from the date of their appointment. Pursuant to the said order, the respondents had also issued an order dated 2nd May, 2013 showing the actual fixation of pay to the petitioners after grant of 2nd financial up-gradations.

6. Despite having issued the above orders after issuance of clarification by the Directorate General office as well as the Ministry of Home Affairs, the respondents issued the impugned Signals dated 28th May, 2013 and 3rd July, 2013 whereby it was informed that a Head Constable/GD who qualify SUOCC Course before completion of 24 years regular service will be eligible for financial up-gradation from the date of completion of 24 years regular service. However, if

he has qualified SUOCC after completion of 24 years regular service, then he is eligible for the financial up-gradation from the date of said promotional course viz-a-viz other conditions.

7. Learned counsel has also emphasized that pursuant to the order dated 6th March, 2012, the respondents had granted the said 2nd financial upgradation to the petitioners vide its order dated 1st February, 2013 and also fixed their pay as per order dated 2nd May, 2013. Having given the said benefit, the respondents cannot withdraw the said benefit without issuing a show cause notice or giving an opportunity to the petitioners to be heard.

8. In the above background, the learned counsel for the petitioners has argued that the impugned signals issued by the respondents is in direct contradiction to the letter dated 6th March, 2012 issued by the Directorate General office in consultation with Ministry of Home Affairs wherein it has categorically been decided that since these Constables (Cts) were detailed on promotional course after completion of more than 12 years of service, they may be allowed 1st financial up-gradation under ACP Scheme (of August 1999) from the date of completion of 12 years of service subject to

fulfillment of other eligibility conditions, as there is no fault on their part for late detailment on promotional course. Learned counsel for the petitioners had argued that once the respondents have taken the said decision for grant of 1st financial up-gradation, there can be no different yardsticks for grant of 2nd financial upgradation.

9. It is also submitted that the respondents cannot be allowed to take benefit of their own wrong. He has submitted that the reason for non-completion of pre-promotional cadre course of the petitioners before completion of 24 years service is due to the reason that the respondents had not detailed the petitioners for the said course. Having not done so, the respondents cannot be allowed to withhold a benefit which the petitioners were otherwise entitled to on completion of 24 years of service only on the ground that they had not completed the pre-promotional cadre course.

10. In support of his contention the learned counsel for the petitioners has placed reliance on the pronouncement of this Court order dated 15th February, 2011 reported in WP(C) No.6937/2010 ***Hargovind Singh V. Central Industrial Security Force***. The petitioner in this case also was seeking restoration of his second

financial up-gradation under the ACP Scheme with effect from 3rd November, 1999 and further grant of 3rd financial up-gradation with effect from 1st September, 2008. It is noteworthy that the petitioner was granted the second up-gradation under the ACP scheme on 3rd November, 1999 but the same was withdrawn without notice to the petitioner resulting in the claim in the writ petition. The stand of the respondents has been noted in Para Nos. 5 and 6 of the judgment which was to the following effect:

‘5. The undisputed position is that the petitioner was granted the benefit of the 2nd up-gradation 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 willingness to attend the course on 29.10.2004.’

11. This very contention is urged before us just as in the present case the petitioner **Hargovind Singh** also did not get an opportunity to undergo the PCC course on the date he became eligible for grant

of further financial up-gradation which was withdrawn. On this aspect in *Hargovind Singh* (supra) the Court has ruled on the respondents' contention urged before us as well, and commented upon the responsibility of the department to detail the person for undertaking the promotional course. In this regard observations made in Para 8 to 14 of the judgment are being relied upon which reads as under:

“8. Learned counsel for the respondents would urge that the issue at hand is squarely covered against the petitioner as per the judgement and order dated 30.9.2010 disposing of WP(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 up-gradation 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 prescribed in the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second up-gradation 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 up-gradation 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 up-gradation 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 up-gradation (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 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 willingness 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."

12. Before us, it is an admitted position that the petitioners became eligible for the financial upgradation on completion of 24 years of regular service and pursuant to the clarification dated 6th March, 2012, the said benefit was indeed granted to the petitioners vide order dated 1st February, 2013 and 2nd May, 2013. So far as they being given opportunity for completing the SUOCC course is concerned, they have been detailed for the said course after completion of 24

years of regular service and all of them have successfully completed the same.

13. Undoubtedly for the reasons recorded in *Hargovind Singh* (supra), the petitioner could not be deprived of the financial up-gradation for this period. It is apparent from the working of the ACP scheme by the respondents that a person is entitled to the financial benefit on the date he completes the required twelve years of service without a promotional opportunity. The respondents have so worked the scheme in *Hargovind Singh* (supra) as well as the present case. The completion of the promotional cadre course is akin to completion of the requisite training upon appointment/promotion. It does not change the date of the appointment or the date of his promotion.

14. The observations of the Division Bench in *Hargovind Singh* (supra) are in consonance with the facts of the present case. After May 2003, the present petitioner was detailed for undertaking PCC only in July 2004. It is an admitted position that the petitioner accepted this offer and has successfully undertaken the PCC which was conducted between 5th July, 2004 to 21st August, 2004. In this background, the petitioner cannot be denied of his rightful dues till

date.

15. The respondents hold a person entitled for undergoing SUOCC course for several years when the employee is not offered an opportunity to undergo the said course even though he may be willing and able to do so. Having not allowed them to undergo the said course the respondents cannot be allowed to take away the benefit of second financial up gradation to the petitioner under the ACP scheme.

16. Admittedly it is the responsibility of the respondents to detail the individual for the pre promotional cadre course. Having not done so the respondents cannot be allowed to withhold the benefits entitled to an individual for their own faults.

17. The said issue has also been adjudicated by various pronouncements of this Court which are as follows- ***R.S Rathore Vs UOI and others*** being W.P.(C)1506/2012, ***Tulsi Das Vs UOI and others*** being W.P.(C) 1881/2012 and others.

18. In view of the forgoing, we direct as follows:-

(i) a writ of certiorari is issued quashing signals dated 28th May, 2013 and 3rd July, 2013

(ii) the respondents are directed to grant the 2nd financial upgradation to the petitioners from the date they had completed 24 years of regular service

(iii) the respondents are directed to fix the pay of the petitioners and pension of the petitioners who may have retired pursuant to the grant of 2nd financial upgradation within a period of six weeks from today. The order passed by the respondents shall be communicated to the petitioners. The arrears in terms of this order shall be released to the petitioners within a period of four weeks thereafter.

19. These writ petitions are allowed in the above terms.

GITA MITTAL, J

V. KAMESWAR RAO, J

SEPTEMBER 06, 2013

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