IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 248 of 2017 (S/B)

Vijay Shanker Shukla .....Petitioner

Vs.

State of Uttarakhand and others .....Respondents

Coram: Hon'ble Ramesh Ranganathan, C.J.
Hon'ble Alok Kumar Verma, J.

Ramesh Ranganathan, C.J. (Oral)

Heard Mr. Shobhit Saharia, learned counsel for the petitioner and Mr. S.S. Chaudhary, learned Brief Holder for the State of Uttarakhand.

2. The jurisdiction of this Court has been invoked by the petitioner seeking a writ of certiorari to quash the order dated 28.02.2017 as well as the recommendation of the scrutiny committee as referred to in the order dated 28.02.2017. In this writ petition, the petitioner claims the Third Assured Career Progression Scheme benefits, as provided by the Government Order dated 08.03.2011, contending that, though the said third ACP benefit accrued in his favour on 13.07.2015, he was denied the said benefit on the ground that a major penalty was imposed upon him subsequently on 30.08.2016.

3. Facts, to the limited extent necessary, are that, by proceeding dated 05.08.2015, the petitioner's claim for grant of the 3rd ACP financial benefits was recommended. The petitioner's entitlement, for the 3rd financial benefit under the ACP scheme, was in terms of the Government Order dated 08.03.2011, and accrued to him on 13.07.2015. The petitioner was imposed a major penalty of stoppage one increment with cumulative effect by order dated 30.08.2016; and the increment granted him to in the month of January 2016, till the month of September 2017,

was directed to be recovered from the salary payable to him for the month of October 2016. The petitioner invoked the jurisdiction of this Court contending that there was no adverse order against him when the 3rd ACP benefit became due to him on 13.07.2015.

4. It is unnecessary for us, however, to dwell on this issue in the light of events which took place subsequent thereto. The petitioner challenged the order of punishment dated 30.08.2016 by way of WPSB No.539 of 2016. A Division Bench of this Court, by its order dated 21.11.2017, quashed the order of punishment without prejudice to the authorities taking steps against the petitioner from the stage when an Enquiry Officer was appointed.

5. In his rejoinder affidavit dated 11.12.2019, the petitioner states that, pursuant to the judgment of this Court dated 21.11.2017, a new Enquiry Officer was appointed who submitted his report to the disciplinary authority on 21.07.2018 holding the petitioner not guilty of any of the charges; and the disciplinary authority had, by its order dated 08.11.2019, concluded the proceedings holding the petitioner not guilty of any of the charges. Since the very basis, for holding that the petitioner was disentitled for the grant of the 3rd ACP benefits, is that a major penalty was imposed on him, and as it does appear from the contents of the rejoinder affidavit that the disciplinary authority had absolved the petitioner of all charges vide proceeding dated 08.11.2019, the only ground, on which the petitioner was denied the 3rd ACP benefits, no longer survives.

6. Since these averments have been urged by the petitioner for the first time, only in his rejoinder affidavit, the respondents have not had any opportunity to put forth their submissions on these factual aspects.

7. Suffice it, in such circumstances, to set aside the impugned order and direct the respondents to consider the petitioner's request for being extended the 3rd ACP benefits in the light of the order of the disciplinary authority dated 08.11.2019 absolving him of all charges. The entire exercise, culminating in a decision being taken and being communicated to the petitioner, shall be completed with utmost expedition; and, in any event, within two months from the date of production of a certified copy of this order.

8. Needless to state that, in case the petitioner is held entitled to be extended the 3rd ACP benefits, then the monetary benefit to which he is entitled to, shall be paid him within one month from the date on which the respondent takes a decision in this regard.

9. The writ petition stands disposed of accordingly. No costs.

(**Alok Kumar Verma, J.**) **(Ramesh Ranganathan, CJ.)**

03.01.2020

NEHA/JKJ