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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 07.12.2015

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W.P.(C) 5799/2015, C.M. NO.10437/2015

K. BANGARU NAIDU & ORS.

.....Petitioners

Through: Sh. Naushad Alam and Sh. Jitendra Bharti,
Advocates with the petitioner no.1 in person.

Versus

MINISTRY OF HOME AFFAIRS AND ANR.....Respondents

Through: Sh. H.K. Garg and Sh. Sarfaraz Ahmad,
Advocates with Sh. Arvind Sharma, Deputy
Commandant, BSF.

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 petitioners have sought for various reliefs. However, during the arguments, the issue argued was with respect to their eligibility and entitlement for grant of Assured Career Progression (ACP)/Modified Assured Career Progression (MACP) scheme benefits.

2. All the petitioners were initially working as Head Constable/Radio Operator in the Border Security Force (BSF). Upon their fulfilling the eligibility criteria, they were permitted to compete in the Limited

Departmental Competitive Examination (LDCE) conducted for promotion in that quota on 15.09.2004. They were declared as successful and eventually reported for training on various dates in November 2004. It is not disputed that all of them qualified in the training, but were issued posting orders in the promoted cadre subsequently on various dates. They urged that the benefit of the MACP scheme benefits (made effective from 01.09.2008 by virtue of directions of Central Government) in replacement of the existing ACP scheme was denied to them. It is contended that the petitioners' eligibility is to be reckoned from the date they joined and reported for training.

3. The BSF resists this proceedings and points to Rule 9 of the *Ministry of Home Affairs, Border Security Force Communication (Non-Gazetted) Cadre Recruitment Rules, 1999* [hereafter "the 1999 Rule"]. The said 1999 Rule reads as follows:

"9. Seniority-(i) Person holding a higher rank whether in an officiating or substantive capacity shall be senior to the person holding a lower rank.

(ii) Seniority in any rank shall be determined on the basis of continuous regular appointment in that rank.

Provided that the seniority of the personnel holding the same rank and promoted on the same day shall be determined in accordance with the order of selection for appointment to that post.

(iii) Subject to the provision of sub-rule (ii) seniority in the entry grade(s) post shall be determined in accordance with their merit of their final examination of the Grade-III course from the date of qualifying such examination."

4. In all these instances, the petitioners joined the higher cadre of Assistant Sub Inspector (ASI) only on different dates in 2006 and their eligibility for MACP scheme benefits accrued only upon expiry of ten years from such dates. Rule 9 of the 1999 Rule relied upon by the respondent BSF clearly envisions the applicable norms that govern the seniority of various entrants to the cadres in question. It is not disputed that in the various cadres of the service, entry is through direct recruitment; promotion by seniority and promotion through LDCE. The respondents also had, during the course of hearing, relied upon a clarification issued by the Department of Personnel and Training, Govt. of India (DOPT) dated 04.10.2013, which is to the following effect:

*“Government of India
Department of Personnel & Training
Establishment (D)*

Dy. No.87423/13

Reference preceding notes.

2. *This was earlier examined vide this Department’s note at p.4/ante. Specific point on which clarification sought relates to whether initial training period of approximately 2 years rendered by the Naik Operator/HC(RO)/HC(Fitter) before their regular appointment in the grade can be counted for the purpose of grant of financial upgradations under ACP Scheme of 1999. The Department has informed that the training period (service) of Personnel recruited prior to May, 1999 was not counted for the purpose of promotion/seniority, etc.*

3. *Hence, it may be confirmed that the period of service (training period) which is not counted for regular promotion/seniority, will not be counted for the purpose of grant of financial upgradation under ACP also. Only such service which is reckoned for financial promotion in accordance with the RRs*

will be counted for the purpose of grant of ACP benefits.”

5. The introduction of ACP scheme which has now been replaced by the MACP scheme was with a view to relieve the acute stagnation experienced by the public employees/Central Government servants in its establishments and organization. It was felt that the stagnation and the consequent stoppage of advancement of career prospects of various segments of employees, solely for lack of adequate vacancies, acted as a dampener to their enthusiasm for continuation in the public employment. Purely to relieve such stagnation, the financial upgradation was envisioned. The ACP scheme contemplated two financial upgradations interspersed between 12 years of the entire service. The salient feature of the ACP Scheme was that the benefits flowed to the employees divorced from actual vacancy position; however, the other eligibility conditions applicable for promotions had to be fulfilled. The ACP scheme ensured that upon compliance with eligibility spelt out by it, the employee was released the grade attached to the promotional post. The MACP, on the other hand, assures three financial upgradations interspersed between 10 years each. However, what is assured in the said scheme is placement in the next higher grade available in the organization – not necessarily the promotional grade.

6. After the launch of the ACP scheme, doubts had arisen in its implementation; the Central Government, through the DOPT issued clarifications in the form of doubts and clarifications in this regard through Office Memorandum dated 10.02.2000. Query No.16 and its answer is pertinent to the issue at hand. It is extracted as follows:

16.	The	relevant	As per the Scheme (Condition No.6), all
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<i>Recruitment/Service Rules prescribe departmental examination/skill test for vacancy based promotion. However, this need not be insisted for upgradation under ACPS.</i>	<i>promotion norms have to be fulfilled for upgradation under the Scheme. As such, no upgradation shall be allowed if an employee fails to qualify departmental/skill test prescribed for the purpose of regular promotion.</i>
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7. It is quite evident from a bare reading of the above query and answer in the Office Memorandum dated 10.02.2000 that since ACP benefits were not based upon vacancies, if the LDCE recruits were required to undergo training and subsequently not confirmed on the basis of their departmental tests, they were not entitled to the benefit till they secured confirmation. The corollary to this obviously is that in case they cleared it, the benefit could not have been denied to them in the first instance from the date they were borne in the cadre, i.e. reported for training. Reliance on Rule 9 of the 1999 Rule, in our opinion, is not apt because that is the norm compelling regulation of seniority of various entrants into the cadre who joined from different streams. However, that does not deal with the pay and the entitlements flowing from being declared successful in the LDCE and subsequently after successfully clearing the training test, in the very first attempt.

8. As a result of the above discussion, this Court holds that the petitioners are entitled to the MACP scheme benefits upon completion of 10 years' service reckoned from the date they reported for training provided all of them were subsequently successful in clearing the Grade-III training test at the first attempt. A direction is issued to work-out the MACP benefits the petitioners are entitled to upon the expiry of ten year period and place them

in the grade they were entitled to in terms of the scheme. The process shall be completed within eight weeks from today. The differential pay and emoluments which they would be consequently entitled to shall also be paid to them during the said period. The writ petition is accordingly allowed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

DECEMBER 7, 2015

