



2025:DHC:671-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 16788/2024, CM APPLs. 71040/2024 & 71041/2024

**THE COMMISSIONER OF POLICE DELHI
& ANR.**

.....Petitioners

Through: Mr. Viplav Acharya, Sr. PC

versus

INSPR PREM SINGH & ANR.

.....Respondents

Through: Mr. Sachin Chauhan, Adv. with
Ms. Ridhi Dua, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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15.01.2025

C. HARI SHANKAR, J.

CM APPL. 71041/2024 (for exemption)

1. Exemption allowed subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 16788/2024, CM APPL. 71040/2024

The Issue in Controversy

3. The respondent was granted financial upgradation, under the

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Assured Career Progression¹ Scheme w.e.f.² 1 February 2007 and second financial upgradation, under the Modified Assured Career Progression³ Scheme w.e.f. 1 April 2015. The respondent claims entitlement to ACP w.e.f. 15 February 2006 and MACP w.e.f. 15 February 2014. The Central Administrative Tribunal⁴ has allowed the claims. The Delhi Police challenges the decision.

4. As such, the issue in controversy relates to the dates from which the respondent is entitled to ACP and MACP benefit.

Facts

5. The respondent joined the services of the Delhi Police⁵ as Sub-Inspector (Exe)⁶ on 15 February 1994. He was promoted as Inspector on 27 January 2010.

6. While he was serving as SI, the respondent was issued a Show Cause Notice on 23 April 1998 alleging lapses in investigation in respect of FIR No. 825 dated 25 December 1996. The proceedings culminated in an Order dated 11 June 1998 passed by the Assistant Commissioner of Police, whereby the respondent was censured.

7. *Vide* Order dated 1 February 2002 passed by the Joint Commissioner of Police, the respondent was again awarded the

¹ ACP

² With effect from

³ MACP

⁴ “the Tribunal” hereinafter

⁵ “the petitioner” hereinafter

⁶ “SI” hereinafter



punishment of censure, alleging that he, along with two other Police officials, had not handled the investigation, in connection with FIR 342/1998 dated 19 August 1998, properly.

8. The ACP Scheme was introduced by Office Memorandum⁷ dated 9 August 1999 of the Department of Personnel & Training⁸, consequent upon recommendations of the 5th Central Pay Commission⁹, to ameliorate service conditions of employees who were stagnating without promotion or occupying isolated posts for which no promotional avenues existed. The Scheme applied to Group B, C and D posts, and isolated posts in Group A. Clause 3.1 of the OM dated 9 August 1999 provided thus:

“3.1 While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt the ACP Scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations [as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group ‘C’ and ‘D’ employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group ‘B’, ‘C’ and ‘D’ employees on completion of 12 years and 24 years (subject to condition no.4 in Annexure-I) of regular service respectively. Isolated posts in Group ‘A’, ‘B’, ‘C’ and ‘D’ categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above. Certain categories of employees such as casual employees (including those with temporary status), ad-hoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annexure-I.”

Of the conditions governing the ACP Scheme, as contained in

⁷ “OM” hereinafter

⁸ “DOPT” hereinafter

⁹ “GPC” hereinafter



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Annexure I to the aforesaid OM dated 9 August 1999, the following are relevant:

“2. The highest pay-scale upto which the financial upgradation under the Scheme shall be available will be Rs.14,300-18,300. Beyond this level, there shall be no financial upgradation and higher posts shall be filled strictly on vacancy based promotions;

3. The financial benefits *under* the ACP Scheme shall be granted from the date of completion of the eligibility period prescribed under the ACP Scheme or from the date of issue of these instructions whichever is later;

4. The first financial upgradation under the ACP Scheme shall be allowed after 12 years of regular service and the second upgradation after 12 years of regular service from the date of the first financial upgradation subject to fulfilment of prescribed conditions. In other words, if the first upgradation gets postponed on account of the employee not found fit or due to departmental proceedings, etc this would have consequential effect on the second upgradation which would also get deferred accordingly;

11. In the matter of disciplinary/penalty proceedings, grant of benefits under the ACP Scheme shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of relevant CCS(CCA) Rules, 1965 and instructions thereunder;

12. The proposed ACP Scheme contemplates merely placement on personal basis in the higher pay-scale/grant of financial benefits only and shall not amount to actual/functional promotion of the employees concerned. Since orders regarding reservation in promotion are applicable only in the case of regular promotion, reservation orders/roster shall not apply to the ACP Scheme which shall extend its benefits uniformly to all eligible SC/ST employees also. However, at the time of regular/functional (actual) promotion, the Cadre Controlling Authorities shall ensure that all reservation orders are applied strictly;”

9. By order dated 27 May 2008, the pay of various SIs, including the respondent was fixed, consequent to grant of ACP benefit was upgraded. The pay of the respondent was upgraded to Rs. 7600/-

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w.e.f. 01.02.2007 and was, therefore, fixed in the scale of ₹ 6500-200-10500/- w.e.f. the date of the order, i.e., 27 May 2008. According to the respondent, this fixation was erroneous, as he was entitled to first ACP benefit w.e.f. 15 February 2006, when he completed 12 years of regular service as SI.

10. Consequent to the recommendations of the 6th CPC, the ACP scheme was replaced by the MACP scheme, which was brought into effect by DOPT OM dated 19 May 2009.

11. The MACP scheme superseded the ACP scheme. MACP scheme provided that, on completion of 10, 20 and 30 years of continuous regular service, an employee would be entitled to three financial upgradations. The scheme applied to all regularly appointed Group A, Group B and Group C Central Government Civilian Employees. As in the case of ACP scheme, cases for financial upgradation under the MACP scheme were also to be considered by a Screening Committee, constituted in each department, the recommendations of which would be placed before the concerned Secretary/Head of Organization for approval. MACP scheme was brought into effect from 1 September 2008, and it was clarified that, till 31 August 2008, the financial upgradations as per the pre-existing ACP scheme would continue to be granted. Of the various conditions governing the MACP scheme as contained in Annexure I to the OM dated 19 May 2009, the following are relevant:

“1. There shall be three financial upgradation s under the MACPS, counted from the direct entry grade on completion of 10, 20 and 30 years service respectively. Financial upgradation under



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the Scheme will be admissible whenever a person has spent 10 years continuously in the same grade-pay.

15. If a financial upgradations under the MACPS is deferred and not allowed after 10 years in a grade pay, due to the reason of the employees being unfit or due to departmental proceedings, etc., this would have consequential effect on the subsequent financial upgradation which would also get deferred to the extent of delay in grant of first financial upgradation.

17. The financial upgradation would be on non-functional basis subject to fitness, in the hierarchy of grade pay within the PB-I. Thereafter for upgradation under the MACPS the benchmark of 'good' would be applicable till the grade pay of Rs. 6600/- in PB-3. The benchmark will be 'Very Good' for financial upgradation to the grade pay of Rs. 7600 and above.

18. In the matter of disciplinary/ penalty proceedings, grant of benefit under the MACPS shall be subject to rules governing normal promotion. Such cases shall, therefore, be regulated under the provisions of the CCS (CCA) Rules, 1965 and instructions issued thereunder.”

12. By order dated 13 June 2016, issued by the GNCTD, the pay of various officers in the Delhi Police was refixed, consequent to grant of MACP benefit. Among these was the respondent, who was granted MACP benefit w.e.f. 1 April 2015. The respondent’s contention is that he was entitled to the benefit of the second MACP scheme w.e.f. 15 February 2014, on completion of 20 years from the date when he joined as SI in the Delhi Police.

13. On 10 May 2016, the respondent addressed a representation to the Commissioner of Police, submitting that he was entitled to first ACP benefit w.e.f. 15 February 2006 instead of 1 February 2007 and to the second MACP benefit w.e.f. 15 February 2014 instead of 1

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April 2015. It was submitted that the punishment of censure which had been awarded to him on 11 June 1998 and 1 February 2002 could not be sought as ground to postpone his entitlement to ACP or MACP benefits.

14. The respondent's representation was rejected by the ACP, on behalf of the Commissioner of Police, by order dated 23 June 2016. The order reads thus:

“Subject: Representation submitted by Inspr. (Exe.) Prem Singh No. D-I/858 (1690008) in connection with Assured Career Progression Scheme/Modified Assured Career Progression Scheme

Reference your office Memo No. 3666/CR-I /CD dated 12.05.2016, on the subject cited above.

The representation of Inspr. (Exe.) Prem Singh, No.D-I/858 has been examined in this Hdqrs. and it has been found that his name alongwith other Sis(Exe.) who are maturing between 01.04.2005 to 31.03.2006 was considered for grant of 1st Financial Upgradation under the Assured Career Progression Scheme by the Departmental Screening Committee in its meeting held on 28.09.2007 & 15.10.2007 and found him "Unfit" due to his indifferent service record. The copy of same was also endst. to DCsP concerned vide No. 60740-840/CB- II /PHQ, dated 20.10.2007 to inform the individual concerned. The name of the representationist was again considered for the grant of 1st Financial Upgradation under the Assured Career Progression Scheme in the next Departmental Screening Committee held on 21/23.01.2008 & 15/16.04.2008 and after scrutinizing his service record found him "Fit" for the grant of ACP Scheme w.e.f. 01.04.2007. As regards grant of 2nd ACP Scheme to Inspr. Anjani Kumar, No.D-I/472, his name alongwith other Insprs. whose 24 years service maturing between the period 01.04.2002 to 30.09.2002 were considered for grant of 2nd Financial Upgradation for the DPC deemed to be held in January-2002 and found fit by the DPC vide GNCT Delhi's Order No. F.5/32/2000/HP-I/Estt.4414 dated 1-Dec.2005 and read with PHQ's endst. No. A/9/3/2004/83114-213/CB-I dated 15.12.2015.

On Completion of 12 years service, the 1st Financial

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Upgradation was granted to the application accordance with the Rules and Standing Instructions on the subject. As such his request for grant of ACP Scheme from ante-date could not be acceded to and his representation is rejected.

He may be informed accordingly.

Sd/-
(H. S. RAWAT) ACP/CB
FOR COMMISSIONER OF POLICE, DELHI"

15. However, the order did not deal with the petitioner's grievance regarding MACP benefit.

16. Aggrieved by the postponement of his ACP and MACP benefit, as noted *supra*, the respondent approached the Tribunal by way of OA 3203/2016¹⁰.

17. The Delhi Police and the GNCTD filed a joint counter affidavit by way of response to the OA. In the counter affidavit, it was submitted that the case of the respondent, for grant of ACP, had been considered by two Screening Committees, which met on 28 September 2007 and 15 October 2007. These Screening Committees found the respondent unfit for grant of first ACP benefit w.e.f. 15 February 2006 on account of the punishment of censure which had been awarded to him by order dated 1 February 2002. Reliance was placed, for this purpose, on Clause (iii) of the following circular issued by the Joint Commissioner of Police on behalf of the Commissioner of Police on 7 February 2005:



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“CIRCULAR

The following principles shall be observed, in future, while holding Departmental Promotion Committee for admission of names to promotion:

- i) The DPC should assess the suitability of the employees for promotion on the basis of their Service records with particular reference to the Confidential Reports for five preceding years irrespective of the qualifying service prescribed in the Service/ Recruitment rules. Officers having at least three “good and above” reports without any “below average” or “adverse” report, even for a small period during last five years may be empanelled. (If more than one CR has been written for a particular year, all the CRs for relevant year shall be considered together as the CR for one year).
- ii) The service record of the officer during preceding 10 years in that particular rank shall be taken into account with particular reference to the, gravity and continuity of punishment till date. Punishment on account of conduct and moral turpitude are to be viewed seriously.
- iii) Officers who have been awarded any major/minor punishment in the preceding 5 years on charges of corruption, moral turpitude and gross dereliction of duty to protect government property, or major punishment within 2 years on charges of administrative lapses, from the date of consideration may not be empanelled.
- iv) Officers whose names stand on Secret List shall not be considered fit as per S.O. No. 265 on the subject.
- v) Officers who have been awarded censure(s) during the last 6 months can be allowed to be brought on promotion list. However, the effect of censure debarring the official for promotion for six months from the dates of award, shall continue.
- vi) Result of officers, who are under suspension or facing DE or Involved in Criminal Cases shall be put in sealed covers.

This supersedes earlier, circular, issued vide this Hdqrs, order No. 83135-234/CB-1, dated 03.12 1998.

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FOR COMMISSIONER OF POLICE DELHI.”

18. The reply also placed reliance on Clause 6.1.2 of DOPT OM dated 10 April 1989, which contained consolidated instructions with respect to Departmental Promotion Committees¹¹ and empowered DPCs to devise their own methods and procedures for objective assessment of suitability of candidates to be considered by them:

“6.1.2 At present DPCs enjoy full discretion to devise their own methods and procedures for objective assessment of the suitability of candidates who are to be considered in matters of promotions and for having uniform procedures for assessment by DPCs, fresh guidelines are being prescribed. The matter has been examined and the following broad guidelines are laid down to regulate the assessment of suitability of candidates by DPCs.”

19. The reply stated that, in the next meeting of the Screening Committee which met on 21/23 January 2008 to consider the case of the respondent for grant of ACP benefit, he was found fit to be granted the said benefit w.e.f. 1 April 2007, as five years from the date of award of censure to the respondent on 1 February 2002 had expired by then. For this purpose, reliance has again been placed on Clause (iii) of the circular dated 7 February 2005 issued by the Commissioner of Police reproduced *supra*.

20. The reply further sought to justify the postponing of the grant of MACP benefit to the respondent on the basis of Clause 15 in Annexure I of the DOPT OM dated 19 May 2009 which dealt with the MACP scheme. It was sought to be contended that, by applying the



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said clause, the petitioners were justified in deferring grant of MACP to the respondent by the period of one year, one month and sixteen days by which his ACP benefit had been earlier deferred.

21. The Tribunal has, by the impugned judgment dated 3 May 2024, allowed OA 3203/2016. The Tribunal has relied on Clause (v) of the Circular dated 7 February 2005 issued by the Commissioner of Police, reproduced *supra*. The Tribunal has held that censure could debar an official for promotion only for six months from the date of award of censure. Even if one were to go by Clause (iii) of the said circular, the Tribunal notes that the impact of the minor penalty of censure awarded to the respondent would at worst be over by two years from the date of its imposition.

22. Applying this to Clause 15 of the DOPT OM dated 19 May 2009 which deals with the MACP scheme, the Tribunal holds that the penalty of censure could not be a basis to defer the grant, to the respondent, either of ACP or MACP. In view of the specific provisions dealing with grant of ACP and MACP benefits, the Tribunal has held that the judgment of the Supreme Court in *UOI v SK Goel*¹², which did not deal with a similar situation, would not apply.

23. As such, the Tribunal has directed grant of ACP and MACP benefits to the respondent w.e.f. 15 February 2006 and 15 February 2014, respectively.

¹¹ "DPCs" hereinafter
¹² (2007) 14 SCC 641



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24. Aggrieved thereby, the Delhi Police is before this Court.
25. We have heard Mr. Viplav Acharya, learned Senior Panel Counsel for the petitioners.
26. Mr. Viplav Acharya has drawn our attention to the DOPT OM dated 7 July 2008, the instructions dealing with MACP Scheme, the counter affidavit filed by the respondents before the Tribunal and the proceedings of the Screening Committee.
27. Once the smoke is cleared, the basis for postponing the grant of ACP/MACP to Respondent 1 is clearly only the fact that he was awarded a punishment of censure.
28. Mr. Viplav Acharya has sought to place reliance on para iii) of the record of the Screening Committee which we may reproduce thus:
- “(iii) Officers who have been awarded any major/minor punishments in the preceding 5 years on charge of corruption, moral turpitude and gross dereliction of duty to protect Govt. property, or major punishment within 2 years on charges of administrative lapses, from the date of consideration have not been recommended.”
29. In the first place, we do not see how the Screening Committee applied, for considering the entitlement to ACP/MACP, the instructions which applied to regular departmental promotion. We may note that Clause 11 of Annexure I to DOPT OM dated 9 August 1999, whereby the ACP scheme was implemented, also provides that “in the matter of disciplinary/penalty proceedings”, grant of benefit



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under the ACP scheme would be subject to rules governing normal promotions, as contained in the Central Civil Services (Classification, Control and Appeal) Rules, 1965¹³. This clause, too, in our view, cannot aid the petitioners as there were, on 15 February 2006, when the respondent had completed 12 years as SI with the Delhi Police, no disciplinary proceedings pending against him.

30. Mr. Viplav Acharya has not drawn our attention to any instructions or other guidelines which permits the application of instructions applicable to departmental promotions to grant of ACP/MACP.

31. That apart, clause iii) from the Minutes of the Screening Committee, dated 28 September 2007 and 15 October 2007 clearly does not apply to the respondent, as the respondent was never awarded any major punishment, or minor punishment on charge of corruption, moral turpitude or gross dereliction of duty to protect Government property.

32. From the time of *Mohinder Singh Gill v Chief Election Commissioner*¹⁴, it is a settled principle that an executive order has to abide by what is contained therein, and cannot be improved by any submissions made in the Court.

33. We are also not inclined to accept the plea of limitation raised by Mr. Viplav Acharya, as the matter involves grant of ACP/MACP

¹³ "CCS (CCA) Rules" hereinafter
¹⁴ (1978) 1 SCC 405



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and has a recurring effect every month when the payment is due to the employee concerned. In any event, the Tribunal has also not dismissed the OA on the ground of limitation.

34. Besides, we also take note of Clause (v) of the circular dated 7 February 2005, which clarifies that the effect of censure would only be for a period of six months from the date of award of the penalty. There could be no justification, therefore, to defer the grant of ACP benefits to the respondent by one year, one month and sixteen days, as has been done in the present case.

35. For the aforesaid reasons, we find no reason to interfere with the impugned judgment of the Tribunal which is affirmed.

36. The writ petition is dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 15, 2025/ar

Click here to check corrigendum, if any