

CWP No. 25414 of 2017

DECIDED ON: NOVEMBER 10, 2017

DARSHAN SINGH MEHMI

.....PETITIONER

VERSUS

STATE OF PUNJAB & ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Ms. Ritu Punj, Advocate
for the petitioner.

JASPAL SINGH, J (ORAL)

By virtue of instant petition preferred under Article 226/227 of the Constitution of India, petitioner has sought a writ in the nature of mandamus directing the respondents to grant him benefit of ACP Scheme dated November 03, 2006 (P-6) as well as to revise all pensionary benefits accrued to him on the date of his retirement i.e. February 29, 2016 after considering his representation dated November 03, 2015 (P-15) as well as legal notice dated July 03, 2017 (P-16) along-with interest @ 18% per annum from the date it became due that too, after quashing the order dated July 15, 2009 (P-7) as well as orders dated November 27, 2013 (P-11) and order dated July 10, 2014 (P-12).

2. The contention of learned counsel for the petitioner is that petitioner was appointed as District Commandant in Punjab Home Guard on February 29, 1980 after having been selected and recommended by Punjab Public Service Commission. He stood promoted to the post of Battalion Commander

on September 19, 1990 after finding his performance to be upto the mark. However, as per the instructions issued by State of Punjab, ACP was granted to him after completion of 8 years of service vide order dated September 02, 2000, as he was not promoted during the said period. Subsequently, he was promoted to the post of Divisional Commandant vide order December 27, 2000 (P-5). Certain instructions (P-6) were issued by the State of Punjab on November 03, 2006 for the grant of ACP on completion of 4/9/14 years of service in the same cadre, which was made applicable w.e.f. November 01, 2006. Though, the petitioner made a representation but that was declined vide order dated July 15, 2009 (P-7).

3. Learned counsel for the petitioner further contended that petitioner represented against certain adverse remarks vide his representation dated August 06, 2009 and ultimately, vide order dated November 04, 2011, and competent authority after considering the whole record took a conscious decision to treat the period for the years 2003-04, 2006-07, 2007-08 and 2008-09 as “no report” period vide order dated December 10, 2010 (P-9) but to the utter surprise, the officer who had passed the order dated December 10, 2010 declaring the ACRs for the afore-said period as “no report” declined the proficiency step up(s) vide order dated July 10, 2014 (P-12). In fact, once the same officer has treated the ACR's of afore-said period as “no report”, he was obliged to consider the previous ACRs and grant the benefit of proficiency step up(s) but for the reasons best known to him, he rejected the same. Even, as per instructions dated August 15, 2000, vide 1 PP 1/9216, dated June 18, 2001 issued by the Government of Punjab to the various departments, in unambiguous terms observed that in such a situation, ACR for a specific period

is treated as “no report”, the previous year report should be considered. Similarly, if the ACR has not been written as per rules, the previous ACR should be taken into consideration but these instructions were not kept in mind while passing the impugned order dated July 10, 2014 (P-12).

4. It is also well settled proposition of law that when ACRs are to be treated as “no report” the concerned authorities are bound to consider the last report which is good in this case. Further, it has been submitted by learned counsel for the petitioner that even, representation was earlier made to the Chief Secretary and subsequent thereto, legal notice was also served upon the respondents but till date no action has been taken.

5. Undisputably, petitioner has been declined the benefit of ACP on completion of 4/9/14 years of service, *inter-alia* on the ground that there are adverse remarks in the reports but when the period regarding which the reports were not written by the competent authority has already been treated as “no report” by the competent authority vide order dated December 10, 2010 (P-9) and as per instructions dated June 18, 2001 referred to above the authorities concerned while granting the benefit of ACP was supposed to consider the last ACR i.e. prior to the period of “no report”, (which has not been done in the instant case), the order dated July 10, 2014 (P-12) is not sustainable in the eyes of law. As such, impugned orders P-7, P-11 and P-12, cannot be taken into consideration and the matter requires to be decided afresh. As such impugned orders are treated to be non-existent.

7. Accordingly, instant petition is disposed of with a direction to respondents to consider the case of the petitioner afresh in the light of averments made in the legal notice dated July 03, 2017 (P-16) and to take a conscious

decision, that too, in the light of various rules and regulations and particularly instructions dated June 18, 2001 within a period of two months from the date of receipt of certified copy of this order. In case the authority comes to the conclusion that petitioner is entitled to the relief(s) claimed by him, to disburse the same within a period of next one month. The grant of interest shall also be considered by the concerned authorities in the light of instructions issued by the Government of Punjab from time to time as well as in view of observations made by Full Bench of this Court in case captioned as “A.S. Randhawa vs. State of Punjab and others; 1997 (3) SCT 468 and by this Court in CWP No. 8772 of 2015 titled as Charan Dass vs. State of Punjab & others; decided on July 11, 2017

8. However, if petitioner still feels aggrieved by any of the orders passed by the aforesaid authority, he shall be at liberty to approach this Court.

NOVEMBER 10, 2017
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>