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

+ **W.P.(C) 11349/2016**

ASHOK KUMAR AND ORS Petitioner
Through Mr. Naushad Alam & Mr. Jitendra
Bharti, Advocates

versus

MINISTRY OF HOME AFFAIRS AND ANR Respondents
Through Mr. Rakesh Kumar, CGSC for
Respondents/UOI

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE SANJEEV NARULA

ORDER

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31.10.2018

1. Petitioner No.1 was provisionally selected for the post of Constable in the pay scale of Rs.825-15-900-EB-1200 plus all other allowances as applicable to the BSF personnel by an order dated 27th October 1994 issued to him by Directorate General of the Border Security Force (Communication Directorate).

2. As far as the present Petitioner No.1 is concerned, his plea is that he should be granted the benefit of the first upgradation under the Assured Career Progression Scheme ('ACP Scheme') from the date of his joining as Constable. This was rejected by the Respondent by reply dated 24th August 2016. Similar requests of the other Petitioners were also rejected. The reason for the rejection was that the period of service on training which is not counted for regular promotion/seniority will also not be counted for the purpose of grant of financial upgradation under the ACP

scheme. Further, it was clarified that the benefit of the MACP scheme would be available from the date of actual joining of post in the entry grade. It is was stated that “the entry grade of communication personnel prior to 1999 is NK(RO) & HC(RM) and after 1999 is HC(RO) & ASI(RM).” Since Petitioner No.1 after training joined as HC(RM) only in 1997, he cannot be granted the benefit of the ACP scheme earlier than 1997. The stand of the Respondents in respect of the other Petitioners is similar.

3. Learned counsel for the Petitioners relied on a decision dated 7th December 2015 of a Division Bench of this Court in W.P.(C) 5799/2015 (*K. Bangaru Naidu v. Ministry of Home Affairs*) where, according to him, a similar ground put forth by the Respondents for denying grant of ACP Scheme benefits was rejected by this Court.

4. A careful perusal of the said decision shows that the Petitioners in the said case were already working as Head Constables/Radio Operators in the BSF. In other words, they were already in the entry grade of HC(RO). They sat for the Limited Departmental Competitive Examination (‘LDCE’) which was conducted for promotion to the next higher post, i.e. the post above that of HC (RO). The said decision is, therefore, distinguishable on facts and does not assist the Petitioners.

5. Learned counsel for the Respondents has drawn the attention of this Court to a clarification issued by the Respondents by an Office Memorandum dated 12th August 2016 whereby it was made clear that the period of service on training which is not counted for regular promotion/seniority will not be counted for the purposes of grant of financial upgradation under the

ACP/MACP scheme and further, that “entry grade of communication personnel prior to 1999 is NK(RO) & HC(RM) and after 1999 HC(RO) and ASI(RM)”.

6. Learned counsel for the Petitioners then contended that, in the BSF, there was no post of Constable at all and, therefore, the entry grade had to be construed as Head Constable. The letter of offer of appointment of the Petitioners which has been referred to hereinbefore clearly stated that they were being appointed as Constables and had to undergo training for being considered for the next higher post of HC. These letters were never questioned by the Petitioners at any point of time.

7. The last contention of the counsel for the Petitioners is that in the case of Petitioner No.1 the basic training period ended on 5th August 1995 but his RM-III period commenced only on 11th September 1995 after a gap of one month. Further, he states that the date of remusteration as HC(RM) was on 28th January 1997 roughly one and a half months after the conclusion of the RM-III period on 14th December 1996 and, therefore, they should be given the benefit of these four months for the purposes of the ACP Scheme upgradation.

8. The Court is unable to accept the above submission. These are exigencies of the service where for various reasons there might be some delay in the final remusteration of a person as a HC. The fact remains that with the entry grade that being of the HC(RM), the benefit of the ACP cannot be given from a date earlier than the Petitioners joining that entry grade.

9. Consequently, the Court finds no merit in this petition. It is accordingly dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

OCTOBER 31, 2018

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