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

+ **W.P.(C) 3461/2016**

SATISH KUMAR & ORS

..... Petitioners

Through: Mr. Jitendra Bharti, Advocate

versus

MINISTRY OF HOME AFFAIRS & ANR

..... Respondents

Through: Mr. Arun Bhardwaj, CGSC with
Mr. J.S. Yadav, SI (Min.).

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

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26.04.2016

1. The petitioners, who are recruited in the BSF and working on the post of Assistant Sub Inspectors/Radio Mechanics, have filed the present petition, praying *inter alia* for issuing directions to the respondent No.1, Ministry of Home Affairs, Govt. of India to implement the directions issued by a Division Bench of this Court in the judgment dated 07.12.2015, pronounced in **W.P.(C) 5799/2015** entitled K. Bangaru Naidu and Ors. vs. Ministry of Home Affairs and Anr. and in terms of the said decision, grant them pay scales of Assistant Sub Inspector/Radio Mechanic with effect from the date of joining the training or conducting the Trade Course on 15.11.2004.
2. The petitioners in the captioned writ petition, who were initially working as Head Constables/Radio Operators in the BSF, were permitted to compete in the Limited Departmental Competitive Examinations (LDCE)

conducted for promotion in that quota on 15.09.2004. They were declared as successful and had reported for training on various dates in November, 2004. All of them had qualified in the training, but they were issued posting orders in the promoted cadre subsequently, on different dates. The grievance of the petitioners therein was that the benefit of the MACP Scheme made effective from 01.09.2008, by virtue of the directions of the Central Government in replacement of the existing ACP Scheme, had been denied to them. Their argument was that their eligibility ought to be reckoned from the date they had joined and reported for training.

3. After considering the submissions made by the counsels for the parties in the captioned case, the Division Bench had made the following observations:-

“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 The introduction of ACP scheme which has now been replaced by the MACP scheme was with a view to relieve the acute stagnation experienced by the public employees/Central Government servants in its establishments and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 Recruitment/Service Rules prescribe departmental examination/skill test for vacancy based promotion. However, this need not be insisted for upgradation under ACPS.	As per the Scheme (Condition No.6), all 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.
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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.” (emphasis added)

4. The petitioners have filed the present petition stating *inter alia* that they are also entitled to the same relief as granted to the petitioners in the captioned case. Counsel for the petitioners submits that vide order dated 31.03.2016 issued by the respondent No.1, compliance of the judgment in the case of K. Bangaru Naidu (supra) was made and it was directed that the petitioners in the said case were entitled to the MACP scheme benefits upon completion of 10 years service reckoned from the date they had reported for training provided that they were subsequently successful in clearing the Grade-III training test at the first attempt. The grievance of the petitioners herein is that the said order has been issued with a caveat that the decision in the case of K. Bangaru Naidu (supra) would be specific to the petitioners who were parties in the said case.

5. Counsel for the petitioners submits that once the question of law has been settled in the captioned case, any direction issued pursuant to the said decision would have to apply across the board to all the similarly placed personnel in the BSF, which the respondent No.1 has sought to restrict by directing that the benefits thereunder would be granted only to the petitioners who had approached the Court in the captioned writ petition.

6. Having regard to the fact that the petitioners have directly approached this Court without first approaching the respondents for seeking parity with the petitioners in the case of K. Bangaru Naidu (supra), it is deemed

appropriate to dispose of the present petition with liberty granted to the petitioners to submit a representation to the respondent No.1 for seeking benefit of the said decision within two weeks from today. Upon receiving such a representation, the respondent No.1 shall consider and decide the same within eight weeks in the light of the decision in the case of K. Bangaru Naidu (supra) and keeping in mind the fact that the question of law has been settled in the said case which has attained finality, and if the petitioners are entitled to the benefits of the MACP scheme upon completion of 10 years service, reckoned from the date they had reported for training and subject to their clearing the trade test at the first attempt, then the same benefits shall be extended to them as have been granted in the case of K. Bangaru Naidu (supra), implemented in terms of the order dated 31.03.2016, issued by the respondent no.1. The concluding para of the order dated 31.03.2016, to the effect that the court order would be specific to the petitioners in the case of K. Bangaru Naidu (supra) alone, will not be a ground to disentitle the petitioners herein from the benefits under the said decision.

7. The petition is disposed of alongwith the pending application.

HIMA KOHLI, J

SUNIL GAUR, J

APRIL 26, 2016

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