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

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Decided on : 13.07.2015

+ **W.P.(C) 6570/2015**

DHARMABIR YADAV

..... Petitioner

Through: Mr.Ankur Chhibber, Advocate

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms.Barkha Babbar, Advocate
Mr.S.S.Sejwal, Law Officer, CRPF

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

C.M.No.11967/2015 (for exemption)

Allowed, subject to all just exceptions.

W.P.(C) 6570/2015

1. Issue notice. Ms. Barkha Babbar, Advocate for the Union of India accepts notice and states that the matter can be disposed off.
2. The grievance of the petitioner in this proceeding under Article 226 of the Constitution of India is with regard to the unjustified denial of the second financial upgradation in terms of the Assured Career Progression Scheme ("ACP Scheme") formulated by the Central Government on 09.08.1999. The Scheme concededly applies to members of the paramilitary forces - in this case, the Central Reserve Police Force ("CRPF"). The

petitioner initially joined CRPF as Constable (General Duty). With the introduction of ACP Scheme, he was entitled to the first financial upgradation - in case he was not beneficiary of any regular promotion, during the first 12 years of his service subject to the further condition that he fulfilled the criteria for promotion.

3. The issue at hand concerns the petitioner's entitlement to the second financial upgradation. The CRPF, as a general rule, insisted that only those who detailed and were successful in completing promotional courses could claim ACP benefits from the date of their clearing the said course. This position was held to be contrary to the ACP Scheme long back in a judgment of this Court, i.e., *Jaipal Singh & Ors. v. UOI & Ors.* (W.P.(C) 5539/2013). Later clarifications issued by the CRPF did not clear the air but instead resulted in imposition of additional barriers. This Court dealt with the Circulars/clarifications and unequivocally declared that those who completed qualifying 24 years of continuous service and are otherwise eligible irrespective of their having completed promotional courses had to be given the second financial upgradation. The latest in the series of judgments was the one delivered by another Division Bench as recently as on 05.03.2015 - *Om Prakash & Ors. v. UOI & Ors.* (W.P.(C) 388/2015 and other connected cases). This Court had then held that: -

“9. The reason for which ACP benefit pertaining to the second financial upgradation is not being accorded is that the service rules envisage successful completion of a pre-promotional course. The grievance of the writ petitioners on said issue is that the department was at fault inasmuch as the department did not send the petitioners (late husband of the writ petitioners

of W.P.(C) No.1717/2015) to undertake the pre-promotional course.

10. The said issue at hand is squarely covered by a Division Bench judgment of this Court in a batch of writ petitions decided on September 06, 2013, the lead matter being W.P.(C) No.5539/2013 Jaipal Singh & Ors. vs. Union of India & Ors.. The view taken was that if a department has not detailed a person for pre-promotional course the person cannot be prejudiced by the inaction of the department.

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12. Today we have been informed that the respondents have issued a clarification dated February 16, 2015 issued by Ministry of Home Affairs, wherein it has been clarified as under:--

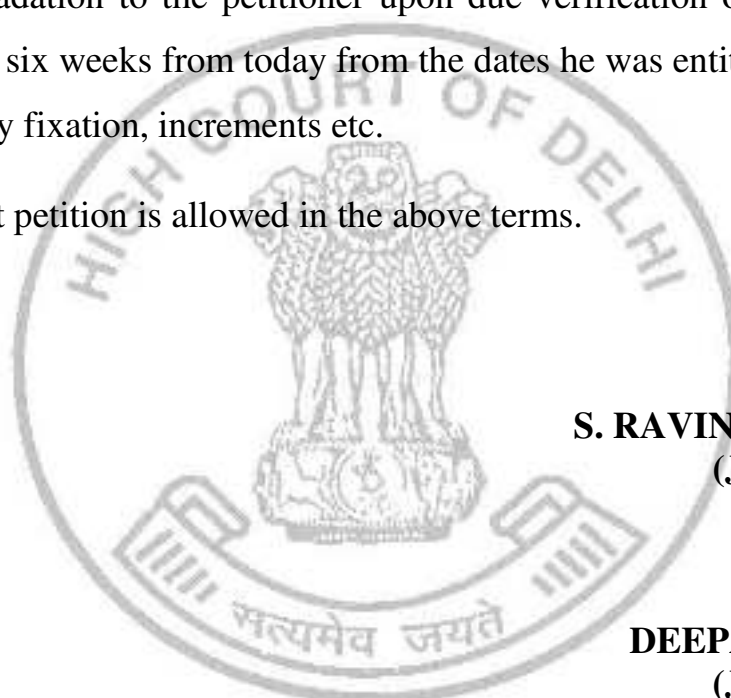
“CRPF is allowed to grant 2nd Financial Up Gradation under ACP Scheme to all eligible, Constable/Head constable (Executive/Technical/Tradesmen) from the date they have completed 24 years of regular service, overlooking the condition of any prepromotional course criteria in those cases where such personnel could not be sent on pre-promotional course by CRPF, due to administrative reasons and not due to any reason owing to such a person concerned, as clarified by DoP&T.”

13. A reading of the above clearly shows that Clause III of the letter dated October 27, 2014 issued by the respondents has already been nullified and superseded by the clarification issued by the respondents on February 16, 2015 and the signal dated February 20, 2015. Thus as of today, the requirement of undergoing the pre-promotional courses for grant of 2nd ACP

benefit on completion of 24 years service is not mandatory any more.”

4. The petitioner’s argument that he is entitled to the second financial upgradation after completion of 24 years of service regardless of whether he was detailed for promotional courses and successfully completed the same is not disputed. In the circumstances, the respondents are hereby directed to grant and release all benefits under the ACP Scheme, i.e., confer second financial upgradation to the petitioner upon due verification of his service records within six weeks from today from the dates he was entitled to it with appropriate pay fixation, increments etc.

5. The writ petition is allowed in the above terms.



S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

JULY 13, 2015

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