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

Decided on : 17.08.2015

\+ **W.P.(C) 2148/2014**

SATPAL SINGH ..... Petitioner

Through : Ms. Harvinder Oberoi and Sh. Jaswinder Singh, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through : Sh. Manish Mohan, CGSC with Sh. Yudhishter Sharma, Advocate, for UOI.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioner, a Head Constable (General Duty) in the Central Industrial Security Force (CISF) is aggrieved by the inaction of the respondents with regard to grant of the third financial up-gradation in terms of the Modified Assured Career Progression Scheme (MACPS), made applicable to his employer, with effect from 28.07.2009.

2. The relevant facts are that the petitioner was recruited to the CISF, in 1982. It is not in dispute that he was granted two previous progressions/benefits akin to promotion. After being charged with commission of misconduct on 23.09.2010, the petitioner was proceeded with departmentally. The charges culminated with a finding of guilt; a resultant

penalty order was issued on 28.05.2011 whereby a future increment was directed to be withheld for two years without cumulative effect. This order was unsuccessfully appealed against – the appellate authority rejected the petitioner's plea on 23.07.2011. The petitioner contends that when his case for consideration of the third financial up-gradation under the MACPS came up, he was denied the benefit on 27.04.2013 on account of application of the Director General, CISF's instruction No.E-31014/24/2011/Estt-I/229 dated 28.09.2012/01.10.2012 (hereafter referred to as "the impugned circular").

3. The relevant condition which is in the form of a disqualification, which in the present case was applied, reads as follows:

" (ii) ***PUNISHMENTS***

The personnel who are considered for promotion:

(a) Should not have any major punishment in last 05 years.
(b) His/her last ACR should not be Below Average or Average.
(c) Should not have two (or more) minor punishments in last 05 years.
(d) Should not have two major punishments in the last ten years.
(e) Should not have a total of five (or more) minor and major punishments in the last 10 years.
(f) The personnel having one minor punishment (in last 05 years) would be considered for promotion ***but five marks will be deducted for the minor punishment."***

4. It is submitted that given the nature of the MACP scheme, the impugned condition is unsustainable. Ms. Harvinder Oberoi, learned counsel relied upon the stipulations in the MACPS, highlighted, in particular, Condition Nos. 2, 18 and 19 and submitted that unlike the (previous) ACP Scheme, which was formulated and brought into force with effect from 09.08.1999, MACPS prescribes no eligibility condition. Ms. Oberoi argued that the *rationale* for this distinction is apparent because the MACPS benefit

is entirely divorced from conditions governing regular promotion. Whereas the ACP Scheme was premised upon the employee/official fulfilling statutory or other prescribed eligibility conditions for consideration for regular promotion, as it resulted in conferment of the pay scale attached to the next higher post, the MACPS benefit, on the other hand, merely assures placement in the next higher grade pay which may not necessarily be the one attached to the promotional post or correspond to it.

5. Learned counsel for the respondents relied upon the averments in the counter affidavit and stated that the Petitioner suffered a penalty which was operative for two years. Although the eligibility conditions for grant of MACPS do not expressly require the fulfillment of eligibility conditions spelt-out in respect of the promotional post, there in fact is no prohibition if benchmark considerations are read into it. He highlighted Para 17 of the MACPS benefits to say that it is necessary for an employee to have a certain grading and in the present case, since the petitioner had incurred a penalty, the effect of which subsisted for two years, he could not claim any entitlement for up-gradation under the MACPS.

6. The MACPS was formulated on 19.05.2009 by an Office Memorandum (OM) issued by the Department of Personnel and Training (DOPT). This scheme superseded the earlier ACP Scheme which had been in force since 09.08.1999. Para 4 of the MACPS require the constitution of a Screening Committee for each department, which under para 6 had to meet twice in a financial year. Para 9 of the Scheme stated as follows:

> *"9. Any interpretation/clarification of doubt as to the scope and meaning of the provisions of the MACP Scheme shall be given by the Department of Personnel and Training (Establishment-D). The scheme would be operational* ***w.e.f.***

> ***01.09.2008.*** *In other words, financial upgradations as per the provisions of the earlier ACP Scheme (of August, 1999) would be granted till 31.08.2008"*

7. The actual conditions governing the MACPs scheme are spelt out in the Annexure to the scheme. MACPS assures – by para 1, three financial up-gradations at the end of a block of 10 years each, i.e. 10, 20 and 30 years of service. Para 2 states that the scheme contemplates placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section 1, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. This is further clarified by stating that in certain cases, the pay scale which MACPS assures can be different than what is *"available at the time of regular promotion"*. Para 5 talks of earned up-gradations and promotions under the previous ACP scheme. The material conditions, i.e. paras 17 to 19 are extracted below:

> *"17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-1.Thereafter for upgradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs. 7600 and above.*
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> *18. ln the matter of disciplinary/ penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued thereunder.*
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> *19. The MACPS contemplates merely placement on personal basis in the immediate higher Grade pay /grant of financial benefits only and shall not amount to actual functional promotion of the employees concerned. Therefore, no reservation*

orders/roster shall apply to the MACPS, which shall extend its benefits uniformly to all eligible SC/ST employees also. However, the rules of reservation in promotion shall be ensured at the time of regular promotion. For this reason, it shall not be mandatory to associate members of SC/ST in the Screening Committee meant to consider cases for grant of financial upgradation under the Scheme."

8. A joint reading of the relevant stipulations in the MACPS would lead one to conclude that unlike ACP scheme:

(a) it does not result in the placement of the employee always in the regular pay scale attached to the promotional post – rather the <u>entitlement appears to be to the higher grade pay</u>;

(b) MACP is not dependent upon the employee possessing all the prescribed eligibility conditions, such as experience, qualification, relevant ACR gradings etc.

9. The reference to benchmark – in para 17 is only descriptive in the sense that at the relevant year of consideration, the benchmark "good" would be applicable if the higher grade pay to the MACPS benefit to be granted is ₹6600 in PB-3; for financial up-gradation to the Grade Pay of ₹7600 and above, the benchmark is "very good." In the present case, the Grade Pay is ₹4200 – according to the respondents. The other salient feature which is relevant for the purposes of this case is that it is only in matters of disciplinary/penalty proceedings that the MACPS benefits would be subject to rules governing normal promotions. Thus, for instance, an employee facing disciplinary proceedings, would be considered and the result of such consideration kept in a sealed cover to await the decision in that disciplinary proceeding. Upon the culmination of the proceeding, depending on whether

the penalty is inflicted or not, the sealed cover would be opened and due effect given to the recommendations in accordance with the relevant rules. Barring these express stipulations, this Court does not discern any condition compelling the consideration of the employee's case based upon ACR grading or performance in the previous years. The stated objective of the MACPS is to assure grant of a certain measure of financial up-gradation. Since the ACP Scheme conditions – particularly those requiring fulfillment of prescribed eligibility conditions were consciously given up, the insistence by the CISF in its circular/OM dated 28.09.2012/01.10.2012, is unsustainable.

10. For the above reasons, the petition has to succeed in part. The respondents' decision to not grant MACPS benefits to the petitioner on the ground that penalty effect existed for five years, - on an application of para 2(g)(ii)(c) of the said circular/notification dated 28.09.2012/01.10.2012 is unsustainable in law. The respondents are consequently directed to consider the petitioner's case for grant of third financial up-grdation in accordance with the MACPS. A consequential order shall be issued by the respondent/CISF pursuant to these directions within six weeks from today. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

AUGUST 17, 2015