



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

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Date of decision: February 26, 2024

+ W.P.(C) 13199/2022

(29) EX HC GD MAHADEV PRASAD

..... Petitioner

Through: Mr. O. P. Agarwal and Mr. Sansar
Kumar, Advs.

versus

UNION OF INDIA AND OTHERS

..... Respondents

Through: Mr. Abhishek Khanna, G.P. with
Mr. Siddharth Khatana, Adv.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

V. KAMESWAR RAO, J. (ORAL)

1. The petitioner has filed the present petition with the following prayers:-

“(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 arrears / benefit of 2nd financial up-gradation under ACP Scheme from 09.08.1999 to 30.11.2006 (AN) in the Pay Scale of Rs.9300-34800, which is applicable for the post Sub-Inspector with grade pay of Rs.4200/- alongwith other consequential benefits including arrears of payment being accrued thereto in pursuance of the OM dated 09/08/1999.

(b) issue directions to the respondent No. 5 & 6 for issuing the revised pension order and also direct them to pay the



arrears of the pension and other retirement benefits as admissible to the Petitioner,

(c) Issue directions to the respondent concerned for granting the reasonable rate of interest on the delayed payment of arrears to the petitioner;

(d) Cost of the petition may also be awarded in favour of the petitioner and against the respondents; ”

2. The claim of the petitioner in this petition is primarily for grant of second ACP. The petitioner has joined the respondent as a Constable in the year 1968. He was promoted as Head Constable in the year 1985. It is a matter of record that on August 09, 1999, the Department of Personnel & Training (DoP&T) under the Government of India had introduced the Assured Career Progression (ACP) Scheme effective from August 09, 1999 which contemplates on account of stagnation, a government servant shall be granted two financial upgradations in 12th and 24th year of service. It is contended by Mr. O. P. Agarwal that the petitioner has not got any promotion after the year 1985. According to him, the next promotional post was that of Sub Inspector. He also states that the petitioner had retired in the year 2006. He having completed 24 years of service in the year 1992, the petitioner shall be entitle to the benefit of second financial upgradation under the ACP Scheme on August 09, 1999, the date on which the scheme was implemented. He submits that it is only in the context that the petitioner was receiving less pension as compared to a person who was junior to him in his service, the petitioner made representation which was decided on March 22, 2019 by the respondents by stating as under:-



“No. -1-21013/PGRC/8th BN/I.G.Ltr./2019-1236761

*Central Records Office I.T.B.P. Force
(Ministry Of Home Affairs, Govt, Of India)
9-A, North Siok, R.K. Ruram,
New Delhi - 110066*

To,

Dated: 22.03.2019

*Shri. Mahadev Prasad,
Ex-HC/GD, ITBP Force,
Vill Salya, P.O. - Andervani, Guptkashi,
Distt., Rudraparyag, Uttrakhand-246439
Sir,*

Please refer your application dated 01.03.2019 regarding pension.

2. In this connection, you are hereby informed that your pension in pursuance of the provisions of VIIth Pay Commission has been revised and sent to CPAO, New Delhi vide ITBPF letter dated 02.01.2018 (Photocopy enclosed). The CPAO after revising the pension forwarded the authority to your pension disbursing bank and ultimately the Bank shall remit you arrears. Therefore, no further action warranted on our office with regard to the matter mentioned in the application.

Encls: As above.

Yours faithfully

S/d

Section Officer (Pension)

3. According to Mr. Agarwal, the petitioner had also got issued a legal notice on July 10, 2022, for seeking benefit of ACP and consequential enhancement in his pension. The said notice was replied to by the respondents in terms of letter dated September 22, 2022, (Annexure R-2) whereby the respondents have said that as the



petitioner was not meeting the eligibility condition of undergoing Platoon Commander promotional course, for which the minimum eligibility is matriculation, he is not entitled to the benefit thereof. He also state, the respondents cannot deny the grant of 2nd ACP on the ground of not undertaking the above course, as any amendment to the Rules, cannot take away the right of the petitioner for promotion

4. We are unable to accept such a submissions of Mr. Agarwal for the simple reason that an appointment under the State is of status and not contractual. Any amendment to the rules are applicable to a government employee as and when made.

5. It is not disputed by Mr. Agarwal that prerequisite for promotion to the post of SI is that an incumbent must undergo Platoon Commander promotional course which the petitioner has not undergone. This is for the reason that the petitioner did not have the requisite matriculation qualification. Since, the petitioner has not undergone the course, it necessarily follows that the petitioner does not meet the requisite qualification for promotion to the post of SI. We may state here that the ACP scheme No. 35034/1/97-Estt(D) dated August 9, 1999, is very clear vide the clause 6 of the *Conditions For Grant Of Benefits Under the ACP Scheme*, that a person is not entitled to the benefit, if he does not meet the eligibility condition under the Recruitment Rules. As the petitioner is not meeting the eligibility condition for promotion to the post of SI, the petitioner is not entitled to the benefit of second ACP Scheme w.e.f., August 09, 1999.



6. We are of the view that the petitioner has not made out any case for grant of relief as sought for in the present petition. The petition is dismissed.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

FEBRUARY 26, 2024/ds