

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

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Reserved on: October 7, 2022

Pronounced on: October 28, 2022

+ W.P.(C) 97/2018

TARLOK MASIH (SINCE DECEASED) THROUGH: L.R. SMT.
KANTA DEVI Petitioner

Through: Mr. O.P. Aggarwal, Advocate

versus

UNION OF INDIA & ORS. Respondents

Through: Mr. Manish Mohan, CGSC

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

SAURABH BANERJEE, J.

1. The petitioner is the widow of one Mr. Tarlok Masih¹, who, after joining the Sashastra Seema Bal² [Special Service Bureau as it then was] on 19.01.1976, completed more than 25 years of service, before taking voluntary retirement as Naik/GD w.e.f. from 01.05.2001. After the death of her husband on 19.08.2011, the petitioner came to know in the year 2017 about introduction of the Assured Career Progression³ Scheme of 09.08.1999 from a batchmate of her late husband. As per her, as her late husband had already completed more than 25 years of service before taking voluntary retirement and was eligible for the grant of financial upgradation under the said ACP scheme, she made a representation dated 09.11.2017 to the respondent No.4/Director General (DG), SSB for grant of the same.

¹hereinafter referred to as “late husband”

²Hereinafter referred to as “SSB”

³hereinafter referred to as “ACP”

Receiving no response thereto, the petitioner filed the present petition seeking the following reliefs:

“a) issue a writ in the nature of mandamus or certiorari or any other writ or order or directions to the concerned respondent for granting the benefit of 1st financial up-gradation under ACP Scheme to the petitioner with effect from 09.08.1999 in the scale of Head Constable and other consequential benefits including arrears of payment being accrued thereto as per O.M. dated 09.08.1999

b) issue a writ in the nature of mandamus or certiorari or any other writ or order or directions to the concerned respondent for granting the benefit of 2nd financial up-gradation under ACP Scheme to the petitioner with effect from 18.01.2000 in the scale of Sub Inspector with other consequential benefits including arrears of payment being accrued thereto as per O.M. dated 09.8.1999.”

2. The first contention raised by petitioner is qua non-grant of 1st financial upgradation as per the ACP scheme to the post of Head Constable as the same is against Order No. 27012/1/97-PC Cell/PF.1 dated 10.10.1997 issued by The Ministry of Home Affairs, Government of India whereby the earlier post of Naik stood merged in the new post of Head Constable in the Central Police Organisations and Order No.1/2/2001-EA.I-133 dated 15.01.2001 whereby the Special Service Bureau was transferred from the Cabinet Secretariat to The Ministry of Home Affairs with immediate effect. However, relying upon the admission of respondents in their counter affidavit wherein it is stated *“That according to the instructions issued by FHQ SSB 1st financial up-gradation under ACP has been granted to Ex NK/GD Tarlok Masih in the pay scale of Rs.3200-85-4900/- w.e.f. 09.08.1999 and pay fixed vide this office order No. E-6/CRC/224/ACP-MACP/25 Bn/G/15/-3316-19 dated 24.01.2018”*, learned counsel for petitioner has fairly given up the said relief in view of the revised Pension Payment Order⁴ dated 24.01.2018 issued by the respondent

⁴hereinafter referred to as “PPO”

No.5/Commandant, SSB. It is to be noted that learned counsel for petitioner never advanced any arguments qua the same and has further given up the said relief in the written synopsis filed by him. We agree with the aforesaid submission of learned counsel for petitioner, thus, no adjudication qua prayer (a) is required.

3. Although not relevant, it is worthwhile to mention that as per petitioner, prior to receipt of the aforesaid revised PPO dated 24.01.2018, i.e., the grant of benefit of 1st financial upgradation as per ACP scheme, her husband was issued a PPO dated 12.02.2001 by the respondent No.7/Central Pension Accounts Office at the time of his retirement and thence a revised PPO on 01.03.2014 under the 6th Central Pay Commission after his death on 19.08.2011. On both occasions the same has been accepted without any protest or demur.

4. Having perused all the documents on record and after having heard learned counsel for the parties, we are left to adjudicate upon the next contention raised by petitioner qua her late husband being entitled to 2nd financial upgradation under ACP scheme after completing more than the requisite minimum 24 years of service prior to opting for voluntary retirement.

5. It is the case of petitioner that her late husband was/is entitled to two financial upgradations under ACP scheme as per O.M. No.35034/1/97-Estt-(D) dated 09.08.1999, i.e, the 1st financial upgradation as per ACP scheme, after completion of 12 years service on 18.01.1988 and the 2nd financial upgradation as per ACP scheme, after completion of 24 years service on 18.01.2000, subject to, *firstly*, his passing the promotion cadre course, *secondly*, having no pendency of punishment/departmental enquiry/vigilance

inquiry and *lastly*, having SHAPE-I medical category, being conditions applicable to the next promotion. Further, as the late husband of petitioner sought voluntary retirement only w.e.f. from 01.05.2001, i.e., after completion of more than 25 years of service, her late husband was/is entitled to 2nd financial upgradation as per ACP scheme.

6. The petitioner claims to be unaware if her late husband had underwent the required promotion cadre course for financial upgradation as admissible to him and the same was subject to verification by the concerned record keeper of SSB, however, she claims to have full confidence that her late husband was keeping in good health. Be that as it may, the petitioner essentially claims that as her late husband had already completed more than 24 years of service before taking voluntary retirement and as he was maintaining SHAPE-I medical category, the derailment of promotion cadre course was attributable to the respondents.

7. On the other hand, the respondents upon service filed a common counter affidavit without disputing the completion of 12 years of service on 18.01.1988 and 24 years of service on 18.01.2000 by the late husband of petitioner. It was further stated that pursuant to issuance of Order No.3/4/09/SSB/Court Case/2014/Pers-II/6692 dated 05.05.2015 by FHQ, SSB, her late husband was granted the benefit of 1st financial upgradation under ACP scheme in the pay scale of Rs.3200-85-4900/- on completion of 12 years service w.e.f. 09.08.1999 and was issued a fresh PPO on 24.01.2018. As stated hereinabove, the same has since been accepted by the petitioner and there is no dispute qua it.

8. However, the respondents refute the claim of petitioner as to the grant of benefit of 2nd financial upgradation as per ACP scheme contending that despite the late husband of petitioner completing the requisite 24 years of

service on 18.01.2000, as he remained medically unfit due to ‘hypertension’ with BP reading of 170/110 mm/hg w.e.f. 11.08.1999 to 07.04.2001, therefore, he was not detailed to undergo pre-promotional Senior Under Officer Cadre Course⁵ for promotion to the rank of Sub-Inspector/GD. Further, thereafter, he took voluntary retirement w.e.f. from 01.05.2001. Placing reliance upon Order No.3/4/09/SSB/Court Case/2014/Pers-II/6692 dated 05.05.2015, respondents thus contend that she is not entitled to avail the benefit of 2nd financial upgradation as per ACP scheme as her late husband was falling short of complying with the mandatory requisites therein. The relevant portion of the said Order No.3/4/09/SSB/Court Case/2014/Pers-II/6692 dated 05.05.2015 is as under:-

“3. MHA in consultation with DoP&T has accorded approval to grant ACP benefits with effect from the due date (24 years of regular service), provided that the concerned officials must have successfully undergone the pre-promotional Senior Under Officer Cadre Course (SUOCC) course in the first attempt or the official have retired before being detailed for such course.

4. Hence all cases in respect of personnel who have since been retired and they had not been provided opportunity for undergoing promotional course even after fulfilling all other eligibility criteria may be reviewed and ACP benefits may be granted to them from their due date within 15 days and ensure that no such case is left out. If any similar situated case comes to notice in future the same will be viewed seriously.”

9. Though the respondents had filed the relevant Medical Report dated 07.04.2001 of the late husband of petitioner qua the above, this Court had also called for the complete original file pertaining to him as according to learned counsel for petitioner, her late husband was only temporarily unfit and not medically unfit as wrongly claimed by respondents in their counter

⁵hereinafter referred to as “SUOCC”

affidavit. The relevant contents of the said Medical Report dated 07.04.2001 are reproduced hereinbelow:

NK/GD Tarlok Masih

STATION	DATE	EYE VISION	EAR HEARING	HEART	LUNGS	OTHER	WT.	Sig. Of MO
G.C. Delhi	11/08/99	B/E 6/6 with glasses	Normal	BP- 160/100 mm/hg	Clear	NAD	60 kg.	T. unfit. Review after one month. Adv. Medication
G.C. Delhi	11/07/2000	6/6 B/E with glasses NV-(N) with glasses CV-(N)	Normal	BP 170/100 mm/HG SIS2(N)	B/L Clear	NAD	60 kg.	T. unfit due to H.I. Adv. Medication for 01 week. Review after 01 week. -sd- 11/07/2000

Reported on 07/04/2001

BP- 170/110 mm/hg

T. Unfit not taking med. Adv. Med & review after one month.

*-sd-
07/04/2001*

10. A perusal of the original Medical Report reveals that the same is part of the file pertaining to the late husband of petitioner and the relevant page, reproduced above, mentions three different dates, i.e., 11.08.1999, 11.07.2000 and 07.04.2001 with gaps of almost eleven months and nine months respectively, when his medical examination was conducted by respondents. On all these three occasions he was indeed found having high

BP and thus declared temporarily unfit, advised medication and called for review examinations. So much so that the last medical examination of the late husband of petitioner conducted on 07.04.2001 categorically records that he was “*T.Unfit not taking med.Adv. Med*” and he was to report for “*review after one month*”. Admittedly, the aforesaid three medical examinations pertain to the last three years before the late husband of petitioner took voluntary retirement w.e.f. from 01.05.2001 and that since he took the same prior to expiry of one month w.e.f. his last medical examination on 07.04.2001, no review medical examination was possible. It is also not the case of petitioner that such a review medical examination ever took place. In fact, the petitioner has built up her case placing reliance upon the aforesaid document.

11. Additionally, in the Standing Order No. 04/2008 dated 15.12.2008 issued by the Directorate General, C.R.P.F. with respect to the ‘Health Care System in Central Para Military Forces-Instructions for Medical Examination and Classification of personnel in CPMF’s’, ‘hypertension’ has itself been graded as under:-

Grade of Hypertension	Blood Pressure	
	Systolic	Diastolic
Normal	120 and	80
Pre-hypertension	120-139 or	80-89
Stage-I hypertension	140-159 or	90-99
Stage-II Hypertension	>160	>100
-Severe	180-209	110-119
-Very Severe	210 or more	120 or more

12. In terms of the above Standing Order No. 04/2008 and the Medical Report of the late husband of petitioner, it is apparent that her husband was suffering from “*Stage-II hypertension*” since the last 3 years prior to his taking voluntary retirement. Such was his condition that he could not be detailed to undergo the mandatory pre-promotional SUOCC. As the late husband of petitioner was declared temporarily unfit over a considerable period of time, it is immaterial if he was actually medically unfit. The same, anyways, makes no difference.

13. Even otherwise, since all the above are contrary to the bald averment of petitioner qua her late husband having SHAPE-I medical category while in service, it can be safely inferred that the late husband of petitioner had no occasion to undergo the mandatory pre-promotional SUOCC and there was no occasion for him to be detailed for the said course as he was unfit in the last three years before taking voluntary retirement and he took voluntary retirement prior to facing a review medical examination.

14. In such a situation, the late husband of petitioner was never eligible to be detailed to undergo the mandatory pre-promotional SUOCC to claim the benefit of the 2nd financial upgradation under ACP scheme as per O.M. dated 09.08.1999. That being so, the petitioner is not eligible to claim a relief qua something for which her late husband was not even in the zone of consideration thereof.

15. Being declared unfit, the late husband of the petitioner was not entitled to the benefit of said 2nd financial upgradation under ACP Scheme. The present writ petition is, per se, neither maintainable in law nor on facts. In view thereof, there is nothing surviving in the present writ petition. Accordingly, we have no hesitation in holding that the petitioner is not

entitled to the grant of benefit of 2nd financial upgradation under the ACP Scheme as per O.M. dated 09.08.1999.

16. Thus, the present writ petition being not maintainable is accordingly dismissed, leaving the parties to bear their own costs.

(SAURABH BANERJEE)
(JUDGE)

(SURESH KUMAR KAIT)
(JUDGE)

OCTOBER 28, 2022/rr

