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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved On- 07th December, 2017
Date of Pronouncement- 05th January, 2018

+ W.P.(C) 2871/2016
MITRU SINGH Petitioner
Through Mr. Ankur Chibber, Advocate.
versus

UNION OF INDIA AND ORS Respondent
Through Mr. Nawal Kishore Jha,
Advocate.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

1. The petitioner who is a Constable in the CRPF, has preferred the present petition praying *inter alia* for grant of first and second financial upgradation under the ACP Scheme from the due dates, by treating him to be in the appropriate medical category after grant of relaxation as per the policies of the respondents.
2. The brief facts relevant for the adjudication of the present petition are that the petitioner was appointed as a Constable (GD) in the CRPF on 24.01.1981, whereafter in the year 1984, he was remustered as a Constable (Driver), upon completion of the relevant courses.
3. On 26.07.1989, while posted in the 72nd Battalion at Tarn Taran, Punjab the petitioner became a victim of an ambush attack by

terrorists, when he was driving a Government vehicle to transfer the troops and in the said ambush attack, the petitioner suffered bullet injuries in his left eye, right arm and right portion of the chest. The said ambush attack by terrorists was reported to the DIG, CISF by Commandant of the 72nd Battalion, in which the petitioner was posted and a Court of Inquiry was accordingly held to enquire into the circumstances under which the vehicle being driven by the petitioner was ambushed and he alongwith other troops were injured/killed by the terrorists.

4. After considering all the facts and circumstances, the Court of Inquiry came to the conclusion that the injuries sustained by the petitioner were attributable to Government service. The said findings returned by the Court of Inquiry were duly approved by the DIG, CRPF, Patna .

5. Despite having suffered several injuries, the petitioner continued to serve in the CRPF and was considered for rehabilitation alongwith 26 other force personnel by the Rehabilitation Board on 28.02.2000. The Board was of the view that the petitioner's injuries were attributable to service and accordingly, recommended that he be retained in service to perform duties in terms of para 7 of the Standing Order No.7/99, that deals with rehabilitation/retention of sick and injured force personnel. It was further recommended that the petitioner's case be reviewed after two years, on 22.01.2003.

6. The petitioner's case was again taken up for consideration by the Rehabilitation Board on 22.01.2003 and his retention in service

was recommended. This time, the Board recommended that he be reverted to General Duty Cadre, for active duty.

7. At that stage, since the petitioner had already put in 12 years of service and had not been granted any promotion or financial upgradation in accordance with the ACP Scheme dated 09.08.1999, he submitted a representation dated 10.06.2003 to the respondents seeking grant of the first financial upgradation under the ACP Scheme. This request was however turned down and vide order dated 19.06.2003, the petitioner was informed that he did not fulfill the criteria prescribed for grant of ACP as he had neither undergone the pre-promotional course, nor was he in SHAPE I medical category, which is a prerequisite for grant of ACP and which an employee is required to fulfill as a part of the normal promotional norms.

8. On 16.02.2015, the Ministry of Home Affairs, Government of India i.e. respondent no.1 herein, issued a clarification to the effect that in those cases where Constables/Head Constables of the CRPF could not be sent for pre-promotional courses by the CRPF due to administrative reasons, they would be entitled to a second financial upgradation under the ACP Scheme, from the date they complete 24 years of regular service, by overlooking the conditions of any pre-promotional course criteria. Immediately upon issuance of the said clarification, the petitioner submitted a representation dated 25.03.2015 to the respondents seeking grant of the first financial upgradation under the ACP Scheme upon completion of 12 years of service reckoned from 1999, as also the second financial upgradation

on completion of 24 years of service, that he had completed in January, 2005.

9. The petitioner was however not granted the benefits of the ACP Scheme and vide order dated 07.12.2015, he was informed by the respondents that he was ineligible for financial upgradation under the ACP Scheme as he had not undergone the pre-promotional course and also because he did not fulfill the medical criteria of being in category Medical Shape I, as he was admittedly in the low medical category SHAPE II (permanent).

10. In these circumstances, the petitioner has approached this Court and has prayed for quashing of the orders rejecting his claim for ACP and has also prayed that the respondents be directed to grant him the benefit of the first and second financial upgradation under the ACP Scheme w.e.f. 1993 and 2005, respectively.

11. In support of his claim of being entitled to receive financial upgradation under the ACP Scheme despite his being in low medical category, learned counsel for the petitioner has relied on a policy dated 14.09.2000, issued by the respondent no.1, according to which those personnel who have been placed in a low medical category due to injuries/wounds suffered while fighting against the enemy/militants or in accidents while on active duty, will be entitled to relaxation in Shape I medical category in certain cases.

12. We deem it appropriate to reproduce below, para 3 of the policy dated 14.09.2000:-

“3. Proposals from BSF and Assam Rifles were received to exempt those officers from Shape I medical category, for

the purpose of promotion, who have been placed in low medical category due to injuries/wounds suffered while fighting against the enemy/militants or in accidents while on active duty. This was discussed with the CPMFs and it has now been decided to give relaxation in Shape I medical category to the following two categories of CPMFs personnel to the extent detailed below:-

a) Officials/personnel wounded/injured during war or while fighting against the enemy/militants/intruders/armed hostiles/insurgents due to an act of these in India or abroad will be eligible for promotion while placed in one of the following medical classifications:-

(i) Individual Low Medical Factors

(aa) H2 or E2 or P2 (Dental) which will be considered at par with Shape I; and

(ab) A2 or P2 or A3.”

13. The petitioner has also placed reliance on a subsequent Standing Order no.4 of 2008 that also grants relaxation in Shape I medical category to officers/men who are wounded/injured due to accidents while on active Government duty. It would be appropriate to refer to para 4.17 of the said Standing Order, which reads as under:-

“4.17 Relaxation in Shape-I Medical Category.

The relaxation in Shape-I medical category will be admissible to the following two categories of CPMFs personnel to the extent detailed below:

a. Official/personnel wounded/injured during war or while fighting against the enemy/militant/intruders/armed hostiles/insurgents due to an act of these in India or abroad will be eligible for promotion while placed in one of the following medical classification:

i) Individual Low Medical Factors

(aa) H2 or E2 or P2 (Dental) which will be considered at par with Shape-I; and;

(ab) A2 or P2 or A3

(ii) Combined Low Medical Factors

(aa) H2 and E2 combined and

(ab) H2 or E2 combined with A2, A3 or P2

b. Officers/men who are wounded/injured during field firing/accidental firings/explosion of mines or other explosive devises and due to accidents while on active Government duty in India or abroad will be eligible for promotion in the following SHAPE categories:

(i) SIH1A2P1E1

(ii) SIH1A1P2E1

(iii) SIH2A1P1E1

(iv) SIH1A1P1E2

(v) SIH2A1P1E2”

14. Relying on the aforesaid two policies relating to the requirement of SHAPE I medical category, it has been contended that the petitioner having admittedly suffered injuries attributable to an ambush attack, during the course of discharging his duty, he was entitled to be granted relaxation in the medical standards and accordingly, considered for grant of financial upgradation under the ACP Scheme.

15. In their counter affidavit, the respondents have opposed the claim of the petitioner mainly on the ground that since he was in a low medical category and had admittedly not undergone a pre-promotional course, he did not fulfill the promotional norms which

were mandatory for grant of financial upgradation under the ACP Scheme. The claim of the petitioner has also been opposed on the ground that he has already been granted the benefit of upgradations under the MACP introduced vide O.M. dated 19.05.2009 and is therefore, not entitled to get any benefit under the ACP Scheme.

16. Arguing on behalf of the petitioner, Mr. Ankur Chhibber, Advocate contended, that the respondents while rejecting the petitioner's claim for grant of benefit under the ACP Scheme have overlooked the fact that he was never detailed for the pre-promotional course and having suffered injuries while on active duty, he was entitled to grant of relaxation in the medical norms prescribed for promotion/ACP.

17. Learned counsel also drew our attention to the order dated 05.07.2017 passed by the predecessor Bench, wherein it was noted that the alternative prayer of the petitioner was that he should be granted the second financial upgradation from the date on which he was actually entitled, though the arrears payable to him could be restricted to a period of 3 years reckoned backwards from the date of filing of the writ petition. He, therefore, urged that the petitioner is entitled to receive the financial upgradation under the ACP Scheme from the due dates and at best, on account of the delay in approaching this Court, the arrears could be restricted as noted above.

18. Per contra, Mr. Nawal Kishore Jha, Advocate appearing for the respondents submitted that the petitioner has already been granted benefits under the MACP Scheme and he is therefore not entitled to

grant of any benefits under the ACP Scheme. He further submitted that despite the directions issued vide order dated 05.07.2017, to examine the entitlement of the petitioner's claim for grant of ACP, he has not been able to get any clear instructions from the Department.

19. Learned counsel for the respondents further contended that the relaxation envisaged in the above mentioned policies of the year 2000 & 2008 are applicable only to cases of promotion and not to cases of ACP. On a query posed to him as to why would the said relaxation not be applicable for grant of the benefits under ACP Scheme when admittedly the normal promotional norms are being treated as mandatory for grant of ACP, learned counsel was unable to give any satisfactory reply.

20. Having heard the learned counsels and on perusing the record, we find that it is an undisputed position that the injuries suffered by the petitioner on 01.08.1989, were a result of an ambush attack on the vehicle that he was driving and the said incident due to which the petitioner sustained injuries, has been treated by the respondents to be a case of an accident while on active duty. We have also perused the recommendations of the DIG, CRPF who has clearly opined that the injuries sustained by the petitioner were attributable to Government services.

21. The respondents have not seriously disputed the averment made by the petitioner that he was never detailed for undergoing a pre-promotional course and therefore, in terms of the clarification dated 16.02.2015 issued by the DOP&T, the requirement of undergoing the pre-promotional course as a condition precedent for grant of ACP,

could not be used to deny him the benefit of the ACP Scheme. In these circumstances, the basic issue that arises for consideration is as to whether the petitioner, despite being initially in the medical category SHAPE III and thereafter in the medical category SHAPE II, would be entitled to get relaxation in the medical standards/category for grant of the benefits under the ACP Scheme, by application of the policies of relaxation extended by the respondents for the years 2000 & 2008.

22. Having examined the aforesaid policies, we are of the considered view that the petitioner was entitled to get relaxation in respect of the requirement of medical category SHAPE I for grant of benefits under the ACP Scheme. Once the policies provide for relaxation in respect of SHAPE I medical category for grant of promotion, the same would automatically be applicable to cases of grant of benefits under the ACP Scheme. As a result, the petitioner would also be entitled to the said benefits under the ACP Scheme by way of relaxation in the prescribed requirement of being in medical category of SHAPE I.

23. In our opinion, the petitioner who had suffered serious injuries in an ambush attack, has been unjustifiably deprived of the financial benefits to which he was entitled upon being granted relaxation in the medical standards as per the policies of the respondents. As a result, the orders dated 19.06.2003 and 30.12.2015, rejecting the petitioner's claim for grant of benefits under the ACP Scheme are hereby quashed and set aside. The petitioner is held entitled to receive the first financial upgradation from the due date i.e. 09.08.1999 and the

second financial upgradation under the ACP Scheme from 24.01.2005, when he had completed 24 years of services.

24. However, keeping in view the delay on the part of the petitioner in approaching the Court for relief, he will be granted only notional fitment in the scales w.e.f. due dates of 09.08.1999 and 24.01.2005 for the 1st and the 2nd financial upgradation under the ACP Scheme and the arrears payable on the grant of the aforesaid upgradations under the ACP Scheme would be paid to the petitioner only for 3 years prior to the date of filing of the present petition.

25. The petition is allowed in the above terms, with no order as to costs.

REKHA PALLI, J

HIMA KOHLI, J

JANUARY 05th, 2018/sr