

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

+ **W.P.(C) 536/2017**

Date of decision: 28th August, 2017

BHAGWAN DUBEY

..... Petitioner

Through: Mr. Ankur Chhibber, Adv. with
Ms. Shruti Munjal, Adv.

versus

UNION OF INDIA AND ORS

..... Respondents

Through : Mr. Rakesh Kumar, CGSC

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

Bhagwan Dubey was appointed as a Constable on 07.06.1981 and promoted as Head Constable on 10.10.1997.

2. The petitioner was denied second financial upgradation under the Assured Career Progression (ACP) Scheme as he had not undergone the requisite pre-promotional course, before completion of 24 years of service.

3. Delhi High Court vide decision dated 06.09.2013 in WP(C) 5539/2013, Jaipal Singh and Others vs. Union of India and Others, has held that those not short-listed for pre-promotional course, would not be denied financial upgradation. Ministry of Home

Affairs on 16.02.2015 issued clarification that Constables/Head Constables who had completed 24 years of regular service would be eligible for second financial upgradation notwithstanding the condition of pre-promotional course criteria, where such personnel could not be sent for pre-promotional course due to administrative reasons and not due to any reason owing to the person concerned.

4. Pursuant to the aforesaid clarification, the petitioner was granted second financial upgradation with effect from 07.06.2005 vide order dated 29.09.2015. The same order had also granted third financial upgradation under the Modified Assured Career Progression (MACP) Scheme with effect from 06.06.2011.

5. The petitioner thereafter retired from service on 30.04.2016.

6. While processing the case for payment of retirement benefits, it was felt that the petitioner was not entitled to second financial upgradation under the ACP Scheme and the third financial upgradation under the MACP Scheme. By the order dated 12.04.2016, the two financial upgradations were withdrawn and the amount paid on account of financial upgradations was sought to be deducted from the retirement dues.

7. The petitioner has filed the present writ petition challenging the letter dated 21st November, 2016 for adjustment of amount paid on account of financial upgradation from retirement dues, which was written in pursuance of the order issued by the respondents dated 12th April, 2016 withdrawing the second and third financial upgradation.

8. The respondents have given two reasons for withdrawal of the two upgradations. Firstly, the petitioner had suffered a heart attack in the year 2011 and his medical category was downgraded from Shape-1. The second reason was that the petitioner had expressed unwillingness to undertake the pre-promotional course at serial Nos. 117 and 118, from 18.07.2005 to 10.10.2005, as recorded in the service book.

9. It is an accepted and admitted position that the medical category of the petitioner was downgraded after he had suffered the heart attack in September, 2011. The petitioner was entitled to third financial upgradation with effect from 06.06.2011, which is prior in point of time. Counsel for the respondents has also obtained instructions, and has stated that for financial upgradation under the MACP Scheme, medical category is irrelevant. The first reason given by the respondents, therefore, fails.

10. We also do not find any merit in the contention that the petitioner should have been denied second financial upgradation with effect from 06.06.2005 under the ACP Scheme as he had failed to or had expressed unwillingness to undergo pre-promotional course in July, 2005. The reason is obvious.

11. The petitioner had completed 24 years of service on 07.06.2005. It is not the case of the respondents that the petitioner had expressed unwillingness to undergo pre-promotional course prior to 07.06.2005. No such assertion, document or paper has been placed on record. Refusal post 07.06.2005, cannot be a ground to

deny the right and entitlement which had accrued and was acquired earlier in point of time. The respondents have not been able to show any entry in the service book regarding unwillingness on or before 07.06.2005.

12. Learned counsel for the petitioner, on instructions, has stated that the petitioner had never expressed unwillingness to undergo pre-promotional course beginning from 18.07.2005. We need not examine the said contention in view of the aforesaid discussion. We have, however, referred to the contention of the respondents and on the basis of legal position rejected the submission without accepting the factual assertion.

13. In these circumstances, the petitioner would be entitled to the benefit of second financial upgradation in terms of the clarification dated 16.02.2015 issued by the Ministry of Home Affairs, that the requirement or condition of pre-promotional course criteria would be overlooked if due to administrative reasons a person has not been sent for the pre-promotional course.

14. Resultantly, the writ petition has to be allowed and the impugned order dated 12.04.2016 passed by the respondents withdrawing benefits of the second and the third financial upgradations under the ACP and MACP Schemes, respectively, are set aside.

15. It appears that the respondents have made recoveries from the retiral benefits of the petitioner. The said recoveries are wrong and contrary to law. The payments withheld or recovered would be

paid/ refunded to the petitioner within a period of three months from the date a copy of this order is received by the respondents. In case payments are not made within three months, the respondents should pay interest @ 8% from the date of recovery till payment is made. Fresh PPO would be issued to the petitioner within a period of three months. There shall be no order as to costs.

AUGUST 28, 2017
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SANJIV KHANNA, J

NAVIN CHAWLA, J



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