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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : July 08, 2016

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W.P.(C) 5780/2016

SHIV CHAND RAO

..... Petitioner

Represented by: Mr.Ankur Chhibber, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Represented by: Dr.Ashwini Bhardwaj, CGSC with
Mr.Gaurav Rohilla, GP
Sh.S.S.Sejwal, Law Officer, CRP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

CM No.23839/2016

Allowed.

W.P.(C) No.5780/2016

1. Counsel as above appear for the respondents and state that counter affidavits need not be filed because all relevant documents have been filed by the writ petitioner.
2. Thus, the present writ petition is being disposed of noting the dates given by the petitioner of having joined service and when he completed 12 years and 24 years service respectively. We take on record the statement made by learned counsel for the respondents that these dates would be

subject to verification by the respondents, to which learned counsel for the petitioner agrees.

3. The issue arising in the captioned writ petition concerns implementation of the Assured Career Progression Scheme (ACP) as per which, those who had rendered twelve years service and had earned no promotion, subject to fitness, would be entitled to the first financial upgradation and upon completion of twenty four years service, if no second promotion was earned, subject to fitness, would be entitled to the second financial upgradation.

4. The facts as averred by the petitioner are that the Petitioner joined service in CRPF as a Constable (GD) on September 07, 1971. He underwent the ROG III course in the year 1980 and thereafter, was re-mustered as Naik/RO on September 04, 1980. He completed 12 years in service on September 07, 1983. He was detailed for ROG Grade-II Promotional Course in the year 1994 and upon completing the same he was promoted to the rank of Head Constable/RO in the year 1994. He completed 24 years of service on September 07, 1995. Thereafter, he was detailed for ROG Grade-I Promotional Course in the year 2001 and after successful completion of the same he was promoted to the rank of Assistant Sub-Inspector/RO on May 24, 2005. He earned promotion to the rank of Sub-Inspector/RO in the year 2006.

5. The petitioner was granted both the first as well as the second financial upgradation effective from February 11, 2003 and August 23, 2004 respectively. However, the benefit of the first financial upgradation was subsequently withdrawn and even the benefit of the second financial upgradation was also revised vide order dated July 25, 2015 to be effective

from September 04, 2004 i.e the date on which the petitioner had completed the Pre-Promotional Course, and thus the problem continued.

6. We need to speak a few words.

7. The Assured Career Progression Scheme was introduced in the year 1999. The object was to avoid stagnation in service. The scheme envisaged placement of the incumbent in the next higher grade; akin to an in-situ promotion.

8. The grievance in the writ petition is to non-grant of the benefit of second financial upgradation upon completing twenty four years service.

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 petitioner on said issue is that the department was at fault inasmuch as the department did not send the petitioner 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.

11. We note that on October 27, 2014 an office order had been issued which reads as under:-

“No. P-VII-52/2014-ESTT Dated, the 27th /Oct/2014

To
The Spl./Addl. DG,

JKZ/CZ/NEZ/SZ.

*The Inspectors General of Police, 1
BS/CS/CHHG/CoBRA/JMU/JKD/M&N/MP/NES/NS/NW
S/ODISHA/RAF/RAJ/SS/SNR/TPA/WS/WB/OPS KMR/
OPS JHT/ISA MT ABU/CRPF ACDY KDR.
The Deputy Director (Accts), PAO, CRPF.*

**Sub :- REGARDING GRANT OF FINANCIAL BENEFITS
UNDER APC/MACP SCHEME – CLARIFICATION.**

Please refer to this Dte letter No.P-VII-52/2012-Estt dated 8/10/2012 and signal No.P-VII-52/2013-Estt dated 3/7/2013.

2. As per guidelines issued vide this Dte letter/signal under reference, Head Constable (GD/Technical/Tradesmen) were allowed 2nd financial up-gradation under ACP scheme (of Aug'1999) from the date of qualifying promotional course and fulfilment of other eligibility conditions.

3. The issue has been further examined in consultation with MHA & DoPT and following clarifications are issue :-

i) Those Head Constables (GD/Technical/Tradesmen) who were detailed on promotional courses after completion of 24 years of service and successfully qualified the promotional course, they may be allowed 2nd financial up-gradation under ACP scheme (of Aug'1999) from the date of completion of 24 years of service provided they fulfil other eligibility conditions on the relevant date of completion of 24 years of service.

ii) Since ACP scheme was operative from 9/8/1999 to 31/8/2008. Hence no HC (GD/Technical/Tradesmen) shall be allowed 2nd financial up-gradation under ACP scheme (of Aug'1999) prior to 9/8/1999 and after 31/8/2008.

iii) The Head Constable (GC/Technical/Tradesmen) who have not qualified promotional courses shall not be eligible for 2nd financial benefit under ACP scheme as they have not fulfilled the promotion norms.

4. *The cases of all affected personnel may be reviewed accordingly.*

SD/ 27/10/2014”

12. It is also pointed out 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 pre-promotional 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.

14. We note that the petitioner has completed the twenty four years of service though he has not undergone the pre-promotional courses. It is the case of the petitioner that he was never detailed for the said pre-promotional course by the respondents. Thus, he is squarely covered by the clarification issued by the respondents vide its clarification dated February 16, 2015.

15. The issue of reckoning 12 years and 24 years for those who were re-

mustered has already been decided by us on March 05, 2015 while deciding a batch of writ petitions, lead matter being W.P.(C) No.388/2015 in which the Division Bench has held that the period would reckon from the date of initial appointment to the post of Constable. We also note that the respondents sought review of the judgment dated March 05, 2015 and vide order dated January 29,2016 the Division Bench declined to interfere with the same for the following reasons:-

“12. We have considered the rival contentions of the parties and on going through the documents and OM relied upon by the parties, it is clear that clarification No. 4,5 and 6 relied upon by the respondents are not applicable in the present case whereas clarification No. 1 squarely covers the case of the petitioners for the reason the petitioners were appointed as Constable (GD) in the CRPF and were thereafter remustered as Naik RO. However, in the year 1997 the post of Naik RO was merged in the rank of Head Constable (RO) and as per clarification No.1 of DOPT's OM dated 10.02.2000 it has been clearly spelt out 'since the benefit of upgradation under the ACP Scheme are to be allowed in the existing hierarchy, the mobility under the ACP Scheme shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scale shall be entitled for upgradation under the ACP Scheme ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a vis the fresh entrant in the merged grade.' Thus a bare perusal of the above clarification clearly shows that upgradation under the ACP Scheme are to be allowed in the existing hierarchy. After 1997 the hierarchy prevalent in CRPF is that of Constable (RO) and then Head Constable (RO). As of today there is no post of Naik RO. Not only this, the clarification further clarifies that an employee who got promoted from a lower pay scale to a higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under the ACP Scheme ignoring the

said promotion. Meaning thereby that in the present case the petitioner was appointed as Constable (GD) and was thereafter remustered as Naik RO in a higher pay scale but however, in year 1997 the post of Naik RO was merged with that of Head Constable (RO). Therefore, as per the clarification the re-mustering to the rank of Naik RO is required to be ignored for grant of ACP. As far as the judgments relied upon by the respondents is concerned the same do not deal with the issue in hand and therefore are of no consequence to the present case.

13. Accordingly, in light of the observations above the present Review Petitions are without any merit and are accordingly dismissed.”

16. Therefore, we need not burden ourselves further. At this stage we note that SLP No.8313/2016 UOI Vs. Prem Singh filed by the Union of India was dismissed on May 06, 2016 in which the issue raised was concerning the re-mustered employees of BSF and the exact point was whether 12 and 24 years service should be reckoned from date of initial service or from date of re-mustering. Thus, the view taken by this Court that the period would reckon from date of initial service binds this Division Bench.

17. The petition is accordingly disposed of issuing a direction that the verification of the dates of employment and the dates when the petitioner completed 12 and 24 years service reckoned from the date of initial appointment and not re-mustering, as also fitness of the petitioner for grant of ACP benefit shall be completed within 12 weeks from today and the petitioner, if found eligible for grant of ACP benefit would be paid the arrears after re-fixation of his pay as also pension. In case the arrears are not paid within the stipulated timeline, then the same shall carry simple interest payable @8% per annum.

18. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JULY 08, 2016
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