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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 19464 of 2009

Philip Jacob

... Petitioner

-vs-

1. The Director General,
Central Reserve Police Force,
Lodhi Road,
New Delhi.
2. The Inspector General of Police,
Central Reserve Police Force,
Southern Sector, Hyderabad.
3. The Deputy Inspector General of Police,
Central Reserve Police Force,
Group Center,
Avadi, Chennai - 600 065.
4. K.Manochan.
HC/GD, 110. Bn, CRPF,
Sri Nagar,
Jammu and Kashmir.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent dated 30.07.2009 in his order No.R.XIIII-159/08-Vig.(L) and quash the same and to direct the respondents to promote petitioner as Head Constable GD with effect from 25.01.2006 and to pay all benefits

For Petitioner : Ms.R.Meenakshi

For Respondents : Mr.D.Simon, CGSC



O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records relating to the order of the first respondent dated 30.07.2009 in his order No.R.XIII-159/08-Vig.(L) and quash the same and to direct the respondents to promote the petitioner as Head Constable GD with effect from 25.01.2006 and to pay all benefits.

2. The petitioner joined in Central Reserve Police Force (CRPF) as Constable in the year 1985 and had unblemished service of 24 years at that time, when he filed this Writ Petition in 2009. The Central Government had already introduced a scheme called "Assured Career Progression Scheme (ACP)" on the basis of recommendation of 5th Pay Commission, where, if there is genuine stagnation and hardships faced by the employees due to lack of promotional avenues, financial upgradation to those who have completed particular years of service would be given.

3. Accordingly, after completion of 12 years of service, the petitioner had been conferred with ACP in 2002 with effect from 09.08.1999 retrospectively. Thereafter, the petitioner had also completed two courses, namely, Junior Cadre Course in 1997 and Senior Cadre Course in 2004. Thereby, he has become eligible to be considered for promotion to the post of Head Constable (General Duty), at least in the year 2010 where the juniors of him were given such promotion and subsequently, he would also be entitled to get further promotion as ASI (GD) in the year 2014 as in that year the promotion was given to some of the juniors of the petitioner.

4. However, this promotion has not been given to the petitioner and the earlier promotion was also not given, except ACP conferred on the petitioner sometime in 2002, of course with effect from 1999. Therefore, in order to get further promotional avenue, the petitioner had approached the respondents by giving representation and the said representation since was not considered, the petitioner seems to have given a legal notice to the respondents, which was responded by the first respondent on 30.07.2009, where the grievance projected by the petitioner has been turned out and in this regard, the personal interview sought for by the petitioner was also rejected. Therefore, challenging the said communication of the first respondent dated 30.07.2009, this Writ Petition has been filed.

5. Heard Ms.R.Meenakshi, learned counsel appearing for the petitioner, who would submit that, though the petitioner was awarded the ACP as in the case of others who have been in stagnation for promotion, subsequently those who received the ACP, even subsequent to the petitioner i.e., with effect from 2000-2002, had been considered for promotion up to the rank of



ASI (GD) which has already been conferred on them, however the petitioner, who had only been conferred with ACP by order dated 07.10.2002 with effect from 09.08.1999, is senior among all the similarly placed persons, who were subsequently given promotion to the rank of HC as well as ASI and such promotional avenue has not been made available to the petitioner.

6. In this context, the learned counsel appearing for the petitioner would submit that, the rank of ACP is only for financial upgradation. Assuming, such financial upgradation was conferred on the petitioner, that would not stand in the way of the petitioner for getting the regular promotion, for which, the petitioner is entitled to or eligible to. Therefore, such an inaction on the part of the respondents in considering the plea of the petitioner for giving regular promotion, subsequently, is bad in law. Therefore, she submitted that, the order impugned is liable to be interfered with.

7. Per contra, Mr.D.Simon, learned Central Government Standing Counsel appearing for the respondents by relying upon the instructions given by the respondents and also relying upon the Office Order dated 11.01.2011 issued by the Office of the Deputy Inspector General of Police, Group Center, CRPF, Avadi, Chennai, submitted that, initially ACP was conferred on the petitioner along with the others, at the time of giving ACP, option was given whether they want the promotion subsequently or not. Certainly, such promotion to be conferred on the petitioner is concerned, after receiving the ACP, he has not given any willingness to get promotion, when the promotion due comes to him. Therefore, based on the instructions issued from time to time in this regard, as well as clarification issued by the Director General of CRPF on various occasions on conferment of ACP and subsequent promotional avenue, all the members of the CRPF have been considered and ultimately decided to confer the promotional avenue to the petitioner. In this regard, at least two times, written request was made by the respondents, one is on 26.03.2010 and another one is 22.07.2010, asking the petitioner to express his willingness to get promotion. However, the petitioner had not responded to the said request made by the respondents during the pendency of this Writ Petition and therefore, it was decided in the year 2011, that once the litigation, i.e., present Writ Petition which was pending before this Court is decided, accordingly the issue can be decided later on.

8. By relying upon these decisions taken by the respondents as reflected in the Office Order dated 11.01.2011, the learned Central Government Standing counsel appearing for the respondents would submit that, no blame can be put against the respondents as ultimately, they made two requests in March 2010 as well as in July 2010, however, both requests made on behalf of the respondents in this regard, have not been positively



9. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. No doubt, ACP was granted to the petitioner on 07.10.2002, of course with effect from 09.08.1999 and on the same date, i.e., on 07.10.2002, some other juniors of the petitioner have been conferred with the very same ACP benefit of course with effect from 2000-2002. Therefore, such ACP was conferred on these persons, only subsequent to the petitioner. Therefore, it has become clear that, those who were getting ACP on the same date along with the petitioner were juniors to him and therefore, if at all, those candidates were considered for subsequent promotion up to the level of ASI conferred on them in 2012 or 2013 or 2014, such benefits should have been conferred to the petitioner also. The following chart given by the petitioner would disclose the aforesaid facts:

Sl.No	Force No.&Name	Date of Appointment & Rank	Date of ACP granted	JCC Sl.No.&Year	SSC Sl.No.&Year	Date of Promotion as HC/GD	Date of Promotion as ASI (GD)
1	850779126 Philip Jacob (petitioner)	31.08.1985 as CT/Bulger	07.10.2002 w.e.f. 09.08.1999	Sl.No .83 1997	Sl.No. 26 2004	-	-
2	889910716 K.Petha Perumal	06.06.1988 as CT/Bulger	07.10.2002 w.e.f. 07.06.2002	-	Sl.No. 26 2004	29.12.2010	16.05.2014
3	880420104 B.D.Barma (Bishu Deb Barma)	20.06.1988 as CT/Bulger	07.10.2002 w.e.f. 21.06.2000	-	Sl.No. 26 2004	16.01.2011	07.09.2013
4	890420026 K.Manochan	15.02.1989 as CT/Bulger	07.10.2002 w.e.f. 16.02.2001	-	2004	27.10.2006	VRS 2012
5	850868449 Rishi Dev Mishra	30.09.1985	07.10.2002 w.e.f. 08.06.2002	Sl.No .80 1995	Sl.No. 17 2002	21.12.2002	22.04.2014



12. However, at the same time, it is the definite stand of the respondents that, as per the clarification issued by the Director General of CRPF from time to time, the case of the petitioner had been reconsidered and with the result, they decided to issue letters two times to the petitioner seeking his willingness for consideration for promotion and this has been stated in the Office Order dated 11.01.2011 and the relevant portion of the same is extracted hereunder:

"8) However, based on further clarification issued by Dtc General vide letter No.P.VII.15/2005-Pers-II dated 12.07.2005 that personnel holding isolated posts and granted benefits under ACP scheme immediately on completion of 12 years service in their respective ranks before passing SCC is required to be removed from Appd List A/GD, the promotion of CT/Bug Philip Jacob was canceled. He was also removed from Appd List A/Gd-8/04 being ineligible to compete with GD cadre as he had already opted to draw financial benefits under ACP scheme w.e.f 09.08.1999 in the rank of CT/Bug.

9) Aggrieved with the same, CT/Bug Philip Jacob has filed W.P. No. 19464 of 2009 in the High Court of Chennai seeking promotion and the matter is subjudice.

10) Subsequently, as conveyed vide IGP SS Sig dated 03.01.2010, DIG (Estt), Dtc General, CRPF, vide Signal No.P.VII.20/2009-Estt dated 31.12.2009 directed to review / process cases of CT(s) (Bug/Mali/Painter) who have been sanctioned financial upgradation under ACP scheme immediately after completion of 12 years of service without obtaining option / application for ACP benefits or unwillingness to compete in GD cadre or both.

11) As per signal No.P.VII.6/2010-Estt-2 dated 16.03.2010 received from Range Office, Chennai, it was desired to consider the case of CT/Bug Philip Jacob (Earlier posted in 142Bn) to bring him on Appd List/8-2004, if he is willing to compete with GD cadre after obtaining his fresh written undertaking subject to fulfillment of other conditions in the light of Dtc General, CRPF Signal No.P.VII.20/2009-Estt dated 31.12.2009.

12) Accordingly, CT/Bug Philip Jacob was directed vide letter (ION) dated 26.03.2010



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through his Coy Comdr (AC(Hqr)) to furnish fresh willingness. As intimated vide AC(Hqr) SIg No.P.VII.1/2010 dated 24.04.2010 CT/Bug Philip Jacob refused to give anything in writing since he had already filed a Court case in this regard.

13) CT/Bug Philip Jacob was once again directed vide Signal dated 22.07.2010 through AC(Hqr) to furnish his written submission regarding his promotion option. The individual vide his application dated 09.08.2010 has once again refused to give his willingness / unwillingness for promotion due to pending Court case.

14) In view of the above, the promotion case in respect of No.850779126 CT/Bug Philip Jacob will be finalized on settlement of the pending Court case filed by the individual in the High Court of Chennai and this order is issued to be kept on records."

13. Wherein, in paragraph Nos.12&13, it has been stated by the respondents that, they have written two letters, i.e., on 26.03.2010 and 22.07.2010 to the petitioner seeking his willingness for consideration of promotion during the pendency of the Writ Petition.

14. However, the learned counsel appearing for the petitioner, on instructions, would submit that, no such letter has been received by the petitioner. Therefore, there had been no occasion for the petitioner to respond for such letter.

15. Be that as it may, at this juncture, this Court do not want to go in to that controversy. The stand of the learned counsel for the respondents has been made explicitly clear that, in Office Order dated 11.01.2011, the only reason given is, due to the pending of this Writ Petition, they kept the issue alive and have been waiting all along for the decision to be made in this Writ Petition by this Court.

16. In that view of the matter, this Court feels that, certainly the petitioner would be entitled to get the promotional avenue on par with juniors and therefore, such promotional avenue can very well be extended to the petitioner and this in fact has been reflected in the Office Order of the respondents dated 11.01.2011.

17. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

"(i) That the impugned order dated 30.07.2009 shall not stand in the way for reconsideration



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of the issue with regard to the promotion of the petitioner in view of the subsequent Office Order dated 11.01.2011.

(ii) Accordingly, there shall be a direction to the respondents to consider the case of the petitioner for conferment of promotional avenue as Head Constable (General Duty) as well as Assistant Sub Inspector (General Duty) on par with the juniors of the petitioner and once such promotions are conferred on the petitioner, it is needless to mention that, the petitioner shall be entitled to get all service and attendant benefits accordingly.

(iii) The needful as indicated above shall be undertaken by the respondents within a period of three months from the date of receipt of a copy of this order."

18. With these directions, this Writ Petition is ordered accordingly. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vji

To

1. The Director General,
Central Reserve Police Force,
Lodhi Road, New Delhi.
2. The Inspector General of Police,
Central Reserve Police Force,
Southern Sector,
Hyderabad.
3. The Deputy Inspector General of Police,
Central Reserve Police Force,
Group Center,
Avadi, Chennai - 600 065.



4.The HC/GD, 110. Bn, CRPF,
Sri Nagar,
Jammu and Kashmir.

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+1 cc to M/s.D.Simon, CGSC, Advocate Sr.No. 11458
+1 cc to M/sR.Meenakshi, Advocate Sr.No. 12058

W.P. No. 19464 of 2009

AAB (CO)
RMP (01/04/2021)