



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.08.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.11384 of 2011

and

M.P.(MD).No.1 of 2011

A.Marianthony

.. Petitioner

Vs.

- 1.The Union of India,
rep. by its Secretary,
Ministry of Home Affairs,
New Delhi.
- 2.The Director General,
Central Industrial Security Force,
CISF Headquarters,
Block No.13, CGO Complex,
Lodhi Road,
New Delhi.
- 3.The Inspector General,
Central Industrial Security Force,
South Zone Head Quarters,
Near War Memorial,
Chennai - 600 009.
- 4.The Deputy Inspector General,
Central Industrial Security Force,
South Zone Head Quarters,
Rajaji Bhavan,
Bezant Nagar,
Chennai - 600 090.
- 5.The Commandant,
Central Industrial Security Force Unit,
SRP Area Post,
CC Complex,
Naspur 504 302,
Adilabad District,
Andhra Pradesh.
- 6.The Assistant Commandant,
Central Industrial Security Force Unit,
SCCL, Singareni,
Andhra Pradesh.

.. Respondents



PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order passed by the 4th respondent in his order No.F-20013/OP-REC/CISF/ACCTS/SCCL/11-12/2603, dated 22.04.2011 and quash the same and to direct the respondents to grant financial upgradation under the Modified Assured Career Progression Scheme with effect from the petitioner's eligibility w.e.f 2008 and to refund a sum of Rs.1,11,487/- recovered illegally from the salary of the petitioner and grant all consequential benefits by modifying the pension.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.J.Jeyakumar,
CGSC

ORDER

This Writ Petition has been filed by the petitioner challenging the recovery order passed by the 4th respondent, dated 22.04.2011 and also for a direction to the respondents to grant financial upgradation under the Modified Assured Career Progression Scheme with effect from the date of petitioner's eligibility and to refund a sum of Rs.1,11,487/- recovered illegally from the salary of the petitioner and grant all the consequential benefits by modifying the pension.

2. The petitioner was appointed in CISF as a Security Guard / Constable with effect from 14.07.1976 and after getting various promotions, he voluntarily retired from service on 01.04.2011. After his retirement, the 4th respondent has passed the impugned order of refixation of pay and recovery of a sum of Rs.1,11,487/- as over payment, without any valid notice and subsequently, recovered the said amount from the retirement benefits of the petitioner. The grievance of the petitioner is that though he has put in prescribed period of service as per the Assured Career Progression Scheme (ACP Scheme) / Modified Assured Career Progression Scheme (MACP Scheme), he has not been given the benefits under the said scheme from the date of his eligibility and that the recovery has been made without any notice.

3. When the similar issue came up for consideration, a Division Bench of this Court in a batch of writ petitions in W.P.Nos.5752 of 2010, etc. batch, (Mr.Babu Paul Vs. Union of India), dated 16.06.2014, has held in paragraph No.9 to 15 as follows:

"9. A perusal of the order rendered by the Division Bench of the Delhi High Court would disclose that the petitioner concerned had completed 12 years of service on 03.04.2009 and offered an opportunity to undergo Promotional Cadre



Course (in short 'PCC') pursuant to an offer made during April, 2001. However, he expressed his unwillingness to undergo PCC on the ground of his wife being seriously ill. Though subsequently, the petitioner expressed his willingness, that was rejected and challenging the same, the abovesaid writ petition came to be filed. The official respondents before the Delhi High Court took a stand that the petitioner, in his unwillingness certificate, has expressed his unwillingness to undergo promotion course and it has been clearly stated that he has no objection, if he was superseded due to his unwillingness and his case was rightly considered and rejected.

10. The Delhi High Court has taken into consideration its earlier decision dated 15.02.2011, in W.P.(C) No.6937 of 2010 (Hargovind Singh vs. Central Industrial Security Force) and in paragraph No.14, held that in the light of the reasons recorded in Hargovind Singh's case (cited supra), the petitioner could not be deprived of the financial upgradation for that period and it is also apparent from the working of the ACP Scheme by the respondents that a person is entitled to the financial benefit on the date he completes the required twelve years of service without a promotional opportunity and the respondents have so worked the scheme in Hargovind Singh's case as well as the present case and the completion of the promotional cadre course is akin to completion of the requisite training upon appointment/promotion and it does not change the date of the appointment or the date of promotion.

11. On the facts of the case, the Delhi High Court found that the petitioner has given genuine reasons for his inability to undergo PCC Course, which has not been doubted by the respondents and as per the Scheme, every employee is entitled to three chances to complete the PCC and in case the petitioner had undertaken the PCC course when he was first offered the same but had failed to clear the course, the respondents would not have then deprived him of the benefits of the financial upgradation but would have offered him a second and thereafter, even a third chance to successfully complete the same and that being the position, a person who was prevented by just and sufficient cause from undertaking PCC at the first option cannot be deprived of the benefit of the financial upgradation.



12. Insofar as recovery of the amount paid to the concerned person, the Delhi High Court has held that the recovery, which is postulated, has to be read in context of the clear stipulation as laid in paragraph 2 of the Circular, dated 07.11.2003 and cannot be related to recovery of an amount beyond the period that is noted in paragraph 2. Paragraph Nos.2 and 4 of the said Circular reads thus:-

"02. Instructions had been issued to the field formations that the personnel who have been granted ACPs benefits without qualifying PCC, but later on declared failed in PCC express their inability to undergo PCC on the pretext of one reason or other reason and submit medical unfitness certificate when detailed for PCC, the ACP benefits earlier granted to them may be stopped from the date of result of failure/submission of medical unfitness certificate or expressing their inability to undergo PCC on medical ground."

"4. In view of the observations of Internal Audit party of MHA, the case has been examined and it has been decided that the recovery of pay and allowances pertaining to the period from the date of upgradation of scale under ACPs to the date of stoppage of such benefits may be made".

13. The Delhi High Court, by taking into consideration the said Circular, dated 07.02.2003, further held that as per the said Circular, paragraph 4 has to be operated in context of what has been clearly stated in paragraph 2 of the abovesaid Circular and such reading and application of the Circular is in consonance with the above discussion and therefore, the respondents cannot possibly seek recovery of the higher pay and allowances (advanced as benefits under the ACP Scheme) for the entire period from the date of upgradation of the scale under the ACP Scheme to the date of stoppage of benefit in case a person fails to clear the PCC in all three chances. A perusal of the impugned proceedings would also disclose that the amount already paid is also sought to be recovered."

14. In the light of the said decision rendered by the Delhi High Court, which has also reached finality in the absence of any challenge to the order in respect of the persons, who are similarly placed like that of the petitioners herein, and that the said order has also been implemented, this Court is of the considered view that all the writ petitions have to be ordered as prayed for."



15. In the result, the impugned orders passed in the respective writ petitions are set aside. The writ petitions are allowed. The official respondents shall consider the claim of the respective petitioners as and when they attain eligibility period prescribed under the ACP Scheme and confer them the benefit without any delay and it is also made clear that any amount already paid, cannot be recovered in the light of the impugned orders. If any amount recovered is also to be reimbursed to the concerned persons within a period of six weeks from the date of receipt of a copy of this order. Connected Miscellaneous Petitions are closed. No costs."

4. The said decision is squarely applicable to the facts and circumstances of this case. Following the same, the impugned order is set aside and the official respondents are directed to consider the claim of the petitioner as and when he attains eligibility period prescribed under the ACP / MACP Scheme and confer him the consequential benefits without any delay and it is also made clear that any amount already paid cannot be recovered in the light of the impugned orders. If any amount recovered is also to be reimbursed to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

5. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-II)

gcg

To

1.The Union of India,
rep. by its Secretary,
Ministry of Home Affairs,
New Delhi.

2.The Director General,
Central Industrial Security Force,
CISF Headquarters,
Block No. 13, CGO Complex,
Lodhi Road,
New Delhi.



3. The Inspector General,
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South Zone Head Quarters,
Near War Memorial,
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4. The Deputy Inspector General,
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South Zone Head Quarters,
Rajaji Bhavan,
Bezant Nagar,
Chennai - 600 090.
5. The Commandant,
Central Industrial Security Force Unit,
SRP Area Post,
CC Complex,
Naspur 504 302,
Adilabad District,
Andhra Pradesh.
6. The Assistant Commandant,
Central Industrial Security Force Unit,
SCCL, Singareni,
Andhra Pradesh.

+1cc to Mr.A.S.Mujibur Rahman, Advocate in SR No.80402

W.P(MD)No.11384 of 2011

NM/RSK/SAR 2/09.10.18/6P/8C.