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

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*Date of Judgment: 17<sup>th</sup> May, 2017*

+ W.P.(C) 7462/2016

AKHTAR HUSSAIN

..... Petitioner

Through: Mr.Ankur Chhibber, Advocate.

versus

UOI AND ORS

..... Respondents

Through: Mr.Arun Bhardwaj, CGSC.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MS. JUSTICE REKHA PALLI**

**SANJIV KHANNA, J. (ORAL)**

1. Learned counsel for the respondents, on instructions, states that they are opposing the present writ petition only on one ground. We may record, counsel for the respondents, on instructions, has not raised other objections or contentions which are so pleaded in the counter affidavit.
2. Counsel for the respondents submits that for the purpose of Assured Career Progression Scheme, period of 12 and 24 years have to be counted from the date the petitioner-Akhtar Hussain was re-mustered as Constable (Driver) in 1992 and not from the date of initial joining as Constable (General Duty) in 1980.
3. The petitioner-Akhtar Hussain was selected and enrolled as Constable (General Duty) with Central Reserve Police Force in 1980. The petitioner

thereafter underwent D & M Course in the year 1992 and was re-mustered in the Driver cadre in the year 1992.

4. It is not the case of the respondents that on re-mustering in 1992, the petitioner stood promoted from Constable (General Duty) to Constable (Driver). It is also not the case of the respondents that pay scale of Constable (Driver) was higher than payable to Constable (General Duty).

5. The question whether the date of initial direct entry as Constable (General Duty) in 1980 or the date of re-mustering i.e. 1992 would be the starting point for computing the period of 12 or 24 years under the Assured Career Progression Scheme, is to be answered by reference to the scheme which records that the period would commence from the date when the Government servant is recruited as a direct recruit. The relevant paragraph of the scheme reads:-

“4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfilment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to department proceedings, etc. this would have consequential effect on the second upgradation which would also get deferred accordingly;

5.1 xxxxxx

5.2 Residency periods (regular service) for grant of benefits under the ACP Scheme shall be counted from the date grade in which an employee was appointed as a direct recruit.”

6. Office Memorandum No.35034/1/97-Estt(D)(Vol.IV) dated 10<sup>th</sup> February, 2000 also answers with the said question/issue. Reference can be

made to answers given to question Nos.4, 5 and 6 which read as under:-

| S.No. | Point of doubt                                                                                                                                                                                                                                                                                                                           | Clarification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| 4.    | In a case where a person is appointed to a post on transfer (absorption) basis from another post, whether 12 years and 24 years of service for the purpose of ACPS will count from the initial appointment or otherwise.                                                                                                                 | The benefits under ACPS are limited to higher pay scale and do not confer designation, duties and responsibilities of the higher post. Hence, the basic criterion to allow the higher pay scale under ACPS should be whether a person is working in the same pay scale for the prescribed period of 12/24 years. Consequently, so long as a person is in the same pay scale during the period in question, it is immaterial whether he has been holding different posts in the same pay scale. As such, if a Government servant has been appointed to another post in the same pay scale either as a direct recruit or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), it should not make any difference for the purpose of ACPS so long as he is in the same pay scale. In other words, past promotion as well as past regular service in the same pay scale, even if it was on different posts for which appointment was made by different methods like direct recruitment, absorption |
| 5.    | Whether a Government servant, who is direct recruit in one grade and subsequently joins another post again as direct recruit, is eligible for first financial upgradation under ACPS after completion of 12 years of service counted from the first appointment or from the subsequent second appointment as direct recruit?             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 6.    | An employee appointed initially on deputation to a post gets absorbed subsequently, whether absorption may be termed as promotion or direct recruitment. What will be the case if an employee on deputation holds a post in the same pay-scale as that of the post held by him in the present cadre? Also, what will be the situation if |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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|  | <p>he was holding a post in the parent cadre carrying a lower pay-scale?</p> | <p>(transfer)/ deputation, or at different places should be taken into account for computing the prescribed period of service for the purpose of ACPS. Also, in case of absorption (transfer)/deputation in the aforesaid situations, promotions earned in the previous/present organisations, together with the past regular service shall also count for the purpose of ACPS. However, if the appointment is made to higher pay-scale either as on direct recruitment or on absorption (transfer) basis or first on deputation basis and later on absorbed (on transfer basis), such appointment shall be treated as direct recruitment and past service/promotion shall not count for benefits under ACPS. Needless to say, in cases of transfer on administrative ground, involving only change of station within the same department, the service rendered in the same grade at two stations may count for ACPS, as such transfers are within the same organisation, ordered generally for administrative/personal considerations and the service</p> |
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|  |  | rendered in the earlier station counts as eligibility service for promotion. |
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7. This being the position as explained and elucidated in the aforesaid memorandum, the petitioner's service with effect from 1980 has to be counted for computing the service period under the ACP Scheme. The petitioner had joined the Government service in 1980 and accordingly has to be given benefit of 2<sup>nd</sup> ACP by computation period of 24 years from the said date.

8. The petitioner would be accordingly entitled to second financial upgradation with effect from the relevant day in the year 2004.

9. The respondents shall comply with the aforesaid directions within a period of two months from the date, on which a copy of this order is received. In case there is delay beyond two months, the respondents would pay interest at the rate of 8% per annum for the period beyond 2 months till the date of payment.

Dasti.

**SANJIV KHANNA, J**

**REKHA PALLI, J**

**MAY 17, 2017**  
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