



2024:DHC:6932-DB

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IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of Decision:- 09.09.2024***+ W.P.(C) 6166/2020
TILAK RAJ

.....Petitioner

Through: Mr.K.K.Sharma & Mr.Harsh, Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr.Rajesh Kumar & Mr.Rahul
Kumar Sharma, Advs.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MS. JUSTICE SHALINDER KAUR****REKHA PALLI, J(ORAL)**

1. By way of the present petition under Articles 226 & 227 of the Constitution of India, the petitioner, a Sub Inspector in the Central Reserve Police Force (CRPF), has approached this Court seeking the following reliefs:-

“(a) To declare the inaction of the respondent No 2 to 4 in fixing the basic pay scale of the Petitioner @ Rs. 9300/+ Rs. 4200/- Grade Pay while granting 2nd ACP benefit w.e.f. the date when he completed 24 years of his regular service, as illegal and arbitrary.

(b) To direct the respondent No. 2 to 4 to fix/revise/step up of basic pay scale of the Petitioner @ Rs. 5500 1.86 = 10230/- + Rs. 4200/- Grade Pay from the date of completion of 24 years of his service while granting him the benefit of 2nd ACP financial benefit;*

(c) To direct the respondent No. 2 to 4 to give the arrears to the petitioner after re-fixation of his basic pay scale @ Rs.



*5500/- * 1.86 Rs. 10230/- + Rs. 4200/- G.P. from the date of completion of 24 years in service while granting him the benefit of 2nd ACP along with subsequent benefits arising there from;*

(d) Any other relief/order/direction as the Hon'ble Court may deem fit and proper.”

2. Learned counsel for the petitioner submits that the petitioner has been compelled to approach this Court as even though, upon his completing 24 years of service, he has been granted 2nd upgradation under the Assured Career Progression Scheme (ACP) scheme, his grade pay has not been properly fixed. He submits that upon grant of 2nd upgradation under the ACP scheme, the petitioner's grade pay was required to be enhanced to the pay scale of the promotional post with a grade pay of Rs.4,200/-. This grade pay has been denied to him only on the premise that he had not undergone the pre-promotional WT course, without appreciating the fact that this Court has already held that benefit of ACP will be granted even to those employees who had not been detailed for the pre-promotional course. In support of his plea, he places reliance on the decision of this Court in '**Jas ram v. Union of India**', [WPC no. 332/2017]. He, therefore, prays that the writ petition be allowed by directing the respondents to step up the petitioner's grade pay to Rs. 4,200/- w.e.f. 11.05.2006, i.e., the date he was granted the benefit of 2nd ACP.
3. On the other hand, learned counsel for the respondents opposes the writ petition by contending that the petitioner, despite being detailed for the pre-promotional WT course on two occasions, had refused to undergo the said course and was therefore rightly not granted the



benefit of 2nd upgradation under the ACP scheme. He submits that since the petitioner was not fulfilling the eligibility criteria for promotion, having not qualified the pre-promotional course, he could be granted upgradation only under the MACP scheme. Consequently, he was granted the benefit of 2nd and 3rd upgradation under the MACP scheme after completion of 20 years and 30 years of service respectively. He submits that this plea has been specifically taken in para nos. 4 to 8 of the counter affidavit but has not been controverted by the petitioner, who has chosen not to file any rejoinder affidavit.

4. Further, he submits that the decision in *Jas ram (supra)* relied upon by the petitioner is not applicable to the present case as unlike the petitioner herein, Sh. Jas Ram was never detailed for the pre-promotional course, and it was only in these circumstances that this Court directed that he could not be denied benefits under the ACP scheme on the ground that he had not undertaken the pre-promotional course. The petitioner having voluntarily given his unwillingness for the said courses, cannot now claim that he should be granted the benefit of ACP. He, therefore, prays that the writ petition be dismissed.
5. Having considered the submissions of learned counsel for the parties, we may begin by referring to the contents of para nos. 4 to 8 of the counter affidavit, which read as under:

“4.That, subsequently, for the purpose of granting 2nd financial upgradation under ACP Scheme, the Petitioner was again detailed for pre-promotional course WT Sl.No.120 which was conducted at CTC-III w.e.f.



02.01.2006 to 30.03.2006, however yet again the Petitioner submitted his unwillingness for the course. Accordingly, the Petitioner lost seniority as well as the last chance out of the permissible number of chances to attend the course vide 152 BN office order No. C. IX-4/2005-EC.I dated 25/01/2006. It is therefore for these reasons, the 2nd financial upgradation under ACP scheme was not sanctioned/ granted to the Petitioner.

5. That, after losing two chances for W.T. (PP) Course, the Petitioner became ineligible to undergo subsequent W.T. (PP) Courses (as per entry made in Service book at page No. 17). As such, the petitioner was ineligible for promotion from HC (GD) to the rank of SI(GD), as qualifying the pre-promotional course was a mandatory eligibility criterion for promotion to the next rank. Further, as per the the existing governing instructions, only eligible candidates can be granted financial upgradation under ACP Scheme. Keeping the above in mind, case of the Petitioner was not considered for 2nd financial upgradation under ACP Scheme by 183 bn office order No. P.VII-9/2016-183-EC-I)T;d^t6dl3.01.2016 which is in accordance with the provisions of GOI, Ministry of Personnel & Public Grievances & Pensions (DoPT) OM No. 35034/1/97-Estt. (D) dated 09.08.1999 read with Dte. Genl., CRPF Letter No. P.Vn-52/99-Pers-II dated 27/03/00, 11/10/03, 28/04/04, No.P.VII-20/12-Estt dated 06/03/12 & P.VII.52/13-Estt dated 27/10/14 & signal No. P.VII.52/2014-Estt dated 20/02/2015, P.VII.52/15-Estt-DA I-P/Cell (Instr) dated 14/10/15, 20/10/15, & P.VIL52/2014-Estt (P/Cell)-DA,1 dated 24/08/2015.

6. That, it is pertinent to mention that 2nd financial upgradation under MACP scheme has been granted to the Petitioner w.e.f 01.09.2008 in the pay band of Rs. 5200-20200 with grade pay of Rs. 2800/- and pay fixed @ Rs.9150/-+ 2800/-(Grade pay) w.e.f. 01.09.2008 since the



condition of eligibility criteria (promotion linked) was dispensed with for granting financial upgradation under MACP Scheme.

7. That, the Petitioner on completion of 30 years of service, was also granted 3rd financial up gradation under MACP scheme w.e.f. 11.05.2012 in the pay band of Rs. 9300-34,800 with grade pay of Rs.4200/- vide 183 BN Office order No. P.VII-8/2012-183-EC.I dated 20.03.2012 and pay fixed @ Rs. 10260/- with grade pay of Rs. 4200/- w.e.f. 11.05.2012 and re-fixed on accrual of next increment @ Rs.11,070/- with grade pay of Rs. 4200/- under the authority of FR 22(I)(a)(i), based on the option given by the Petitioner vide GC SNR office order No. P.I.04/14-SRC-183 dated 24.11.2014.

8. That, lastly as per provisions contained in Standing Order -06/1999, two chances only were admissible for qualifying Pre-promotional courses in order to get promoted to the next rank. It transpires that the petitioner did not attend WT-Pre-promotional course despite giving two chances before attaining 24 years of service. There are prescribed norms for promotion to the next rank which are mandatorily required to be fulfilled for getting financial up-gradation under ACP Scheme. As such, qualifying chances given for pre-promotional courses before eligible for financial up-gradation was mandatory. Therefore, it is established that the Petitioner himself tendered unwillingness to undergo pre-promotional course which was not due to administrative reasons but was purely petitioner's decision."

6. From a perusal of the aforesaid, it emerges that the respondents have specifically pleaded that despite having been granted two opportunities, the petitioner had expressed his unwillingness to undergo the pre-promotional WT Course and that too without any



justifiable reason for the same. As rightly urged by the learned counsel for the respondents, this plea of the respondents has not been controverted by the petitioner. In these circumstances, when the petitioner willingly refused to undergo the pre-promotional WT Course, and was therefore, not meeting the eligibility criteria for promotion, he cannot claim that he should be granted the benefit of ACP by ignoring the pre-promotional course. We have also considered the decision in *Jas Ram (supra)* but find that the same would not be applicable to the facts of the present case, as unlike the petitioner who was detailed twice for the pre-promotional course, which he refused to undertake, the petitioner in *Jas Ram (supra)* was never detailed for the pre-promotional course. It was only in these circumstances that this Court had directed grant of benefits of ACP to him. We, therefore, find no infirmity in the decision of the respondents to deny the benefit of 2nd upgradation under the ACP scheme to the petitioner, despite completing 24 years of service on 11.05.2006.

7. For the aforesaid reasons, we find no merit in the writ petition, which is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(SHALINDER KAUR)
JUDGE

SEPTEMBER 9, 2024

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