



W.P.No.2287 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:16.06.2023

Delivered on: 23.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.2287 of 2016

V.Sobana Kumar

... Petitioner

Vs.

1.The Union of India
Rep. by the Secretary
Ministry of Home Affairs
Police Division-II
(Resettlement and Welfare Directorate
North Block, New Delhi-110 001)

2.The Director General
CRPF, CGO Complex
Lodhi Road
New Delhi-110 003

3. The Inspector General of Police
Southern Sector CRPF
Road No.10 C.Jubilee Hills
New MLA/MPs Colony
Gayathri Hills
Hyderabad-500033



W.P.No.2287 of 2016

4.The Dy. Inspector General of Police
GC, CRPF
Po:Hakimpet
Rangareddy (A.P)
Pincode No.500 078

5.The Dy. Inspector General of Police
GC, CRPF, Avadi
Chennai-600 065

6.The Commandant
90 Bn, CRPF
Anantnag
Jammu & Kashmir

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 27.08.2010 issued by the 6th respondent in pursuance of the proceedings No.P.VII-5/2010-90-EC-I and quash the same in petitioner concerned and direct the respondents to grant 1st and 2nd financial upgradation under the Modified Assured Career Progression Scheme (MACPS) to the petitioner and revise the basic pension.

For Petitioner : Mrs.R.Meenakshi

For Respondents : Mr.B.Sudhir Kumar, CGSC



W.P.No.2287 of 2016

WEB COPY

ORDER

The petitioner seeks issuance of a Writ of Certiorarified Mandamus to quash the impugned proceedings on the file of the 6th respondent dated 27.08.2010 and direct the respondents to grant first and second financial upgradation under Modified Assured Career Progression Scheme (MACPS) and to consequently revise the basic pension for the petitioner.

2.The case of the petitioner, as stated in the affidavit in support of the Writ Petition is that he joined the Central Reserve Police Force as a Constable on 05.09.1988. He was deployed at various places through out the country and he voluntarily retired from service with effect from 01.01.2010. The petitioner was sanctioned basic pension of Rs.4670/- and residual pension of Rs.2,802/- vide pension payment order dated 30.08.2010. Since the petitioner was awarded lesser pension and that too incorrectly he made enquiries and also submitted a representation on 15.10.2010 to the 5th respondent. As there is no reply to the said representation the petitioner sent an application dated 01.11.2013 under the provisions of the Right to



W.P.No.2287 of 2016

WEB COPY

Information Act. As there is no compliance, he sent another application dated 24.02.2014 requesting for further information/documents and after obtaining the documents, the petitioner found that the respondents have not given satisfactory information regarding his basic query of sanctioning the correct amount of pension to him. The petitioner places reliance on MACPS which is operational from 01.09.2008. The scheme contemplates grant of three financial upgradations on completion of 10 years, 20 years and 30 years respectively, of continuous and regular service. However, the said financial upgradation was with certain conditions. According to the petitioner he was eligible for the first and second financial upgradation. However, the 4th respondent vide order dated 15.07.2010, held that he was not entitled for annual increment for 01.07.2006 and 01.07.2007 due to stoppage of increment for three years, for the reason that there was a major punishment awarded to the petitioner in the preceding five years. According to the petitioner he was not having any currency of punishment or any pending departmental enquiry against him and therefore the reasoning of the 4th respondent was erroneous. Further, according to the petitioner, DPC rules are



W.P.No.2287 of 2016

WEB COPY

also clear in stating that punishment would not be a bar in assessing suitability for promotion. The 6th respondent, despite all these submissions made by the petitioner rejected the same and passed the impugned order on 27.08.2010, holding that the petitioner is not entitled to financial upgradation. The said order is under challenge in the present Writ Petition, mainly on the ground that the prescribed bench mark mentioned in Annexure I of the scheme would not apply for grant of financial upgradation under the scheme and moreover the case of the petitioner was promotion on non selection basis and therefore the impugned order passed is in violation of DPC Rules.

3. Even though the respondents have not filed a counter, the standing counsel for the Central Government appearing for the respondents 1 to 6 made his oral submissions.

4. Heard Mrs.R.Meenakshi, learned counsel appearing for the petitioner and Mr.B.Sudhir Kumar, CGSC appearing for the respondents.



W.P.No.2287 of 2016

WEB COPY

5. Apart from reiterating the facts narrated in the affidavit in support of Writ Petition and taking this Court through the various documents filed by way of typed set, especially Departmental Promotion Committees (DPC) Rules pertaining to seniority, the counsel for the petitioner would contend that the respondents have not adhered to their own Rules and Regulations and the order was passed in violation of the same and therefore the petitioner was entitled to relief as prayed for.

6. The counsel for the petitioner also relied on proceedings of the Directorate General, CRPF, New Delhi, (Ministry of Home Affairs) dated 28.05.2021. In the said proceedings placing reliance on the orders passed by the Delhi High Court as well as the Hon'ble Supreme Court, it has been stated that the Supreme Court has upheld the Appeal of Union of India that the benefits under MACPS scheme cannot be granted in promotional hierarchy and that it would be in the standard hierarchy of grade pay in the pay band as per the existing MACPS guidelines. Following the said judgment, the CRPF have taken a decision that the benefits under the MACPS are to be granted



W.P.No.2287 of 2016

only in standard hierarchy of grade pay/pay levels and not in promotional hierarchy.

7. On the other hand, learned counsel for the respondents would rely on the order of this Court passed in W.P.No.12133 of 2016 dated 15.03.2023, wherein a learned Single Judge of this Court has held that as per promotional norms as envisaged in Standing Order No.01/2015, record of service should be good viz., must not have any major punishment and adverse report in the confidential card in the preceding five years and that the same is applicable for granting MACPS also. It is needless to state that when disciplinary proceedings are involved, the grant of benefit of MACPS would be the Rules governing normal promotion. It is also seen that in and by office order in No.P.VIII-3/2004-42-EC.II-(VSK) dated 04.04.2005, Commandant-42 BN had awarded major punishment to the petitioner. Therefore, the petitioner was not entitled to any financial benefits under MACPS. However, petitioner placed his reliance on para 13 of Departmental Promotion Committees (DPC). The same is extracted:



WEB COPY



W.P.No.2287 of 2016

“13. Punishment no bar in assessing suitability for promotion:- As officer whose increments have been withheld or who has been reduced to a lower stage in the time scale, cannot be considered on that account to be ineligible for promotion to the higher grade as the specific penalty of withholding promotion has not been imposed on him. The suitability of the officer for promotion should be assessed by the DPC as and when occasions arise for such assessment in assessing the suitability, the DPC will take into account the circumstances leading to the imposition of the penalty and decide whether in the light of the general service record of the officer and the fact of the imposition of the penalty, he should be considered suitable for promotion. However, even where the DPC considers that despite the penalty the officer is suitable for promotion, the officer should not be actually promoted during the currency of the penalty.”

8. A reading of the same reveals that it deals only with the aspect of considering a person who has been punished being considered for assessing his suitability for promotion. There is absolutely no reference to the MACP



W.P.No.2287 of 2016

WEB COPY

Scheme in this paragraph relied on by the petitioner. The proceedings of the Directorate General, CRPF, New Delhi, (Ministry of Home Affairs) dated 28.05.2021 also does not in any way come to the aid the Writ Petitioner. The said proceedings pertain only to the issue of granting benefits under MACPS in promotional hierarchy or standard hierarchy.

9. The respondents have considered relevant materials in denying the benefits of MACPS to the petitioner and for all the foregoing reasons, the Writ Petition is liable to be dismissed and accordingly dismissed. No costs.

23.06.2023.

Internet:Yes
Index:Yes/No
Neutral Citation:Yes/No
kpr



W.P.No.2287 of 2016

To

1.The Secretary
Union of India
Ministry of Home Affairs
Police Division-II
(Resettlement and Welfare Directorate
North Block, New Delhi-110 001)

2.The Director General
CRPF, CGO Complex
Lodhi Road, New Delhi-110 003

3. The Inspector General of Police
Southern Sector CRPF
Road No.10 C.Jubilee Hills
New MLA/MPs Colony
Gayathri Hills, Hyderabad-500033

4.The Dy. Inspector General of Police
GC, CRPF
Po:Hakimpet
Rangareddy (A.P)
Pincode No.500 078

5.The Dy. Inspector General of Police
GC, CRPF, Avadi
Chennai-600 065

6.The Commandant
90 BN, CRPF
Anantnag
Jammu & Kashmir

10/11



WEB COPY



W.P.No.2287 of 2016

P.B.BALAJI, J.,
kpr

Pre-delivery order in
W.P.No.2287 of 2016

23.06.2023