

Court No. - 33

Case :- WRIT - A No. - 4416 of 2007

Petitioner :- Babu Lal

Respondent :- Railway Board Thru' Its Chairman And Others

Counsel for Petitioner :- Mahesh Gautam, Anand Kumar, Jagdish Narayan Gupta, Sudama Ram

Counsel for Respondent :- Govind Saran, S.C., Saral Srivastava, Sharad Srivastava, Vivek Singh

Hon'ble Manoj Misra, J.

Hon'ble Ved Prakash Vaish, J.

Heard Sri J.N. Gupta for the petitioner; and Sri P.K. Pandey, holding brief of Sri Sharad Ranjan, for the respondents.

The instant petition has been filed for quashing the order dated 24.06.2005 passed by the second respondent (Director General, Railway Protection Force, Rail Bhawan, New Delhi) by which request of the petitioner for financial upgradation under the Assured Career Progression Scheme (in short ACP Scheme) was rejected as petitioner was not found fit. The other prayer of the petitioner is to issue a direction commanding the second respondent to grant upgradation to the petitioner in the pay-scale of Rs.8000-13500/- as per ACP Scheme, with effect from 20.07.2003, and to pay arrears accordingly.

The record reflects that ACP Scheme was introduced vide RBE No.233/99, dated 01.10.1999, which was circulated vide circular dated 20.10.1999 (Annexure No.1 to the petition). Under the ACP (Assured Career Promotion), the first financial upgradation is to be allowed after 12 years of regular service and the second upgradation is after another 12 years of regular service from the date of first financial upgradation subject to fulfilment of prescribed criteria. It is specifically provided in the Scheme, as would be evident from page 38 of the paper book, that the upgradation is not a matter of right, inasmuch as, on account of employee not found fit or due to departmental proceedings, the same could get deferred. It is mentioned therein that if first upgradation gets postponed on account of employee found not fit or due to departmental proceedings, etc., it would have consequential effect of deferring the second upgradation as well. Further, it is provided that there shall be a screening committee for the purpose of processing the cases for grant of benefits under the ACP Scheme.

It appears that the case of the petitioner was considered for ACP but by order dated 28.10.2004, which has been brought on record as Annexure No.C.A.7, the petitioner was not found fit.

Thereafter, on 29.07.2005, again, the Screening Committee did not find the petitioner fit for ACP benefit. The order dated 29.07.2005 has been placed on record as Annexure No.C.A.8. Thereafter, again, on 30.10.2006, the Screening Committee did not find the petitioner fit. The order dated 30.10.2006 is on record as Annexure No.23 to the counter affidavit. A supplementary counter affidavit has also been filed which was served upon counsel for the petitioner in the year 2015. In the supplementary counter affidavit, in paragraph 13, it has been stated that the petitioner was considered by the Screening Committee in the year 2003, 2004, 2005 and 2006 and he was not found fit. A copy of letter dated 26.06.2007 has also been enclosed as Annexure No.2 to the supplementary counter affidavit, which indicates that under ACP Scheme, fitness or unfitness of the candidate is considered and the names are recommended on the basis of benchmark "Good" or above which is normal criterion for promotion as ASC (next higher grade) in the Rs.8000-13500/- grade. The said letter indicates that the Screening Committee had considered the case of the petitioner and had not found him fit for financial upgradation. The decisions of the Screening Committee, which have been brought on record through the counter affidavit as well as supplementary counter affidavit, have not been challenged by the petitioner by seeking any amendment in the writ petition even though the counter affidavit was served on the counsel for the petitioner in the year 2007 and the supplementary counter affidavit was served in the year 2015. In the supplementary counter affidavit it has been stated that although the petitioner was not found fit for ACP by the Screening Committee but has been provided benefit under MACP Scheme, which was introduced in the year 2008, under which benefit is available on completion of 10, 20 and 30 years of regular service. It is stated therein that grant of MACP benefit would not mean that the petitioner would automatically be entitled to ACP benefit.

The learned counsel for the petitioner has claimed that the ground on the basis of which ACP benefit was earlier denied to the petitioner was that he was punished in the year 2004. It is the case of the petitioner that the petitioner has already served the punishment and therefore that could not be made basis to withhold the benefit of ACP otherwise available to the petitioner on completion of block periods of 12 and 24 years of service, as per ACP Scheme.

The aforesaid contention of the learned counsel for the petitioner is not acceptable because from Annexure No.1 to the writ petition, which contains the ACP Scheme, the grant of benefit under ACP Scheme is conditional upon employee being found fit by the Screening Committee as also that there should

be no departmental proceeding, etc. pending against him. The respondents have taken a clear stand in their counter affidavit that the petitioner was considered but was not found fit. The criteria of fitness though has not been provided specifically in the Scheme, or at least shown to the Court, but from the document which has been brought on record as Annexure No.2 to the supplementary counter affidavit, it appears, the criteria adopted by the department was that for grant of such benefit the concerned employees should have ACR "Good" or above.

Neither the aforesaid criteria has been challenged by the petitioner nor it has been shown to us that the Department has itself not followed that criteria in respect of certain employees so as to make out a case of discrimination. Further, it has not been demonstrated to us, with reference to the record, that the petitioner had ACR entries higher or equal to entries required for ACP, as mentioned in the letter dated 26.06.2007 (Annexure 2 to the supplementary counter affidavit), though, in paragraphs 18 to 20 of the writ petition, it is stated that appeal in respect of ACR for the year 2003 was filed and is pending. Whereas, in the counter affidavit it has been stated that the appeal has been decided and rejected of which information was given by letter dated 08.03.2006 (Annexure No.6 to the counter affidavit).

Under the circumstances, as the case of the petitioner was considered and the petitioner was not found fit for ACP benefit, no relief can be granted to the petitioner, as has been prayed for, particularly, when the petitioner made no effort to challenge the orders by which the Screening Committee, repeatedly, after consideration of his claim for ACP benefit, found him unfit. The contention of learned counsel for the petitioner that since the petitioner has served the punishment, therefore ACP benefit cannot be denied to him is not acceptable in view of the fact that grant of ACP benefit, as per scheme, is dependent on the incumbent being found fit.

In view of the above, keeping in mind that the department has considered the case of the petitioner and have found him not fit, and the orders finding him not fit have not been challenged, the petition deserves dismissal and is, accordingly, **dismissed**. There is no order as to costs.

Order Date :- 27.9.2018
AKShukla/-

(V.P. Vaish, J.) (Manoj Misra, J.)