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

+ **W.P.(C)No.2640/2012**

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Date of decision: 27st August, 2013

B PADMAIAH

..... Petitioner

Through : Mr. S. Beno Bencigar, Adv.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr. B.V. Niren and
Mr. Prasouk Jain, Advs.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J. (Oral)

1. The petitioner in this case is aggrieved by the failure of the respondents to grant him the benefits of Assured Career Progression Scheme ('ACP' Scheme hereafter) from the date of completion of 12 years of regular service without promotion. The petitioner also assails the order dated 12th March, 2011 passed by the Deputy Inspector, Central Industrial Security Force ('CISF' hereafter) denying the benefit of the ACP Scheme to the petitioner as well as the order dated 3rd August, 2011 passed by the Director General, CISF confirming the order of the Deputy Inspector.

2. The factual narration by the petitioner is undisputed by the

respondents. The petitioner who was appointed as Constable on the 3rd of August, 1983 with the respondents completed 12 years of service in the year 1995. The ACP Scheme was introduced on 9th August, 1999 by the respondents, benefit whereof were extended to the CISF personnel effectuating the recommendations of the Fifth Central Pay Commission in its report for the Central Government's employee to deal with the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues. The same becomes applicable for the CISF personnel pursuant to CISF Circular No. ESTT-I/16/2000 dated 18th February, 2000.

3. The respondents have drawn our attention to para 6 of Annexure I of the Scheme which prescribes the conditions which render an employee eligible for grant of benefit of this scheme. The same is as under:-

“6. Fulfilment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness in the case of Group ‘D’ employees, etc.) for grant of financial up-gradation, performance of such duties as are entrusted to the employees together with retention of old designations, financial up-gradation as personal to the incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme.”

4. The controversy in the instant case rests on the requirement of a person successfully completing the prescribed Promotion Cadre Course (PCC) which would render him eligible for promotion. It appears that the petitioner was served with the charge sheet dated 28th March, 1998 under Rule 34 of the CISF Rules. The disciplinary proceedings against the petitioner culminated in passing of the order dated 16th June, 2000 imposing the penalty on the petitioner for dismissal from service. The petitioner's appeal came to be rejected by an order dated 27th November, 2000 while an order dated 31st March, 2001 was passed by the revisional authority dismissing his revision petition. Aggrieved by these orders in the disciplinary proceedings and in the challenge thereof, the petitioner invoked the writ jurisdiction of the Madras High Court by way of WP(C)No.22574/2001. This writ petition came to be allowed by the judgment of the Division Bench of High Court of Judicature at Madras dated 12th December, 2006 wherein the orders passed by the disciplinary authority, appellate authority and the revisional authority were set aside and quashed. The respondents were directed to reinstate the petitioner in service forthwith "*with backwages, continuity of service and all other attendant benefits*".

5. The writ petitioner had been removed from service with the CISF with effect from the 23rd of June, 2000. It is because of the intervention of this order of dismissal that the petitioner was prevented from undergoing the promotion cadre course.

6. While the disciplinary proceedings were on by an order dated 24th April, 2000, the respondents made an offer to the petitioner to undergo the promotion cadre course for the first time to which petitioner showed his unwillingness. After resumption of duties, the respondents made a second offer to the petitioner to participate in the promotion cadre course being conducted from 21st May, 2007 to 7th July, 2007. The petitioner undertook the course but was unsuccessful in the drill and weapon training and consequently was declared failed. The last and final opportunity available to the petitioner to undertake the promotion cadre course was successfully availed by the petitioner between 24th June, 2008 to 27th June, 2008 and he was declared qualified vide service order PT-II No.80/2008 dated 17th July, 2008.

7. The respondents acted only after the petitioner successfully completed the promotion cadre course. The case of the petitioner was considered by the Screening Committee and he was given the first financial upgradation under the ACP Scheme vide order dated 7th February, 2009 with effect from 27th January, 2009.

8. The petitioner is primarily aggrieved by the fact that the respondents failed to grant him the benefit of ACP Scheme with effect from 9th August, 1999 when it was promulgated and when the petitioner had already completed all eligibility conditions.

9. Some additional facts subsequent to the grant of benefit of ACP Scheme with effect from 27th January, 2009 also deserve to be considered. We are informed that on 19th May, 2009, the

modified ACP Scheme was promulgated with effect from 1st of September, 2008 which was also extended to the personnel of the CISF.

10. The Screening Committee considered the case of the petitioner on 24th February, 2010 but found him unfit for grant of MACP benefit due to deferment of his first financial upgradation for the period between 9th August, 1999 to 1st September, 2008, i.e., for a period of 9 years and 23 days.

11. Under the MACP Scheme, a personnel of the force becomes eligible for the benefit on completion of 10 years of service as against the 12 years prescribed under the 1999 scheme. On 7th October, 2010, the first ACP benefit granted to the petitioner was converted into the “FIRST” MACP benefit with effect from 1st September, 2008. The respondents relied upon this order to urge that the ACP benefit was therefore, being given to the petitioner from the date earlier to 27th January, 2009 which had been ordered earlier.

12. The petitioner made a representation dated 7th March, 2011 to the Inspector General of the CISF for grant of second financial upgradation. The same did not find favour and was rejected by respondent no.3 by an order passed on 12th March, 2011. The second representation dated 27th March, 2011 made to the Director General of the CISF was rejected by a reply dated 3rd August, 2011. The petitioner has contended that, in these circumstances, he has been wrongly deprived of the benefits of MACP for the period

between 9th August, 1999 till 1st September, 2008.

13. We have heard learned counsel for the parties.

The respondent's opposition to the writ petition lies on the fact that the petitioner was given an opportunity to undergo the PCC on the 24th of April, 2000 but he had shown unwillingness and consequently he was not entitled to the benefits of PCC till he successfully cleared the promotion cadre course.

14. The salient features of the ACP scheme as well as the criteria and procedure for its implementation in the CISF are detailed in the Circular dated 18th February, 2000. The respondents have set down the categories of the CISF employees to whom the ACP scheme is applicable in para 3(a) which reads as follows:-

“A) CATEGORIES OF CISF EMPLOYEES TO WHOM THE ACP SCHEME IS APPLICABLE”

The ACP scheme covers all such Group “B”, “C” & “D” employees of the CISF who for reasons of no promotional avenues at all or due to limited promotional avenues, have not availed any regular promotion for 12 years from the date of their direct appointment to any post or if availed one promotion but have not got the opportunity for second promotion till the completion of 24 years of regular service isolated posts in Group “A”, “B”, “C” and “D” categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above.”

15. It is apparent from the above reading that the scheme is applicable to all employees of the CISF who, though eligible, for

reasons of no promotional avenues at all or due to limited promotional avenues, have not availed any regular promotion for 12 years from the date of their direct appointment to any posts. Such personnel would be entitled to the benefit under the Scheme. The date on which the person has to be considered for the benefit of the ACP is obviously the date on which they complete 12 years of service.

16. In the instant case, the petitioner has completed 12 years of service in the year 1995 on which date the Scheme was not vogue. Therefore, even if the effective date of the applicability of the scheme was construed as 18th February, 2000 when the scheme became applicable to the employees of the CISF, the petitioner was eligible under para 3(A) for consideration and, therefore, the contention that he should have been considered and granted benefit of ACP Scheme as on 18th February, 2000 is not without merit.

17. So far as the submission of learned counsel for the respondents that petitioner could claim benefit of the ACP Scheme only from such date when he successfully completed promotion cadre course is concerned, this question has been raised and answered in several cases.

18. The grant of the benefit of the ACP Scheme to the petitioner is opposed on the ground that he has refused the first opportunity to undergo the promotion cadre course.

19. Learned counsel for the petitioner has placed reliance on Circular No.39/1993 dated 23rd/28th November, 1993 whereby the

decision of the CISF to grant three opportunities in various ranks between Constable to Inspector to complete the promotion cadre course was permitted. This circular also shows that the decision had been taken that third chance will be accorded to those personnel who have not been able to clear the promotion cadre course after availing of the second chance and such opportunity would be given only by the Inspector General/Headquarter at Force Headquarter on special recommendation from the concerned DIGs. However, DIGs will have to justify the reasons for such recommendation.

20. Mr. S. Beno Bencigar, learned counsel for the petitioner has drawn our attention to the pronouncement dated 4th December, 2006 passed by the Division Bench of the High Court of Judicature at Madras in ***W.P.No.22111/2004 S. Ravi & Others v. Union of India & Others*** filed in similar circumstances. The above circular was relied upon by the petitioner to contend that the petitioners are entitled to three attempts to pass the promotion cadre course and therefore respondents cannot deny the benefits of PCC upon failure of a person succeeding in the PCC course on the first and second attempts. This submission found favour with the Madras High Court which quashed the decision of the respondents withdrawing the benefits of PCC to persons who had either not undertaken the PCC or had failed in first and second chance and the benefits of PCC were restored to such person.

21. Learned counsel for the petitioner has also placed reliance on

the pronouncements of this court dated 15th February, 2011 in ***WP(C)No.6937/2010 Hargovind Singh v. Central Industrial Security Force*** and the judgment dated 21st May, 2013 in ***WP(C)No.1506/2012 R.S. Rathore v. Union of India & Another*** wherein also the respondents had withdrawn the benefit of PCC to the petitioners on the same ground as in the case of the present petitioner. The respondents had even initiated recovery proceedings.

22. We may usefully extract the relevant portion of the pronouncement of ***Hargovind Singh*** (Supra) wherein the respondents contention has been overruled by the court which reads thus:-

“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 prescribed in 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.”

23. As noted above, the petitioner before us was eligible for PCC on the 9th of August, 1999 when the ACP Scheme came into force and on 18th February, 2000 when it became applicable to the CISF. No circumstance has been pointed out which would render the petitioner ineligible to grant of the benefit with effect from 18th February, 2000 and as such the benefit thereof has to be given to the petitioner from that date. So far as petitioner’s unwillingness in undertaking the PCC on 24th April, 2000 is concerned, for the reasons recorded in the *Hargovind Singh* (Supra), we are of the view that the same would not be a disqualification to grant of such benefit to the petitioner.

24. The same reasons would apply upon the failure of the petitioner to successfully complete the PCC in the second opportunity given to him between 21st May, 2007 to 7th July, 2007. The petitioner has successfully completed the PCC in the third attempt between 24th June, 2008 to 14th July, 2008. The petitioner has therefore, satisfied all essential conditions which were notified by the respondents under the ACP Scheme which entitles him to the continuation of the benefits.

25. By the judgement dated 12th December, 2006, the Madras High Court directed reinstatement of the petitioner in service with all benefits which included backwages, continuity of service and all other attendant benefits. It has also to be held that grant of ACP Scheme from the relevant date is an integral part of the relief which

had been granted by the court to the petitioner.

In view of the above, we direct as follows:-

- (i) The impugned order dated 12th March, 2011 passed by the respondent no.3 and 3rd August, 2011 by the respondent no.2 are not sustainable and are hereby set aside and quashed.
- (ii) The petitioner is entitled to the benefits of ACP Scheme with effect from 18th February, 2000 as applicable to the CISF.
- (iii) A direction is issued to the respondents to compute the benefits of ACP Scheme which enure to the petitioner with effect from 18th February, 2000 till the date the same are actually granted to him.
- (iv) The orders in this regard with the calculations thereof shall be duly communicated to the petitioner within a period of eight weeks from today.
- (v) As a result of the above, the respondents shall also consider the entitlement of the petitioner for grant of benefit of MACP if any and pass order in this regard as well.

This writ petition is allowed in the above terms.

Dasti to parties.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

AUGUST 27, 2013/mk