

GAHC010184162014



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

Case No. : WP(C)/276/2014

HIRENDRA NATH MALAKAR
FORCE NO.833090256, PRESENTLY SERVING IN CISF UNIT BCPL,
DIBRUGARH, ASSAM, R/O KATAHKUCHI, P.O. DUBI, PATHSALA, DIST-
BARPETA, PIN-781325

VERSUS

THE UNION OF INDIA and 4 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, CGO
COMPLEX, LODHI ROAD, NEW DELHI-03

2:THE DIRECTOR GENERAL
CENTRAL INDUSTRIAL SECURITY FORCE
CGO COMPLEX
LODHI ROAD
NEW DELHI-03

3:THE DY. INSPECTOR GENERAL OF POLICE
CISF UNIT OIL
DULIAJAN
DIBRUGARH
ASSAM
PIN-786602

4:THE COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE
BCPL UNIT
DIBRUGARH
ASSAM

5:THE ASSTT. COMMANDANT
CENTRAL INDUSTRIAL SECURITY FORCE

BCPL UNIT
DIBRUGARH
ASSA

Advocate for the Petitioner : MR.R MAZUMDAR

Advocate for the Respondent : MR. H. GUPTA, C.G.C.

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. R. Mazumdar, Advocate

For the Respondents : Mr. G. Pegu, CGC.

Date of Hearing : 12.03.2024

Date of Judgment & Order :22.04.2024

JUDGMENT & ORDER(CAV)

1. Heard Mr. R. Mazumdar, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned CGC representing the respondent Union of India.
2. The grievance of the petitioner in a nutshell, raised in the instant writ petition is as regards non grant of benefit of third financial up-gradation in accordance with Assured Career Progression Scheme (ACPS) inasmuch as according to the petitioner, he had completed 30 years of continuous service in Central Industrial Security Force as on 01.01.2013, when according to the petitioner, he was entitled to be granted the third financial up-gradation.

3. Mr. Mazumdar, learned counsel for the petitioner in support of aforesaid contentions argues the following:-

- I. The currency of a punishment of withholding of one increment without cumulative effect was over on 01.01.2000 and therefore, there will be no impediment for payment of ACPS thereafter inasmuch as it is his case that the first ACPS was due on 09.08.1999 and the petitioner will be entitled for the ACPS, even if it is assumed that due to currency of punishment, such ACPS was not granted on 09.08.1999. Thus, according to the learned counsel the petitioner was granted the benefit of ACPS with effect from 02.01.2001 instead of 02.01.2000.
- II. The second contention of the petitioner is that the second ACPS became due on completion of 24 years of regular service w.e.f. 01.01.1983 i.e. w.e.f. 01.01.2007 and accordingly, he was rightly granted such benefit on 01.01.2007. However, same is sought to be re-calculated after the petitioner preferred a representation.
- III. Such actions of the respondent/employer, in granting the first ACPS to the petitioner with effect from 02.01.2001 and the third financial up-gradation with effect from 25.05.2014 are illegal on the face of the scheme and therefore, a direction should be issued to the respondents to recalculate the benefit in the aforesaid terms and give the consequential benefit thereof.

4. Mr. Pegu, learned CGC appearing on behalf of the respondent Union of India argues the following:-

- I. So far relating to first ACPS, in terms of the Scheme dated 09.08.1989, the petitioner case was considered and rightly granted financial up-gradation with effect from 02.01.2001 instead of 02.01.2000 for the reason that the punishment of stoppage of increment for one year was inflicted with effect from 27.04.1999 and therefore, such punishment shall continue till 27.04.2000 and therefore, action of the respondents cannot be faulted with.
- II. As regards grant of second financial up-gradation in terms of the ACPS, 1999, Mr. Pegu, learned CGC contends that as the petitioner was entitled for first ACPS on 02.01.2001 and therefore, he will be entitled for second financial up-gradation only with effect from 24.05.2008. That being so, according to the learned counsel, the petitioner will be entitled for the third ACPS only with effect from 25.05.2014 and not from 01.01.2013 and accordingly, the employer is seeking to correct the date of effect of the second ACPS with effect from 24.05.2008.
- III.** Mr. Pegu, learned CGC further contends that unless the period of punishment gets expired, the claim for consideration of ACP/MACP cannot be made and therefore, the determination made by the respondents are correct. In support of such contention, Mr. Pegu, learned counsel relies on the decision of the Hon'ble Apex Court in the case of **State of T.N. –Vs-**

Thiru K.S. Murugesan and Others Reported in **1995 3 SCC 273.**

IV. Therefore, Mr. Pegu, learned CGC submits that there is no illegality in the exercise and therefore, the writ petition is liable to be dismissed.

5. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Also perused the materials available on record.

6. For determination of the present lis, certain undisputed facts are recorded herein below:-

I. The petitioner joined the service under CISF on 01.01.1983. The Assured Career Progression Scheme, 1999, was given effect to on 09.08.1989 (Hereinafter referred to as ACPS, 1999). In terms of ACPS, 1999, the employees were granted financial up-gradation to the next higher grade pay when an employee completes 12 years of service. The second benefit is granted after completion of 24 years of regular service.

II. The petitioner completed 12 years of regular service on 01.01.1995, however, as the scheme itself was introduced with effect from 09.08.1999, the petitioner was entitled for first financial up-gradation w.e.f. 09.08.1999. However, the petitioner was granted financial up-gradation under the ACPS, 1999 w.e.f. 02.01.2001. It is the case of the respondents that petitioner was not granted such benefit, w.e.f. 09.08.1999 for the reason of currency of a punishment. It is important to note that the petitioner was inflicted with a punishment of stoppage of

one increment without cumulative effect w.e.f. 27.04.1999.

III. As per the extant service rule, when an employee joins in his service on the first of day of year, his increment shall be due on first day of the year. The punishment was imposed on 27.04.1999 for stoppage of one increment without cumulative effect. Accordingly, the petitioner shall not be entitled for the next increment which was due on 1st of January, 2000. And accordingly, the currency of punishment will be over on 1st January, 2000 on deprivation of the petitioner from such increment in terms of the penalty imposed and thus, currency of punishment shall be till 1st of January, 2000. Thus, though, Mr. Pegu, is correct in saying that during currency of punishment, the claim for consideration of ACPS/MACPS cannot be granted, however, as determined hereinabove, on 02.01.2000, there was no currency of punishment to deprive the petitioner from the due benefit.

IV. The Modified Assured Career Progression Scheme (hereinafter referred to as MACPS, 2008) was given effect to on 01.09.2008. In terms of the MACPS, 2008, the financial up-gradations are to be granted at the interval of 10 years, 20 years and 30 years. As the petitioner has already granted financial up-gradation in terms of the earlier Scheme of ACPS, 1999, the third financial up-gradation will fall due on 01.01.2013 i.e. on completion

of 30 years of service w.e.f. 01.01.1983 i.e. the date, the petitioner joined in the service. However, the petitioner has been granted such benefit w.e.f. 25.05.2014. Accordingly, such determination is also incorrect.

7. Accordingly, in view of the determination made hereinabove, it is held that the currency of the punishment of stoppage of increment for one year without cumulative effect shall be over on 01.01.2000. It is further held that the petitioner shall be entitled for third financial up-gradation in terms of ACPS, 1999 w.e.f. 01.01.2013 and he was entitled for first financial up-gradation w.e.f. 02.01.2001. accordingly, it is directed that the financial benefit be recalculated by the respondent authorities in terms of the determination made hereinabove and pay the arrears of benefit, if any, within a period of six weeks from the date of receipt of a certified copy of this order to be furnished by the petitioner.

8. Writ petition stands disposed of. Parties to bear their own cost.

JUDGE

Comparing Assistant