

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

CWP No.22766 of 2013

Date of Decision:-14.12.2016.

Buddha Ram Prajapat

.....Petitioner

Versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI**

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Present: Mr. Rajeev Anand, Advocate for the petitioner.

Mr. Namit Kumar, Advocate for the respondents-UOI.

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**P.B. BAJANTHRI, J. (Oral)**

In the instant writ petition, the petitioner has questioned the validity of the orders dated 2.8.2013 and 1.8.2011 (Annexures P-6 and P-7, respectively) by which his claim for second financial upgradation under the Modified Assured Career Progression Scheme, has been denied.

The petitioner claims that he is entitled for second financial upgradation on 1.12.2010, the date on which it was due to him. Since he was facing disciplinary proceedings and he was punished by imposing the penalty of stoppage of one increment for a period of one year on 18.5.2010. Thus, his entitlement for second upgradation got postponed to 1.7.2011 for the reasons that currency of penalty imposed on 18.5.2010 was in force during the period from 1.7.2010 to 1.7.2011 as his increment was due on 1.7.2010 i.e., after imposing the penalty of stoppage of one increment for a

period of one year. Having regard to the facts and circumstances, the respondents have rightly declined to grant relief of second financial upgradation to the petitioner as on 1.12.2010. Petitioner counsel submitted that the petitioner's case is required to be examined and considered for the purpose of grant of second financial upgradation w.e.f. 1.7.2011, the date on which currency of penalty was over.

On the other hand, learned counsel for the respondents submitted that the petitioner is not entitled for grant of second financial upgradation as on 1.7.2011 also for two reasons, namely, (i) he had submitted application for voluntary retirement and he was permitted to take voluntary retirement w.e.f. 1.11.2011 and (ii) for the purpose of granting second financial upgradation, previous five years' record is required to be examined with reference to whether an employee faced with any major penalty or not.

Heard learned counsel for the parties.

Having regard to the dates and events relating to the entitlement of second financial upgradation read with the imposition of penalty the petitioner is not entitled to second financial upgradation on 1.12.2010 in the normal course. However, his claim is required to be examined as on 1.7.2011, the date on which currency of penalty imposed on 18.5.2010 would be over. The contention of the respondents that petitioner had submitted application for voluntary retirement which has been accepted w.e.f. 1.11.2011, therefore he is not entitled is correct for the reasons that as on 1.7.2011, the petitioner was very much in service. The other contention that the previous five years' service is to be examined whether petitioner was facing any major penalty or not is concerned, it is to be noted that

perusal of the Modified Assured Career Progression Scheme do not prescribe or stipulate such conditions for grant of second financial upgradation. In the absence of such condition in the scheme the contention of the respondent is not tenable. Accordingly, the respondents are directed to re-examine the claim of the petitioner for the purpose of granting second financial upgradation as on 1.7.2011 and extend the same with consequential financial benefits within a period of four months from today.

Petition stands disposed of.

**(P.B. BAJANTHRI)**  
**JUDGE**

**December 14, 2016.**

*sandeep sethi*

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.