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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 09.07.2015

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W.P.(C) 5937/2012

PRATAP SINGH

..... Petitioner

Through: Ms Punam Singh and Ms Ankita
Patnaik, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Ruchir Mishra and Mr Mukesh
Kumar, Advs.

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 seeks directions in this proceeding under Article 226 to quash an order dated 19.06.2012 by the third respondent (hereinafter referred to as 'the BSF'). The fact of the impugned order is to deny him the third Modified Assured Career Progression (MACP) admissible in terms of the Central Government Scheme.

2. The brief facts are that the petitioner joined the BSF in the year 1980. He left the organization on 30.11.1996. At that stage, the BSF had sanctioned pension to the petitioner. By general order dated 15.01.1998, the BSF clarified that to avail of pension, an individual had to serve for a minimum qualifying period of 20 years. Accordingly, the BSF withdrew the pension order and other attending benefits which the petitioner was

enjoying. Similar orders were made in respect of the other personnel. This led to litigation which culminated in the judgment of Supreme Court on 04.01.2006. The Supreme Court directed that all such pensioners who have sought and were permitted to retire and the beneficiaries of pension ought to be granted the option to rejoin, but on condition of refund of the pension they had received. The petitioner received intimation asking him to re-join his services. The respondent allowed him to do so on 30.06.2006. He was reinstated from 19.09.2006 by an order dated 05.03.2007. The petitioner and others were aggrieved yet again when the BSF by an order dated 17.10.2008 stated that those who were re-inducted would retain previous seniority, but in order to get promoted to the next rank, would have to undergo mandatory courses. This led to some dissatisfaction. Various individuals approached this Court which by judgment dated 02.02.2011 directed that notional increments were admissible to all such personnel, though the arrears of salary were not to be granted. This was in order to rectify the pay anomaly which had arisen on account of the respondent's position whereby juniors were drawing a higher pay than the seniors.

3. The petitioner underwent the mandatory promotional course in September, 2011 and was not granted promotion to the rank of Sub-Inspector as he was placed in Low Medical Category. Consequently, he was not promoted. The petitioner, therefore, became entitled to third MACP benefit on 23.05.2012. He represented to the respondents who rejected his request by the impugned order.

4. In the counter-affidavit filed before this Court, the respondents have relied upon the Circular/Notification dated 28.02.2013, which states that the period of service of such re-inducted personnel is to be reckoned to include

the period that they were out of service. The respondents also indicated in the counter-affidavit that the petitioner was allowed to rejoin on 23.06.2006 and that the period of absence during the intervention time. i.e., 1996-2006 of 3008 days is to be counted as regular service. However, they also said that the petitioner was charged with committing the criminal offence, i.e., punishable under Sections 143, 452 and 427 of IPC and as a result, the MACP benefit could not be released.

5. During the course of these proceedings, apparently the petitioner has been acquitted of the charges. The BSF had accordingly initiated the steps to have this verified. On 09.07.2015, the order of the Central Government to the Deputy Commandant (Law), FHQ was issued indicating that *“accordingly, this unit character verification sought concerned District Magistrate in respect of above individual and clarified by District Magistrate vide verification report No.F16/VR/Judge/2015/752 dated 29th May, 2015 that, there is nothing adverse has been found against him in the Police Record.”* Copy of the said order is hereby taken on record.

6. The factual narrative disclosed that even according to the respondents—as is evident from the order dated 28.02.2013, the period of absence of re-indicted persons is reckoned to be regular persons subsequently for the purpose of grant of MACP. Para 3 of the said order reads as follow:-

“Whereas, the problem of disparity/anomaly in pay of such re-inducted personnel with their juniors arised (sic) due to non-grant of MACPs along with their juniors, has been examined at this HQ in consultation with DIG/CLO (B&L) and FA BSF and found that such disparity/anomaly in pay due to non-grant of MACPs to such re-inducted personnel along with their juniors

can be avoided, if the period treated towards EOL of such re-inducted personnel is considered as regular service only for the purpose of grant of MACPs, likewise the order passed by the Govt. In favour of these re-inducted personnel by granting them Notional Increments for their EOL Period.”

7. The respondents had in the petitioner's case withheld the MACP benefit by relying on para 5 of the Office Memorandum stating that since he was facing criminal charges, the promotional benefit could not be given to him. As the facts now disclose that the petitioner has been acquitted on 07.02.2015 of the charges he was facing and the further verification by the concerned District Magistrate has paved the way for grant of benefit.

8. In these circumstances, the writ petition has to succeed. A direction is issued to the respondents to issue a consequential order granting him MACP benefit from the date he was entitled to it in the year 2010. The said order shall be issued within two weeks and the proper pay fixation be effected within four weeks from today.

The writ petition is allowed in above terms.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JULY 09, 2015
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