

Rakesh Kumar Vs. Union of India and ors.

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Court : Delhi

Decided On : Jul-08-2014

Judge : Reva Khetrapal

Appellant : Rakesh Kumar

Respondent : Union of India and ors.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + WP(C) No.4138/2014
RAKESH KUMAR Through: Petitioner Mr.Ankur Chhibber, Advocate. versus
UNION OF INDIA & ORS. Through: Respondents Mr.Niraj Kumar, Advocate.
CORAM: HON'BLE MS. JUSTICE REVA KHETRAPAL HON'BLE MS. JUSTICE
PRATIBHA RANI

ORDER

(ORAL) : REVA KHETRAPAL, J.

CM No.8313/2014 Exemption granted subject to all just exceptions. Application stands disposed of. WP(C) No.4138/2014 1. The present writ petition has been filed for quashing the signals dated 28.05.2013 and 03.07.2013 whereunder the respondents have denied benefits to the Petitioner under the ACP Scheme to the extent that the Petitioner has been held eligible for the 2nd financial upgradation under the ACP Scheme from the completion of the promotional course (SUOCC) and not from completion of 24 years of regular service. The Petitioner has further

prayed for directions to the respondents to grant 2nd financial upgradation benefits to the Petitioner under the ACP Scheme as has been approved vide order dated 01.02.2013 after completion of 24 years of regular service.

2. The relevant facts are that as per the ACP Scheme, in order to be eligible for grant of 2nd financial upgradation, an employee is required to have completed 24 years regular service from the date of his appointment to a post without any promotion in the last 12 years and he should have successfully undertaken the pre-promotional cadre course (SUOCC). It is an admitted fact that the petitioner had completed his 24 years of regular service without there being any promotion in the last 12 years. However, the Petitioner was not granted his financial upgradation as he had not undergone the promotional course required for promotion to the next rank. It is also relevant to note that the non-completion of the said pre-promotional cadre course was not due to the fact that the petitioner had not undertaken the said course, but for the reason that the respondents for their own fault did not detail the petitioner to undergo the said prepromotional courses.

3. The respondents, acknowledging the above fault of theirs, issued clarification order dated 06.03.2012 after consultation with the Ministry of Home Affairs. The said clarification regarding financial benefits under ACP/MACP Scheme issued by the office of Directorate General, CRPF 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, Do PT 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. SCC) and allowed 1st ACP 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 ACP and MACP schemes as under: Sl. No. Categories of CTs

1) CTs who qualified promotional course within maximum permissible three chances. Modalities for Grant of Financial up-gradation benefits under ACP/MACP Schemes Since these CTs were detailed on promotional course after completion

of more than 12 years of service, they may be allowed 1st financial up-gradation under ACP Scheme (of August 1999) from the date of completion of 12 years of service subject to fulfillment 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.

4. Thereafter, the respondents passed an order dated 1.2.2013 wherein the 2nd financial up-gradation under the ACP Scheme was granted to petitioner.

5. Subsequently, however, the Respondents, instead of releasing the financial benefits to the Petitioner pursuant to the issuance of the above order, issued the impugned Signals dated 28th May, 2013 and 3rd July, 2013, which are also in direct contradiction to the clarification order dated 6th March, 2012 issued by the Directorate General office and the Ministry of Home Affairs. The relevant part of the Signal dated 3rd July, 2013 reads as under:

As such a HC/GD qualified SUOCC before completion of 24 years on regular service will be eligible for financial up-gradation from the date of completion of 24 years regular service. However, if he has qualified SUOCC after completion of 24 years regular service then he is eligible for financial up-gradation from the date of completion of said P.Course vis.a.vis other conditions.

6. In the course of hearing, reliance was placed by learned counsel for the petitioner on the decision rendered in Writ Petition No.5539/2013 titled Jaipal Singh and Ors. Vs. Union of India and Ors., Writ Petition No.4258/2013 titled Gajraj Singh Singh and Ors. Vs. Union of India and Ors. and Writ Petition No.5059/2013 titled Raj Kanwar and Ors. Vs. Union of India and Ors. by a Co-ordinate Bench of this Court wherein the impugned signals dated 28.05.2013 and 03.07.2013 were quashed vide a common order dated 06.09.2013. It was observed that the reason for non-completion of pre-promotional cadre course of the Petitioner before completion of 24 years service was that the Respondents had not detailed the Petitioner for the said course. Having not done so, the Respondents could not withhold the benefit of 2nd financial upgradation, which the

Petitioner was otherwise entitled to on completion of 24 years of service only on the ground that he had not completed the pre-promotional cadre course, and thereby reap the benefit of their own wrong.

7. Subsequently, vide order dated 11.10.2013, in WP(C) No.6550/2013 titled Suraj Bhan and Ors. Vs. Union of India and Ors. the same legal position was reiterated.

8. In view of the aforesaid, we issue a writ of certiorari quashing the signals dated 28.05.2013 and 03.07.2013. We further direct the respondents to grant the second financial upgradation to the Petitioner from the date on which they completed 24 years of regular service. The respondents are also directed to fix the pay of the Petitioner and pension of the Petitioner who may have retired pursuant to the grant of second financial upgradation within a period of eight weeks from the date of receipt of this order. The order passed by the respondents shall be communicated to the Petitioner. The arrears in terms of this order shall be released to the Petitioner within a period of six weeks thereafter. This, however, shall be subject to verification by the Respondents.

9. The writ petition is allowed and stands disposed of in the above terms. A copy of this order be given dasti to counsel for both the parties, as prayed. REVA KHETRAPAL (JUDGE) JULY08 2014 k PRATIBHA RANI (JUDGE)

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