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

+ **W.P.(C) 4099/2020**

INSPR. MAHESH CHAND

..... Petitioner

Through: **Mr. R.K. Shukla and Mr. D.S. Badiar,**
Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: **Mr. Manish Mohan, Adv.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

ORDER

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10.07.2020

[VIA VIDEO CONFERENCING]

CM No.14697/2020 (for exemption from filing duly affirmed affidavit and court fees)

1. Allowed, subject to just exceptions and as per the extant rules.
2. The application is disposed of.

W.P.(C) No.4099/2020 & CM No.14696/2020 (for interim relief)

3. The petitioner, an Inspector with the respondents Indo Tibetan Border Police (ITBP), has filed this petition impugning the orders dated 7th March, 2019 and 1st June, 2020 of the respondents ITBP and seeking restoration of the earlier order dated 25th June, 2018.
4. It is the case of the petitioner, (i) that the petitioner joined the respondents ITBP as Head Constable, on 15th February, 1988; (ii) that with effect from 9th August, 1999, pursuant to the recommendation of the Pay

Commission, the grant of financial upgradation after 12 years of service, was introduced under the Assured Career Progression (ACP) Scheme; (iii) that however before being entitled to financial upgradation, a candidate was required to pass pre-promotional course; (iv) that no examination for pre-promotional course was held in 1999 or in the year 2000 and the examination was held only in the year 2001 and thereafter in the year 2003; (iv) that three chances are available for clearing the pre-promotional course examination; (v) that the petitioner cleared the pre-promotional course examination on second chance in the year 2003 and was granted 1st financial upgradation with effect from 15th July, 2003; (vi) that however the respondents ITBP vide order dated 25th June, 2018 reviewed the matter and directed financial upgradation to be given to the petitioner with effect from 15th February, 2000 and in accordance with the said order, the arrears of financial upgradation were released to the petitioner; and, (vii) that however vide the impugned order dated 7th March, 2019, the financial upgradation granted to the petitioner with effect from 15th February, 2000 has been recalled and vide impugned order dated 1st June, 2020, recovery of alleged excess amount received by the petitioner pursuant to release of arrears of financial upgradation from 15th February, 2000 to 15th July, 2003 have been ordered to be recovered from the emoluments of the petitioner commencing from the month of June, 2020. Ad-interim relief of restraining such recovery is sought.

5. The counsel for the respondents appearing on advance notice, on enquiry, states (a) that the petitioner was entitled to financial upgradation only after clearing the pre-promotional course examination and being brought in 'D' list; (b) that though the petitioner completed 12 years of

service in the year 2000 but did not become entitled to financial upgradation for the reason of having not cleared the pre-promotional course examination; (c) that the petitioner took the pre-promotional course examination in the years 1994, 1998 and in the year 2001 but could not clear the examination; and, (d) that however since the examination for administrative reason was not held in the years 1999 and 2000, the petitioner was given a special chance of taking the examination in the year 2003 and cleared the same and was entitled to first financial upgradation with effect from 15th July, 2003.

6. A perusal of the order dated 25th June, 2018 (Annexure P-4 to the petition) shows that the grant of financial upgradation to the petitioner with effect from 15th July, 2003 was reviewed pursuant to the judgment dated 18th May, 2015 of this Court in W.P.(C) No.4833/2015 titled ***Rajender Singh & Ors. Vs. Union of India & Ors.*** and under Office Note dated 22nd February, 2016 of Ministry of Home Affairs, Government of India.

7. The counsel for the respondents states that though in accordance with the said judgment in ***Rajender Singh*** supra, the case of the petitioner was not required to be reviewed but was erroneously reviewed.

8. We may notice that the petitioner, along with this petition has not filed a copy of the judgment in ***Rajender Singh*** supra and which is indicative of it being not the claim of the petitioner also that the petitioner is covered thereby. The petitioner has also not placed before us the Office Note dated 22nd February, 2016, again indicating that the claim of the petitioner is not premised thereon also.

9. The Rule relating to financial upgradation i.e. whether to be entitled thereto, passing the pre-promotional course examination and coming in 'D' list is essential and whether the financial upgradation is with effect from the

date of clearing the said examination or with effect from the date of completion of 12 years of service, even if the examination is cleared later on, is not before us.

10. The counsel for the petitioner however invites our attention to pages 49 and 50 of the petition, being the copies of the orders dated 11th April, 2018 in W.P.(C) No.6977/2017 titled **Surjeet Singh Vs. Union of India** and dated 14th March, 2019 in W.P.(C) No.1650/2019 titled **Ravinder Kumar Vs. Union of India** and states that the petitioners in both these petitions have been granted financial upgradation with effect from the date of completion of 12 years of service, even though cleared the examination subsequently. He states that the petitioner has made a representation dated 23rd April, 2019 to the respondents for being treated at par with the said petitioners and which representation has not been decided as yet. It is also informed that though **Ravinder Kumar** supra is listed next before this Court on 7th August, 2020 but order has already been passed holding the petitioner therein Ravinder Kumar to be entitled to financial upgradation with effect from the date of completion of 12 years of service. The counsel for the petitioner states that this writ petition be disposed of directing the respondents to decide the representation of the petitioner and to treat the petitioner at par with **Surjeet Singh** and **Ravinder Kumar** supra.

11. The counsel for the respondents states that the representation dated 23rd April, 2019 of the petitioner and also treating the present writ petition of the petitioner as a representation, will be decided by a reasoned order.

12. The counsel for the petitioner is satisfied therewith and states that the writ petition be disposed of directing so.

13. We accordingly dispose of this writ petition directing the respondents to, within eight weeks of today, dispose of the representation dated 23rd April, 2019 of the petitioner and also treating the present writ petition as representation, by passing a reasoned order and communicate the said decision to the petitioner forthwith. While deciding the said representation, it be also considered and decided whether the petitioner is entitled to be treated at par with ***Surjeet Singh*** and ***Ravinder Kumar*** supra.

14. Till the decision, the recovery of the monies received by the petitioner pursuant to the order dated 25th June, 2018, be not carried out.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

JULY 10, 2020

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