
(2018) 12 DEL CK 0319
In the Delhi High Court
Case No : Civil Writ Petition No. 648 Of 2017

Ramesh Rai

APPELLANT

Vs

Ministry Of Home Affairs & Anr

RESPONDENT

Date of Decision : 13-12-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 12 DEL CK 0319

Hon'ble Judges : S. Muralidhar, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : Naushad Alam, Jitendra Bharti, Rajesh Kumar Gogna, Akhilesh Kumar, Perala Upendra Sai, Liu Gangambi

Final Decision : Allowed

Judgement

Sanjeev Narula, J

1. By way of the present petition under Article 226 of the Constitution of India, Petitioner seeks directions for re-fixation of first financial upgradation granted under the ACP Scheme dated 9th August, 1999 and consequential benefits arising therefrom.

Factual Background

2. The Petitioner was appointed as Constable/Radio Operator (CT/RO) with Border Security Force (BSF) on 5th September, 1980.

3. After successful completion of BRT and trade course, Petitioner was promoted to the rank of Naik/Radio Operator (NK/RO) on 16th August, 1982. Later, on 1st September, 1984, after qualifying Limited Departmental Competitive Examination (LDCE), he was appointed to the rank of Head Constable/Radio Mechanic (HC/RM). On 19th December, 1999, the Petitioner was promoted to the rank of Assistant Sub Inspector/Radio Mechanic (ASI/RM).

Financial Upgradation

4. The Petitioner's appointment as Constable/RO was at the pay scale of Rs. 210/-. After successful completion of BRT and trade course, and on being appointed to the rank of NK/RO, he was getting a pay scale of Rs. 225-5-260-6-290-EB-6-308 + Special Pay Rs. 40/-. On becoming HC/RM Petitioner was getting pay scale of Rs. 330-8-370-10-400-EB-10-480. His pay scale was re-fixed to the pay scale of Rs. 1200-30-1440-EB-30-1800 w.e.f. 1st January, 1986. The rank of HC/RM was merged with the rank of ASI/RM w.e.f. 22nd January, 1998 in the pay scale of 4000-100-6000.

5. Government introduced Assured Career Progression Scheme (ACP Scheme) on 9th August 1999 effective w.e.f. 01.01.1996. As a consequence (on successful completion of promotional cadre course), Petitioner was granted first financial upgradation on 3rd February, 2007 in the pay scale of 5500-175-9000 and his pay was fixed at Rs. 5850/- with DNI 01-04-2008, Controversy in the present case

6. Though the Petitioner had sought several reliefs in the writ petition, however, during the course of the arguments, learned counsel appearing on behalf of the Petitioner on instructions stated that he would like to confine the present petition to seek the relief of re-fixation of the effective date for grant of first financial upgradation under the ACP Scheme and consequential orders. According to him the benefit has been granted belatedly and should have been instead allowed from the date of introduction of the ACP Scheme.

Analysis

7. The Court has heard the learned counsels appearing on behalf of the parties. The scope of the present petition having been narrowed down as noted above, the submissions of the parties were heard only on this precise issue.

8. Learned counsel for the Petitioner argued that the subject matter of the present petition is covered by several decisions of this Court and strongly relied upon the order dated 6th September, 2013 passed by this court in W.P. (C) No. 5539/2013 titled as Jaipal Singh v. UOI. He also fairly stated that in order to be eligible for grant of first financial upgradation under the ACP Scheme, the Petitioner has to fulfil the eligibility conditions that includes undergoing the promotion cadre course (PCC). He admitted that the Petitioner had successfully completed the requisite promotional cadre course in the year 2007. He however asserted that notwithstanding the fact that Petitioner had undergone the promotional cadre course in the year 2007, he would be entitled to first financial upgradation, w.e.f 1st August, 1999, the date of introduction of the ACP Scheme. He submitted that since the Petitioner had completed 12 years of regular service without any promotion on the date of introduction of ACP scheme, he was fulfilling the eligibility conditions for grant of the first financial upgradation, the Respondents ought to have granted the financial upgradation from the aforesaid date.

9. Elaborating this contention, learned counsel for the Petitioner referred to para

15 of the Annexure I to the ACP Scheme that provides as under:-

"15. Subject to Condition No. 4 above, in cases where the employees have already completed 24 years of regular service, with or without a promotion, the second financial up gradation under the scheme shall be granted directly. Further, in order to rationalise unequal level of stagnation, benefit of surplus regular service (not taken into account for the first up gradation under the scheme) shall be given at the subsequent stage (second) of financial up gradation under the ACP Scheme as a one time measure. In other words, in respect of employees who have already rendered more than 12 years but less than 24 years of regular service, while the first financial upgradation shall be granted immediately, the surplus regular service beyond the first 12 years shall also be counted towards the next 12 years of regular service required for grant of the second financial upgradation and, consequently, they shall be considered for the second financial upgradation also as and when they complete 24 years of regular service without waiting for completion of 12 more years of regular service after the first financial upgradation already granted under the Scheme".

10. The learned counsel for the Petitioner also referred to the clarification order dated 6th March, 2012 issued by the Office of Directorate General, CRPF which reads as under:-

"Sub: Grant of Financial Benefits under ACP/MACP Scheme- Clarification.

A case was referred to the MHA seeking clarification in connection with grant of financial up-gradation under MACP scheme to the Constables and fixation of pay thereupon. The issue was examined in MHA, DoPT and Department of Expenditure (MoF). After due examination the Ministries have clarified the position as under:

A) The case of Cts who have 'qualified promotional course (i.e. SCO) and allowed E' AGP benefit from the next date of termination of SCC qualified by them may be reviewed and they may now be granted financial up-gradation under AGP and MACP schemes as under:-

S.No.

Categories of CTs

Modalities for Grant of Financial up-gradation benefits under ACP/MACP Schemes

CTs who qualified promotional course within maximum permissible three chances

Since these CTs were detailed on promotional course after completion of more than 12 years of service, they may be allowed 1st financial upgradation under ACP Scheme (of August 1999) from the date of completion of 12 years of service subject to fulfilment of other eligibility conditions, as there is no fault on their part for late detailment on promotional course. Financial up-gradation under MACP will be admissible to such CTs wherever they complete 20/30 years of continuous regular service or spent 10 years continuously in the same Grade

Pay whichever is earlier."

11. Relying on the aforesaid clarification, learned counsel for the Petitioner urged that Constables who were detailed for promotional cadre course after completion of 12 years are entitled to first financial upgradation under the ACP Scheme from the date of completion of 12 years of service, subject to fulfilment of other eligibility conditions. He emphasised that attending the course is not at the option of the officers and therefore they cannot be at disadvantage on account of the delay on the part of the Respondents for detailing them for the course.

12. As per the Service Rules, Constables are given three chances for qualifying the promotional cadre course. It is pertinent to note that the Petitioner was detailed for URM Grade II, the promotional course in the year 1988, but he could not clear the exam. He was again detailed for URM Gde-II in the year 1996, but at that stage, he submitted his unwillingness. According to the Respondents since the Petitioner failed to qualify the exam and later declined to undergo the course, he alone is responsible for not having acquired the necessary eligibility condition in time and therefore they are justified in granting him the benefit w.e.f. 3rd February, 2007.

13. The stand of the Respondent does not appear to be correct. It is not in dispute that the Petitioner is entitled to three chances for undertaking the promotion cadre course. No doubt, Petitioner had failed in his first attempt in the year 1988 and thereafter had expressed his unwillingness, when he was detailed for the second time in the year 1996, however, that would itself not disentitle him for the benefit under the scheme. Both the attempts were made, prior to the introduction of the ACP Scheme on 1st September, 1999. Therefore, even if the Petitioner did not qualify in the first two attempts, it would be of no consequence. He was entitled to a third chance and this option concededly was not offered to him until the year 2007.

14. It is also an admitted position that the candidates do not have any say in the matter for being detailed for the promotional course. It is for the Respondent's administration, to take a decision regarding the detailment of candidates for the promotional course. The Respondents cannot take advantage of not discharging their obligation, which precedes the obligation of the employee to clear the promotional cadre course. The chance of clearing the promotional course was given to the Petitioner in the year 2007. The question therefore arises as to what should be the effective date for grant of first financial upgradation?

15. The ACP Scheme has been introduced for granting financial benefits, to such persons who complete the requisite number of years of service (12/24.) without any promotional opportunity. It is the responsibility of the Respondent to detail the individuals for promotional cadre course. After the introduction of ACP Scheme, employees without a regular promotion are entitled to financial benefits of next higher grade in accordance with the existing hierarchy of posts in a

cadre. It was thus incumbent for the Respondents to offer a chance to complete the promotional course. Petitioner was not detailed for promotional cadre course after the introduction of the Scheme until 2007. Therefore, we are of the opinion that the Petitioner is justified in claiming that first financial upgradation should be granted w.e.f 1st September, 1999, instead of 3rd February, 2007.

16. We also note that a similar question had arisen for consideration before this Court in W.P.(C) No. 1506/2012 titled R.S. Rathore v. UoI and Ors. and W.P.(c) No.6973/2010 titled Hargovind Singh v. CISF relevant paragraph of the same has been reproduced as under:

"This very contention is urged before us. Just as the present case in hand, the petitioner Hargovind Singh also did not get the opportunity to undergo the PCC course on the date he became eligible for grant of further financial upgradation which was withdrawn. On this aspect, in Hargovind Singh's case (supra) the court has ruled on the respondents contention urged before us as well, commented on the responsibility of the department to detail the person for undertaking the promotional course. In this regard, observations made in para 8 to 14 of the judgment are being relied upon which reads thus :

"8 Learned counsel for the respondent would urge that the issue at hand is squarely covered against the petitioner as per the judgment and order dated 30.9.2010 disposing of W.P.(C) No.8631/2009 Bhagwan Singh Vs. UOI & Ors.

9. A perusal of the decision in Bhagwan Singh's case (supra) would reveal that the petitioner therein was working as a Head Constable and was denied the second upgradation under the ACP Scheme on account of the fact he had consciously refused to undergo the mandatory promotional courses which would have made him eligible to be promoted as an Assistant Sub Inspector and, in writing, had given that he foregoes the right to be promoted.

10. The Division Bench noted paragraph 10 of the ACP Scheme which reads as under :

"10. Grant of higher pay-scale under the ACP Scheme shall be conditional to the fact that an employee, while accepting the said benefit, shall be deemed to have given his unqualified acceptance for regular promotion on occurrence of vacancy subsequently. IN regular promotion subsequently, he shall be subject to normal debarment for regular promotion as prescribe din the general instructions in this regard. However, as and when he accepts regular promotion thereafter, he shall become eligible for the second upgradation under the ACP Scheme only after he completes the required eligibility service/period under the ACP Scheme in that higher grade subject to the condition that the period for which he was debarred for regular promotion shall not count for the purpose. For example, if a person has got one financial upgradation after rendering 12 years of regular service and after 2 years therefrom if he refused regular promotion and is consequently debarred for one year and subsequently he is promoted to the higher grade on regular basis after completion of 15 years (12+12+1) of regular service, he shall

be eligible for consideration for the second upgradation under the ACP Scheme only after rendering ten more years in addition to two years of service already rendered by him after the first financial upgradation (2+10) in that higher grade i.e. after 25 years (12+2+1+10) of regular service because the debarment period of one year cannot be taken into account towards the required 12 years of regular service in that higher grade.

11. In the instant case, facts noted hereinabove, would show that the respondents offered to detail the petitioner for the mandatory PCC course to be held with effect from 15.11.2004. We shall deal with the effect of the petitioner not joining the said course, but relevant would it be to note that the petitioner's entitlement to the ACP benefit accrued with effect from the month of November 1999 and it is not the case of the respondents that till they offered petitioner the chance to clear the PCC course commencing with effect from 15.11.2004, any earlier opportunity was granted to the petitioner to attend the course.

12. It is an admitted position that the department has to detail persons for undertaking the promotion cadre course and attending said courses is not at the option of the officers concerned.

13. If that be so, the respondents cannot take advantage of not discharging their obligation which precedes the obligation of the incumbent to clear the promotion cadre course. The prior obligation of the department is to detail the person concerned to undertake the promotion cadre course."

14. As regards petitioner's unwillingness to undergo the promotion cadre course commencing from 15.11.2004, it may be noted that the use of the word 'unwilling' would be a misnomer. What has happened is that prior to the petitioner being intimated that he would be detailed to undertake the promotion cadre course commencing with effect from 15.11.2004, on account of the extreme ill medical condition of the wife of the petitioner he had sought for and was granted leave to proceed to his native village."

13. Before us, it is an admitted position that the petitioner became eligible for grant of financial upgradation on 20th June, 2000 which was actually granted to him. So far his being given an opportunity to undergo the PCC is concerned, he was detailed for the first time to undergo the course which commenced on 5th May, 2003.

14. Undoubtedly for the reasons recorded in Hargobind Singh's case (supra), the petitioner could not be deprived of the financial upgradation for this period. It is apparent from the working of the ACP Scheme by the respondents that a person is entitled to the financial benefit on the date he completes the required twelve years of service without a promotional opportunity. The respondents have so worked the scheme in Hargobind Singh's case as well as the present case. The completion of the promotional cadre course is akin to completion of the requisite training upon appointment/promotion. It does not change the date of the appointment or the date of his promotion."

17. In view of the foregoing discussion and the judgments of this court, we see no legal impediment to grant the petitioner the relief prayed for. Accordingly we direct as follows:-

(i). A writ of certiorari is issued quashing signals/reply dated 06.01.2015 and 26.10.2016.

(ii) The respondents are directed to grant first financial upgradation to the Petitioner w.e.f. 1st September, 1999 and re-fix the pay.

(iii) As a result of the above Respondents shall also consider and grant second financial upgradation under the ACP and the third financial upgradation under the MACP after 24 years and 30 years of service respectively.

(iv) The respondents while granting the 2nd financial upgradation under the ACP scheme shall also take into consideration the surplus service of 4 years and 11 months.

18. The Respondents shall pass the necessary consequential orders to give effect to the aforesaid directions within a period of eight weeks. The order passed thereon should be conveyed to the Petitioner. The amounts due and payable in the above terms shall be released to the Petitioner within a period of four weeks thereafter. The above writ petition is allowed in the above terms with no order as to costs.