

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.17210 OF 2010

Date: 23.01.2018

Between:

M.S.Narayana, s/o. late M.Gopi Naidu,
Retired Constable No. A 1803, Armed Wing,
Aged about 68 years, R/o. H.No.58-9-11,
New Karasa, N.A. D. Post, Visakhapatnam.

.....Petitioner

and

Union of India, rep.by its Senior Divisional
Security Commissioner, Railway Protection
Force, East Coast Railway, Waltair Division,
Visakhapatnam.

.....Respondent



The Court made the following:

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ORDER:

Petitioner joined service as Police Constable in Railway Protection Force on 09.10.1965. He retired from service on attaining the age of superannuation on 28.02.2002. This writ petition is filed praying to issue direction declaring the action of respondent in not considering the representation of petitioner dated 10.04.2010 for release of his monetary benefits by fixing his pay on par with his juniors at 4900/- and above and consequently to direct the respondent to settle all the benefits by fixing his pay correctly on par with his juniors.

2. Heard learned counsel for petitioner and learned standing counsel for respondent.

3. Learned counsel for petitioner submits that during entire service rendered by him, he was not granted a single promotion and he was retired in the same post. According to learned counsel, the Government of India formulated Assured Career Progression Scheme (ACP) to come to rescue of employees who do not earn promotions, in the form of financial up-gradation on completion of 12 years for the first time and on completion of 24 years for second time. These benefits were not granted to petitioner. It is further submitted that once this benefit is extended, petitioner is also entitled to Rail travel facility in First Class and the same is also not extended. Learned counsel further submits that petitioner is entitled to payment of arrears by working out the amounts payable as per ACP Scales.

4. Learned counsel for petitioner has drawn the attention of this Court to the orders issued by the respondent authority on 11.07.2005 granting him ACP first benefit w.e.f. 01.10.1999 fixing his pay at 4050/- and second ACP benefit w.e.f. 01.01.2000 at 4400/-. If this is implemented, petitioner would be crossing 4900/- ceiling to get the benefit of first A.C. Traveling Pass. According to the learned counsel, though these proceedings were issued on 11.7.2005, so far the same is not implemented for the reasons best known to the respondent authority and these proceedings have come to light only when order is filed along with the counter-affidavit. He has also drawn the attention of various averments in the counter-affidavit of the Government, which according to learned counsel, would support the contention of petitioner.

5. Learned standing counsel submits that petitioner retired from service in the year 2002, but writ petition is filed in the year 2010 and therefore delay of more than 8 years after his retirement. Thus, writ petition is liable to be dismissed on this ground alone.

6. Fact that petition did not earn promotions while in service is not disputed. It appears, no disciplinary action was initiated or pending by the time he retired from service. In terms of ACP Scheme, an employee is entitled to financial up-gradation on completion 12 and 24 years respectively. This financial up-gradation was not granted to him while he was in service. According to learned counsel for petitioner, though proceedings were issued but they were not communicated to the petitioner and the benefit of financial up-gradation is not extended to him.

7. Learned standing counsel is unable to explain as to why proceedings dated 11.07.2005 are not implemented. The counter-affidavit is also silent on the reasons for non implementation of said proceedings. It is also not the case of respondents that said proceedings were withdrawn.

8. The entitlement of petitioner to claim two financial up gradations is not disputed. In the facts of this case, as noted above, writ petition cannot be thrown out merely on the ground that petitioner instituted the writ petition 8 years after his retirement. Thus, this contention is stated to be rejected and it is held that petitioner is entitled to benefit of two financial up gradations in lieu of promotions.

9. The only issue that requires consideration is whether the claim to grant first class train traveling pass if he had crossed the stage of 4900/-. It is not clear from the material on record whether petitioner has crossed the said limit before his retirement. Thus, no positive direction on the said claim can be given and it requires consideration by the competent authority after assessing the pay that petitioner can draw at the time of his retirement after fixing his pay in the ACP-1 and ACP-2 scales from the respective dates of his entitlement.

10. Further, if only these amounts were paid when they were due or soon after proceedings were issued, more particularly to the retired employee, they would have been very handy. As petitioner is entitled to ACP scales and without any justification the ACP scales were not extended to the petitioner, causing lot of hardship

and suffering, petitioner is also entitled to interest on the arrears of amount from the date they were due till they are paid.

11. In view of the same, writ petition is allowed and following directions are issued:

- i) Pay revision extended to the petitioner by granting ACP-I and ACP-2 in proceedings dated 11.07.2005 should be given effect to and arrears of amounts payable to the petitioner be determined;
- ii) After working out the arrears of amount payable to the petitioner, the same shall be paid to the petitioner within two months from the date of receipt of copy of this order;
- iii) By the time of his retirement if petitioner crossed 4900/- after applying the benefits of ACP-I and ACP-2 from 01.10.1999 and 01.01.2000, respectively, he shall be granted benefit of First Class Train Traveling Pass as per the entitlement; and
- iv) Petitioner is entitled to interest at the rate of 8% per annum from the date of due of arrears of amount till the date of payment.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

Date: 23.01.2018
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