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

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+ **W.P.(C) 1063/2018**

RAMESH CHANDER, EX.HC/GD

..... Petitioner

Through: Mr. O.P. Aggarwal, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Jitesh Vikram Srivastava,
Advocate for UOI.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

ORDER

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02.04.2019

1. The Petitioner, who retired from the Indo Tibetan Border Police ('ITBP') as a Head Constable/ General Duty ('HC/GD'), is aggrieved by the failure of the Respondents to grant him benefit of the Second Financial Upgradation under the Assured Career Progression ('ACP') Scheme with effect from 28th December, 2000 in the scale of Sub Inspector/ General Duty ('SI/GD') along with other consequential benefits.

2. The facts which are not in dispute are that the Petitioner joined the ITBP on 29th December, 1976. He completed various courses i.e. basic training, JCC, SCC, Map Reading Level-I, II and III, Judo Course, etc. The Petitioner was promoted as HC/GD on 22nd June, 1992.

3. On 10th October, 1997, the Ministry of Home Affairs ('MHA') rationalized

and restructured the ranks of the ITBP. Two posts, namely, Lance Naik ('LNK') and Naik were abolished and merged with the posts of Constable and HC/GD.

4. On 9th August, 1999, the ACP Scheme was introduced on the basis of the recommendations of the Fifth Central Pay Commission ('CPC'). In terms thereof, two financial upgradations were allowed in the higher scale as per hierarchy. The two upgradations were to be periodically applicable after an interval of 12 years each (total 24 years of service).

5. Since the Petitioner was already promoted as HC/GD on 22nd June, 1992, he was eligible for the financial upgradation after he completed 24 years of service on 28th December, 2000. By that time, he had got only one promotion. Therefore, he was entitled to the second financial upgradation.

6. On 19th May, 2009, the ACP Scheme was replaced by the Modified Assured Career Progression Scheme ('MACP'). On 29th December, 2006, the Petitioner completed 30 years of regular service. He was entitled to the third financial upgradation under the MACP. According to the Petitioner, his pay should have been fixed in the Pay Band-II of Rs.9300-34800/- with grade pay of Rs.4600.

7. On 30th September, 2014, the Petitioner superannuated from the ITBP. By this time, he had made several representations for granting him the financial upgradations under the ACP and MACP. He did not receive any response. Thereafter the present petition was filed.

8. The stand of the Respondents in the counter affidavit is that the benefit of financial upgradation in terms of the OM dated 9th August, 1999 is admissible only for those personnel who were otherwise eligible for promotion in all respects, but could not be promoted due to non-availability of higher posts or vacancies for existing higher posts. According to the Respondents, while the Petitioner had done the JCC and SCC courses, he did not complete the 'platoon commander course', which was a mandatory promotional course for the rank of SI/GD. Therefore, since he was not eligible for promotion as SI/GD, he was not entitled to the second financial upgradation.

9. The stand of the Petitioner in the rejoinder is that he was not detailed for the abovementioned course and, therefore, he could not complete it. He did not himself refuse to undertake the course, or his unwillingness would have had to be annexed by the Respondents along with the relevant record. The fault was not his. He relies upon the decision of this Court dated 18th May, 2015 in W.P.(C) No.4833/2015 (*Rajender Singh v. Union of India*) wherein in similar circumstances, relief was granted to the Petitioner.

10. Indeed, the Respondents have no answer to the above plea of the Petitioner, that since he was not detailed for the platoon commandant course, he was not in a position to complete it. The failure for the same was, therefore, attributable to the omission of the Respondents. In similar circumstances, this Court in *Rajender Singh v. Union of India* (*supra*) granted relief after noticing a similar clarificatory Office Order issued by the CRPF on 16th February, 2015 to the following effect:

“CRPF is allowed to grant 2nd Financial Up Gradation under ACP Scheme to all eligible, Constable/Head constable (Executive/Technical/Tradesmen) from the date they have completed 24 years of regular service, overlooking the condition of any pre-promotional course criteria in those cases where such personnel could not be sent on pre-promotional course by CRPF, due to administrative reasons and not due to any reason owing to such a person concerned, as clarified by DoP&T.”

11. This Court in ***Rajender Singh v. Union of India*** (*supra*) then extended the above benefit to all other para-military forces, including the ITBP to which Rajinder Singh and others belonged. The Court observed in paragraph 8 as under:

“8. Similar writ petitions filed against other Para Military Forces have been disposed of by this Court issuing a direction that the writ petitions would be treated as a representation to the respondents with the declaration of law being that if the force personnel was not deputed to undergo a prepromotional course that would not be a bar for grant of the ACP and MACP benefit. Since appraisal of the person to determine fitness was required the direction issued was that necessary appraisal would be within 12 weeks and necessary orders passed. Such persons who would have the benefit extended from a prior date would be paid the arrears simultaneously.”

12. For all of the aforementioned reasons, this Court directs the Respondents to grant the Petitioner the benefits of the second financial upgradation under the ACP Scheme with effect from 1st September, 2008 in the Pay Band-II of Rs.9300-34800/- with grade pay of Rs.4600 per month till the date of the retirement of the Petitioner. His pension would be revised on the above basis and he would be entitled to all consequential benefits, including the arrears.

The necessary orders should be issued within 8 weeks from today. If the arrears are not paid within a period of 12 weeks from today, simple interest on the said amount @ 6% per annum would become payable by the Respondents to the Petitioner for the period of delay.

13. The petition is allowed in the above terms. No costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

APRIL 02, 2019

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