(2015) 03 DEL CK 0225

In the Delhi High Court

Case No : Writ Petition(C) 5082/2013

Swaran Pal Singh and Others APPELLANT

Vs

UOI and Others RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Citation : (2015) 3 AD 432

Hon'ble Judges : Pratibha Rani, J.;Pradeep Nandrajog, J.

Bench : Division Bench

Advocate : Jyoti Singh, Senior Advocate instructed by Tinu Bajwa and Sameer Sharma, for the Appellant; Joydeep Mazumdar and Rohit Dutta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Directly recruited in the grade of Sub-Inspector in the Railway Protection Force (''RPF'' for short) the petitioners have challenged the letter dated January 22, 2010 issued by the Railway Board, in which letter parameters for grant of financial upgradation to the employee of RPF under the Modified Assured Career Progression Scheme (MACPS) are prescribed. Petitioners have also prayed for a direction that the respondents should grant second financial upgradation under MACPS in the next Pay Band applicable to the post of Assistant Security Commissioner i.e. Pay Band-3 with Grade Pay of Rs. 5400/- and next, viz. 3rd financial upgradation with Grade Pay of Rs. 6600/-.

2. Prior to the implementation of the recommendations of the 6th Central Pay Commission, Sub-Inspectors in RPF were directly recruited in the then pay scale of Rs. 4500-7000. The 5th Central Pay Commission introduced the Assured Career Progression Scheme (ACP) , which envisaged two financial upgradations as per DOPandT O.M. dated August 09, 1999 : (i) after completion of 12 years of service; and (ii) after completion of 24 years service, by way of fixation of the pay prescribed for the promotional post in the hierarchy. Petitioners plead that as per the ACP Scheme, Sub-Inspectors in RPF were placed in the next higher pay

scale of Rs. 6500-10500 on completion of 12 years service and then in the scale of Rs. 8000-13500 on the completion of 24 years service.

3. The 6th Central Pay Commission replaced the ACP Scheme by the MACPS. The ACP Scheme thus remained in force till August 31, 2008 and as per DOPandT O.M. dated May 19, 2009, MACPS was introduced with effect from September 01, 2008, which envisages three financial upgradations after 10, 20 and 30 years of service. MACPS was made applicable to the employees of the Railways including RPF with effect from September 01, 2008 as per Railway Board''s order dated June 10, 2009.

4. The Railway Board vide its order dated January 22, 2010 has prescribed the financial upgradations admissible for RPF/RPSF Personnel under MACPS in the following terms:

5. It is this order of the Railway Board which has been challenged by the petitioners on the ground that second financial upgradation by giving the grade pay Rs. 4800/- granted to directly recruited of Sub-Inspector on completion of 20 years of service is fallacious and instead second financial upgradation should have been granted in the next higher Pay Band of Assistant Security Commissioner i.e. Rs. 15600-37100/- with Grade Pay of Rs. 5400/-. Petitioners have accordingly claimed that the next financial upgradation should be in the said Pay Bank with Grade Pay of Rs. 6600/-.

6. It is the case of the petitioners that by the application of the MACPS in the manner as above, directly recruited Sub-Inspectors have been discriminated vis-?-vis their counterparts who have got benefit under the ACP Scheme as also those direct recruits who have received two financial upgradations under ACP Scheme and the 3rd under the MACPS.

7. Petitioners also submit that the Railway Services (Revised Pay) Rules, 2008 issued vide notification dated September 04, 2009 for implementation of the recommendations of the 6th Central Pay Commission, under the Ist Schedule, Part-A, Section-II has specified the entry pay, which is the minimum pay corresponding to each grade pay prescribed by the 6th Central Pay Commission and further that for any post, pay cannot be less than the minimum pay prescribed under Section- II. It is pleaded that for Pay Band-1 (Rs. 5200-20200) and Pay Band-2 (Rs. 9300-34300) the following are recommended as the applicable pay scales:

8. Petitioners have also relied upon Rule 7 of the Railway Rules, 2008 to plead that it prescribes a procedure for fixation of Pay Scales/Pay Band of the employees of RPF and under this Rule the salary of an employee has to be determined by multiplying the existing pay as on January 01, 2006 by a factor of 1.86 and rounding of the resultant to the next multiple of 10. It is the further case of the petitioners that if the minimum of the revised Pay Band/Pay Scales is more than the amount so arrived, the pay shall be fixed at a minimum of revised Pay Band/Pay Scale and thereafter the facility of bunching would be applicable as

per the proviso to the said Rule. According to the petitioners if in case the pay so determined under Rule 7 of the Railway Rules, 2008 is less than the minimum of the revised Pay Band/Pay Scales fixed as on January 01, 2006, it shall result in an anomaly because seniors would be getting lesser pay than the juniors after their pay is fixed at the minimum in terms of Section (2) of the revised Railway Rules, 2008.

9. Per contra, it is pleaded by the respondents that the Railway Services (Revised Pay) Rules, 2008 were supplemented by the Schedules issued vide letter September 11, 2008. The ''existing scales of pay'' prescribed for the members of RPF/RPSF prior to the implementation of the recommendations of the 6th Central Pay Commission, and the corresponding revised pay structures as implemented by the Railway, is as follows:

10. It is submitted by the respondents that as per Rule 7 of the Railway Services (Revised Pay) Rules, 2008 read with the definition clause under Rule 3 thereof, only the pay drawn in the ''prescribed existing scale of pay'' would form the basis for fixation of pay in the revised pay structure. Accordingly, for the post of Inspector in RPF, for the pre-revised scale of Rs. 6500-10500/- revised pay structure in PB-2 (Rs. 9300-34800/-) with grade pay of Rs. 4600/- will be applicable. Neither the Rules of 2008 nor the Schedule circulated vide letter dated September 11, 2008 stipulate the pay scale of Rs. 7450-11500/- for the purpose of pay fixation for the post of Inspector in RPF. The financial upgradation under the ACP Scheme was in the cadre hierarchy whereas under MACPS the financial upgradation is in the hierarchy of Grade Pay and Pay Band of the pay structure introduced in implementation of the recommendations of the 6th Central Pay Commission. Since the case of the petitioners fall exclusively in the period covered by MACPS therefore, no parallel can be drawn with their seniors either those who have got benefit under the ACP Scheme or those who have received second upgradation under the ACP Scheme and the third upgradation under MACPS.

11. Questions that would essentially arise for determination in this case are whether the benefit under MACPS can be claimed to the pay band applicable to the next promotional post in the hierarchy on the ground of seniors getting lesser pay than their juniors who have availed such scale of the promotional post under the ACP Scheme; whether Section-II Part- A of the 1st Schedule to the Railway Services (Revised Pay) Rules, 2008 prescribe minimum pay and the petitioners by application thereof become entitled to stepping up of their pay in case their pay scales/Pay Band fixed in terms of Rule 7 is less than the minimum pay so prescribed.

12. Prior to the implementation of the Pay-Bands recommended by the 6th Central Pay Commission, the Sub-Inspectors in RPF were placed in the Pay-Scale Rs. 5,500-9,000/- and Inspectors were placed in the pay scale Rs. 6,500-10,500/-. Pursuant to the recommendations of the 6th Central Pay Commission, with effect from January 01, 2006, the Sub-Inspectors were placed

in PB-2 (Rs. 9300-34800/-) with Grade pay of Rs. 4200/- whereas Inspectors were placed in PB-2 with Grade Pay of Rs. 4600/-. It is apparent that the erstwhile concept of pay scale stands replaced by the concept of a Pay Band.

13. The earlier Assured Career Progression Scheme, which was in force till August 31, 2008 envisaged two financial upgradations as per DOPT OM dated August 09, 1999; the first up-gradation after completing 12 years'' service and the second after completing 24 years'' service.

14. Relevant would it be to note that under the Assured Career Progression Scheme the financial upgradation was by way of fixation of the pay prescribed for the promotional post in the hierarchy.

15. With the implementation of the Pay Bands after the 6th Central Pay Commission made recommendations, various erstwhile pay scales were merged in a common Pay Band and a higher grade pay was given to the posts with onerous and higher responsibilities. The Assured Career Progression Scheme was replaced by the Modified Assured Career Progression Scheme (MACPS) as per DOPT OM dated May 19, 2009 which envisaged 3 financial upgradations; the first after 10 years service, the second after 20 years service, and the third after 30 years service.

16. Para 2, 4 and 6 of the Modified Assured Career Progression Scheme (MACPS) are relevant. They read as under:-

"2. The MACPS envisages merely placement in the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in Section I, Part-A of the first schedule of the CCS (Revised Pay) Rules, 2008. Thus, the grade pay at the time of financial up-gradation under the MACPS can, in certain cases where regular promotion is not between two successive grades, be different than what is available at the time of regular promotion. In such cases, the higher grade pay attached to the next promotion post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion.

x x x

4. Benefit of pay fixation available at the time of regular promotion shall also be allowed at the time of financial up- gradation under the Scheme. Therefore, the pay shall be raised by 3% of the total pay in the pay band and the grade pay drawn before such upgradation. There shall, however, be no further fixation of pay at the time of regular promotion if it is in the same grade pay as granted under MACPS. However, at the time of actual promotion if it happens to be in a post carrying higher grade pay than what is available under MACPS, no pay fixation would be available and only difference of grade pay would be made available. To illustrate, in case a Government Servant joins as a direct recruit in the grade pay of Rs. 1900 in PB-I and he gets no promotion till completion of 10 years of service, he will be granted financial upgradation under MACPS in the

next higher grade pay of Rs. 2000 and his pay will be fixed by granting him one increment plus the difference of grade pay (i.e. Rs. 100) . After availing financial upgradation under MACPS, if the Government servant gets his regular promotion in the hierarchy of his cadre, which is to the grade of Rs. 2400, on regular promotion, he will only be granted the difference of grade pay between Rs. 2000 and Rs. 2400. No additional increment win be granted at this stage.

x x x

6. In the case of all the employees granted financial upgradations under ACPS till 01.01.2006, their revised pay will be fixed with reference to the pay scale granted to them under the ACPS."

17. As noted above the petitioners have pleaded that they have been discriminated vis-?-vis the other Sub-Inspectors in RPF who have got the benefit under the erstwhile ACP Scheme as also those who have received two financial upgradations under the ACP Scheme and the third under the MACPS.

18. The grievance of the petitioners rests on the premise that their counterparts who have got the benefit under the ACP Scheme have been placed in the pay scales of the next higher posts on completion of 12 and 24 years service. Whereas the petitioners by implementation of MACPS, have been granted second financial upgradation confined only to Grade Pay. Resultantly, the petitioners would be getting lesser pay than those whose pay is fixed with reference to the pay scales granted to them under the ACP Scheme.

19. The grievance of the petitioners as made, is however, contrary to the fundamental concept on which MACPS introduced through the 6th Central Pay Commission operates. A bare reading of paragraph 2 of the MACPS would make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post, as was available under the ACP Scheme with reference to the pay scale of the next above hierarchical post. It is not in dispute that MACPS supersedes ACP Scheme which was in force till August 31, 2008. Therefore, after August 31, 2008 any financial upgradation would be confined to placement in the immediate next higher grade pay in the hierarchy of the recommended revised Pay Band. The use of word ''merely'' in para 2 of the Scheme supports this interpretation. Paragraph 2 further clarifies that the higher Grade Pay attached to the next promotional post in the hierarchy of the concerned cadre/organization will be given only at the time of regular promotion. Therefore, the claim that the petitioners should also be placed in the replacement Pay Band applicable to the next promotional post in the hierarchy as was available under the ACP Scheme is misplaced.

20. This very issue had come up for consideration before this Court in W.P. (C) No. 3420/2010 R.S.Sengor and Ors. Vs. Union of India and Ors. decided on April 04, 2011. In said case the petitioners were in Pay Band- 1 and had a corresponding grade pay of Rs. 1900/-. The next hierarchical post was also in Pay Band-1 but had a grade pay of Rs. 2400/-. The petitioners therein claimed

that since the next hierarchical post had a pay band of Rs. 2400/-, they should, on financial upgradation, under the MACPS, be granted the grade pay of Rs. 2400/-. However, what the respondents in that case had done was to grant the petitioner therein the grade pay of Rs. 2000/- which was the next higher grade pay though, not the grade pay corresponding to the next hierarchical post. Dismissing the writ petition the Division Bench held as under:-

"10. The question would be whether the hierarchy contemplated by the MACPS is in the immediately next higher Grade Pay or is it the Grade Pay of the next above Pay Band.

11. Whatever may be the dispute which may be raised with reference to the language of paragraph 2 of the MACPS the illustration as per para 4 of Annexure I to the OM, contents whereof have been extracted hereinabove, make it clear that it is the next higher Grade Pay which has to be given and not the Grade Pay in the next hierarchical post and thus we agree with the Respondents that Inspectors have to be given the Grade Pay after 10 years in sum of Rs. 4800/- and not Rs. 5400/- which is the Grade Pay of the next Pay Band and relatable to the next hierarchical post. To put it pithily, the MACPS Scheme requires the hierarchy of the Grade Pays to be adhered to and not the Grade Pay in the hierarchy of posts."

21. This view has since been followed by another Division Bench of this Court in the decision reported as Union of India Vs. Delhi Nurses Union (Regd.) and Another,

22. Therefore, merely because others who have been granted financial upgradation in the pay scale of the promotional post in the hierarchy under the ACP Scheme and by operation of para 6 of MACPS, their pay is fixed with reference to the pay scale granted to them under the ACP Scheme, the petitioners would not get any right to be placed in such scales, since the language of the scheme makes it clear that the financial upgradation under ACP/ MACPS are different than regular promotions in the grade.

23. Even otherwise, as held in R.S.Sengor''s case (supra) the MACPS requires the hierarchy of grade pay to be adhered to and not the grade pay in the hierarchy of posts. Both the schemes conferred benefit of financial upgradation to tide over the problems of stagnation and operate in their respective fields. Though, there is no challenge to the MACPS or any part thereof, yet it is beyond any cavil that the Courts by judicial review cannot interfere with a policy decision of a State unless it is shown to be patently arbitrary, discriminatory or mala-fide. In this case, there is no such claim made by the petitioners.

24. In the decision reported as Govt. of T.N. and Another Vs. S. Arumugham and Others, the Supreme Court held that the Courts cannot substitute their own views for the views of the government or direct a new policy based on the Court''s view.

25. In the decision reported as Hardev Singh Vs. Union of India (UOI) and Another, the issue before the Supreme Court was with regard to the change of promotion policy from based on ''value judgment'' to ''quantification method''. Relying upon the decision reported as Virender S. Hooda and Others Vs. State of Haryana and Another, , the Supreme Court held that it is always open to an employer to change its policy in relation to giving promotion to the employees and the Court would normally not interfere in such policy decisions.

26. In the decision reported as Secr.,Govt. of NCT of Delhi Vs. Grade-I Dass Officers Association, the Supreme Court while considering ACP Scheme held that the scheme being a policy decision of the government, the Court will not interfere with the same.

27. It is also claimed by the petitioners that the minimum of the Revised Pay Band/Pay Scales as on January 01, 2006 has been fixed per Section-II Part-A of the 1st Schedule to the Railway Services (Revised Pay) Rules, 2008 and thus, the pay of the employees of RPF fixed under Rule 7 of the Rules cannot be less than the minimum pay so fixed.

28. Rule 8 of the Rules deal with fixation of pay in the Revised Pay Structure of the employees appointed as fresh recruits on or after January 01, 2006 and prescribes that the entry level pay in the Pay Band at which the pay of direct recruits to a particular post carrying a specific Grade Pay will be fixed on or after January 01, 2006. Section-II of Part-A of 1st Schedule to the Railway Services (Revised Pay) Rules, 2008, as the heading of the Section would make it clear, prescribes entry pay in the revised pay structure for direct recruits appointed on or after January 01, 2006. Therefore, the pay structure prescribed under Section-II cannot be invoked by an employee other than those who are appointed afresh by way of direct recruitment on or after January 01, 2006. Undeniably, the petitioners in this case, do not fall in this category. Therefore, the petitioners cannot claim their pay to be fixed in the scales/Pay Bands as prescribed in this Section.

29. The writ petition is accordingly dismissed but without any orders as to costs.