

06.12.2023
Court No. 13
Item No. 173
AP

WPA 7434 of 2023

Shyamal Rajak Das
Vs.
The Union of India and Ors.

Mr. Rabindra Nath Bag
Mr. Rohan Raj

... For the Petitioner.

Mr. Bhudeb Chattopadhyay

... For the Respondent Nos.1 to 5.

Ms. Swapnalekha Auddy
Mr. Surajit Auddy
Ms. Reshma Sharma

... For the Respondent Nos.6 to 7.

1. The writ petitioner retired voluntarily from the service of the Central Industrial Security Force (hereinafter referred to “the CISF”) on 7th April, 2022 in the rank of Sub-Inspector.

2. The petitioner joined the service of CISF on 20th July, 1988 as a Constable G.D. In September, 1992 the petitioner was promoted to the post of Sub-Inspector, CLK/Typist as fresh appointee through proper channel. The petitioner received the first upgradation under the then existing Assured Career Progression (hereinafter referred to as “ACP”).

3. After the 20th year of service, the writ petitioner, in the year 2012, also received the second upgradation of pay under the Modified Assured Career Progression (hereinafter referred to as “the MACP”) scheme, which replaces the earlier ACP scheme. MACP scheme introduced a third

tranche of benefit of upgradation of pay after 30 years of service.

4. It is necessary to mention that the writ petitioner in the year 2012 had, along with second benefit under the MACP scheme, also received an upgradation in pay of Rs.4,500/-, which is equivalent to the pay in the next higher rank. The writ petitioner was not promoted nor had he sought any such promotion.

5. In the meantime, the writ petitioner was offered formal promotion recommended by the DCP to the post of Inspector on 3rd November, 2021. The writ petitioner by issuing a formal letter and/or certificate dated 29th November, 2021 refused the said promotion. Such refusal was recorded and accepted by the CISF.

6. The writ petitioner thereafter tendered an application for voluntary retirement that was provisionally accepted by the CISF on 7th April, 2022. The Voluntary Retirement was formally given effect to from 4th September, 2022.

7. One day after the writ petitioner's provisional acceptance of voluntary retirement, another department of the CISF published a list of employees, who would be entitled to the financial upgradation under the MACP scheme i.e. 10 years, 20 years and 30 years. The petitioner's name came to be included in the list for 3rd 30 year benefit.

8. This Court has no doubt in its mind that had the concerned department of the CISF known of the provisional acceptance of the writ petitioner's voluntary retirement a day before, his name could not have been included in the said list. The reason therefor is simplicitor that there was no master servant relationship between the writ petitioner and the CISF.

9. Be that as it may, the reason for the impugned order being passed is slightly different. The CISF authorities applied Clause 25 of Annexure 1 to the MACP scheme issued under Office Memorandum dated 19th May, 2009. Clause 25 of the Annexure is set out hereinbelow:-

“25. If a regular promotion has been offered but was refused by the employee before becoming entitled to a financial upgradation, no financial upgradation shall be allowed as such an employee has not been stagnated due to lack of opportunities. If, however, financial upgradation has been allowed due to stagnation and the employees subsequently refuse the promotion, it shall not be a ground to withdraw the financial upgradation. He shall, however, not be eligible to be considered for further financial upgradation till he agrees to be considered for promotion again and the second the next financial upgradation shall also be deferred to the extent of period of debarment due to the refusal.”

10. Learned counsel for the writ petitioner would argue that in view of the last three lines of the aforesaid

paragraph the writ petitioner would have been entitled to the third financial upgradation since there was no further consideration of any promotion to him after he refused the promotion in November, 2021. This argument is not acceptable to this Court.

11. The object and purpose of the ACP and MACP schemes were to ensure that persons who do not have promotional avenues in Government service or applicable autonomous bodies should not be deprived of financial upgradation at least to enable them have a better standard of living.

12. Clause 25 makes the aforesaid position clear. The writ petitioner was indeed offered a promotion to the post of Inspector in November 2021. He had formally in writing refused the same. It, therefore, cannot be said that the writ petitioner did not have any promotional avenue or was stagnating in the post or service. The writ petitioner is therefore clearly hit by the explanation in Clause 25 above.

13. The mere fact of his inclusion in the list of beneficiaries under the MACP scheme on 8th April, 2022 cannot confer any rights contrary to the MACP schemes.

14. Had the concerned officials of the Personnel Department of the CISF preparing the aforesaid list dated 8th April, 2022 known about the provisional acceptance of the writ petitioner's application for Voluntary Retirement or the refusal by the writ petitioner of his promotion to the

post of Inspector on 30th November, 2021. His name would not have been included in such provisional list.

15. There cannot be any estoppel against the law. If the writ petitioner in law could not have been entitled to the benefit of the 3rd increment under the MACP scheme, the question of any promise or enlistment binding the respondents does not and cannot arise.

16. For the reasons stated hereinabove, the writ petition fails and hereby dismissed.

17. There shall be no order as to costs.

18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)