

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.17900 of 2015
Date of decision: 05.12.2016**

Gurdip Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. V.K. Shukla, Advocate
for the petitioner.

Mr. A.P.S. Mann, Addl. A.G., Punjab
for the respondents -State.

Daya Chaudhary, J.

The prayer in the present writ petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 16.03.2015 (Annexure P-5) and order dated 26.03.2015 (Annexure P-6) whereby the claim of the petitioner for grant of benefit under Assured Career Progression Scheme (in short 'ACP') as per notification dated 03.11.2006 (Annexure P-3) on completion of four years of service in the cadre of District Commander has been declined. A further prayer has also been made for issuance of direction to the respondents to grant the benefit of ACP to the petitioner on completion of four years of service along with all consequential benefits.

Briefly, the facts of the case as made out in the present writ petition are that initially the petitioner entered into service as Palatoon Commander on 22.10.1968 and was promoted as Company Commander on

15.07.1980. Thereafter, he was promoted as District Commander on 02.05.2003. He was granted deemed date of promotion as District Commander w.e.f.21.05.2002 and ultimately, he retired from service as District Commander on 28.02.2007.

The grievance of the petitioner in the present writ petition is that he could not be promoted as District Commander along with his juniors on 21.05.2002 due to non-availability of his annual confidential reports but he was promoted subsequently vide order dated 02.05.2003. After promotion as District Commander vide order dated 02.05.2003, the petitioner was granted benefit of back date seniority but he was not granted benefit of deemed date of promotion w.e.f.21.05.2002. The petitioner filed CWP No.20597 of 2014 before this Court for grant of deemed date of promotion, which was disposed of vide order dated 01.10.2014 with the direction to the respondents to consider the claim of the petitioner and pass a speaking order. In compliance of said directions, order dated 23.01.2015 was passed by respondent No.1 whereby the petitioner was promoted notionally as District Commander w.e.f.21.05.2002. Since the petitioner was granted deemed date of promotion w.e.f.21.05.2002 vide order dated 23.01.2015, he became entitled to get the benefit of ACP on completion of four years of service in the cadre of District Commander but his claim was rejected only on the ground that he did not furnish his option within the stipulated period. Orders dated 16.03.2015 and 26.03.2015 passed by respondent No.2 have been challenged in the present writ petition by raising various grounds.

Learned counsel for the petitioner submits that in pursuance of

directions issued by this Court, the respondents granted deemed date of promotion to the petitioner to the post of District Commander w.e.f.21.05.2002. He completed four years of service on 21.05.2006 and as such, he became entitled for the said benefit w.e.f.01.11.2006. Learned counsel further submits that the petitioner became entitled to benefit of ACP on completion of four years of service and option could not be exercised earlier as the cause of action arose to the petitioner for giving option only after grant of deemed date of promotion vide order dated 23.01.2015 and accordingly, the petitioner made representation on 02.02.2015 i.e., within the period of two months from the date of cause of action as required under policy dated 03.11.2006. Learned counsel also submits that this aspect has not been considered while passing the impugned order and the claim of the petitioner has wrongly been rejected.

In response to notice of motion, reply has been filed by the respondent-State, which is on record.

Learned State counsel submits that the petitioner did not exercise his option within the stipulated period as per ACP Scheme and as such, he is not entitled for the benefit. Learned State counsel also submits that the period of exercising option under ACP Scheme was extended from time to time but in spite of that the petitioner did not exercise his option and accordingly, his claim was rejected.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned orders as well as other documents available on the file.

The facts relating to appointment of the petitioner to the post of

Palatoon Commander and thereafter, his promotion to the post of Company Commander and order of granting deemed date of promotion as District Commander w.e.f.21.05.2002 are not disputed. It is also not disputed that the petitioner retired from service on 28.02.2007 and he could not be promoted as District Commander along with his juniors on 21.05.2002 due to non-availability of his annual confidential reports. However, he was subsequently promoted vide order dated 02.05.2003. It is also not disputed that the petitioner was granted benefit of seniority but he was not granted benefit of deemed date of promotion as District Commander w.e.f.21.05.2002 i.e., the date from which, his juniors were promoted. Thereafter, in pursuance of order passed by this Court in CWP No.20597 of 2014 filed by the petitioner, he was promoted notionally as District Commander w.e.f.21.05.2002 but he has not been granted benefit of ACP on completion of four years of service only on the ground that he did not exercise his option as required under the ACP Scheme on completion of 4/9/14 years of service vide policy dated 03.11.2006. As per said policy, the employees were asked to furnish their option within a period of four months but since the petitioner was granted deemed date of promotion w.e.f.21.05.2002 vide order dated 23.01.2015 whereas he became entitled to get the benefit of ACP on completion of four years of service in the cadre of District Commander. He gave option for grant of said benefit by making representation dated 02.02.2015, meaning thereby, the cause of action arose to the petitioner only after grant of deemed date of promotion. A clarification was also given by the Personnel Department of Punjab Government vide letter dated 28.10.1992 whereby it was decided that the

period of notional promotion will be considered for grant of proficiency step-up. In the case of the petitioner, he was given deemed date of promotion to the post of District Commander w.e.f.21.05.2002 vide order dated 23.01.2015. He completed four years of service on 21.05.2006 and as such, he became entitled for said benefit w.e.f.01.11.2006. The option was given by the petitioner well within time but while passing the impugned orders, it has not been taken into consideration that after the petitioner became entitled for deemed date of promotion then only he could have exercise his option. Not only he made a representation but also furnished an affidavit still his claim has been rejected. The right of the petitioner for said benefit accrued only after grant of deemed date of promotion as District Commander, which was granted vide order dated 23.01.2015 and representation was made on 02.02.2015 i.e., only within two months from the date of deemed date of promotion. The petitioner became entitled for said benefits and the question of not exercising option did not arise as there was no occasion to furnish affidavit or to exercise option for grant of benefit prior to grant of deemed date of promotion to the post of District Commander. The cause of action arose to the petitioner on completion of four years of service and only after grant of deemed date of promotion vide order dated 23.01.2015. The option was exercised within a period of two months from the date of cause of action as required under policy dated 03.11.2006 and the claim of the petitioner has wrongly been rejected only on the ground that he did not exercise his option within the stipulated period.

Accordingly, the present petition is allowed and the impugned

orders dated 16.03.2015 (Annexure P-5) and 26.03.2015 (Annexure P-6) are hereby quashed. The respondents are directed to consider the case of the petitioner by considering the fact that the option was exercised by him well within time and the necessary benefits be granted to the petitioner within a period of three months from the date of receipt of certified copy of this order.

05.12.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No