

Dharamvir Singh and Ors. Vs. Union of India and Ors.

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Court : Delhi

Decided On : Mar-05-2015

Judge : Pradeep Nandrajog

Appellant : Dharamvir Singh and Ors.

Respondent : Union of India and Ors.

Judgement :

\$~13, 14, 16 & 17 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision : March 05, 2015 + W.P.(C) 388/2015 OM PRAKASH & ORS. Represented by: Petitioners Mr.Ankur Chhibber, Advocate versus UOI & ORS. Represented by: Respondents Mr.Rakesh Kumar, Standing Counsel for UOI W.P.(C) 394/2015 RAJPAL & ANR. Represented by: Petitioners Mr.Ankur Chhibber, Advocate versus UOI & ORS. Represented by: Respondents Mr.Rakesh Kumar, Standing Counsel for UOI W.P.(C) 972/2015 DHARAMVIR SINGH & ORS Represented by: Petitioners Mr.Ankur Chhibber, Advocate versus UNION OF INDIA & ORS Represented by: Respondents Ms.Shubhra Parashar & Mr.V.P.S.Charak & Mr.Rakesh Mani Tripathi, Advocates W.P.(C) 1717/2015 SAVITRI DEVI & ANR. Represented by: W.P.(C) No.388/2015 & CONN.MATTERS Petitioners Mr.Ankur Chhibber, Advocate Page 1 of 9 versus UNION OF INDIA & ORS. Represented by: Respondents Mr.Anurag Ahluwalia, CGSC for UOI CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J.

(Oral) 1. With the consent of learned counsel for the parties we have heard arguments in the above captioned writ petitions, noting that facts are not disputed and hence the respondents who appear on advance copy of the writ petitions being filed, having obtained a date on the last date of hearing which was January 14, 2015, state that the matters could be disposed of, deciding the legal issues which arise for consideration, requiring the respondents to thereafter check the particulars of each writ petitioner and the deceased husbands of Savitri Devi and Satyawati, the writ petitioners of W.P.(C) No.1717/2015 and grant the necessary benefit keeping in view the law declared.

2. Issue concerns implementation of the Assured Career Progression Scheme (ACP) as per which, those who had rendered twelve years service and had earned no promotion, subject to fitness, would be entitled to the first financial upgradation and upon completion of twenty four years service, if no second promotion was earned, subject to fitness, would be entitled to the second financial upgradation.

3. The first writ petitioner of W.P.(C) No.388/2015 joined service in CRPF as a Constable (GD) on August 01, 1974. He was re-mustered in the cadre of Radio Operator in the rank of Naik./RO on May 23, 1976. He completed twelve years service on August 01, 1986. He earned promotion to the rank of Head Constable on April 18, 1993. He completed twenty four years service on August 01, 1998. He was subsequently detailed for ROG-1 promotional course to the rank of Sub-Inspector in the year 1999 but was not promoted to the said rank. The second writ petitioner of W.P.(C) No.388/2015 joined service as a Constable (GD) in CRPF on July 01, 1964. He completed twelve years of service on July 01, 1976. He was promoted as a Head Constable in the year 1996. He completed twenty four years service on July 01, 1988. The third writ petitioner of W.P.(C) No.388/2015 joined service as a Constable (GD) in CRPF on May 17, 1971. He completed twelve years of service on May 17, 1983. He was promoted to the rank of Head Constable in the year 1999. He completed twenty four years service on May 17, 1995.

4. The first writ petitioner of W.P.(C) No.394/2015 joined service in CRPF as a Constable (GD) on July 10, 1981. He was re-mustered in the cadre of Driver Trade

in the year 1988 after undergoing the D&M course. He completed twelve years service on July 10, 1993. He earned promotion to the rank of Head Constable in the year 2000. He completed twenty four years service on July 10, 2005. The second writ petitioner of W.P.(C) No.394/2015 joined service as a Constable (GD) in CRPF on July 11, 1974. He was re-mustered in the cadre of Radio Operator in the year 1979 after undergoing the ROG-III course. He completed twelve years of service on July 11, 1986. He was promoted as a Head Constable in September 1993. He completed twenty four years service on July 11, 1998.

5. The first writ petitioner of W.P.(C) No.972/2015 joined service in CRPF as a Constable (GD) on July 11, 1974. He was re-mustered in the cadre of Radio Operator in the year 1984 after undergoing the ROG-III course. He completed twelve years service on July 11, 1986. He earned promotion to the rank of Head Constable in the year 1997. He completed twenty four years service on July 11, 1998. The second writ petitioner of W.P.(C) No.972/2015 joined service as a Constable (GD) in CRPF on October 19, 1970. He was re-mustered in the trade of Constable Driver after completion of D&M course in the year 1977. He completed twelve years of service on October 19, 1982. He was promoted as a Head Constable on August 05, 1977. He completed twenty four years service on October 19, 1994. The third petitioner of W.P.(C) No.972/2015 joined service as a Constable (GD) in CRPF on February 02, 1970. He completed twelve years of service on February 02, 1982. He was promoted to the rank of Head Constable. He completed twenty four years service on February 02, 1994.

6. The late husband of the first writ petitioner of W.P.(C) No.1717/2015 joined service in Punjab Armed Police as a Constable (GD) on November 25, 1962. He was re-mustered in the cadre of Constable (GD) in CRPF in the year 1968. He completed twelve years service on January 01, 1980. He completed twenty four years service on January 01, 1992. The late husband of the second writ petitioner of W.P.(C) No.1717/2015 joined service as a Constable (GD) in CRPF on October 16, 1980. He completed twelve years of service on October 16, 1992. He was promoted as a Head Constable on December, 1994. He completed twenty four years service on October 16, 2004.

7. The Assured Career Progression Scheme was introduced in the year 1999. The object was to avoid stagnation in service. The scheme envisaged placement of the encumbent in the next higher grade; akin to an in-situ promotion.

8. The grievance in the writ petitions is to non-grant of the benefit of second financial upgradation upon completing twenty four years service.

9. The reason for which ACP benefit pertaining to the second financial upgradation is not being accorded is that the service rules envisage successful completion of a pre-promotional course. The grievance of the writ petitioners on said issue is that the department was at fault inasmuch as the department did not send the petitioners (late husband of the writ petitioners of W.P.(C) No.1717/2015) to undertake the pre-promotional course.

10. The said issue at hand is squarely covered by a Division Bench judgment of this Court in a batch of writ petitions decided on September 06, 2013, the lead matter being W.P.(C) No.5539/2013 Jaipal Singh & Ors. vs. Union of India & Ors.. The view taken was that if a department has not detailed a person for pre-promotional course the person cannot be prejudiced by the inaction of the department.

11. We note that on October 27, 2014 an office order had been issued which reads as under:

No.P-VII-52/2014-ESTT Dated, the 27th /Oct/2014 To The Spl./Addl. DG, JKZ/CZ/NEZ/SZ. The Inspectors General of Police, 1 BS/CS/CHHG/Co BRA/JMU/JKD/M&N/MP/NES/NS/NW S/ODISHA/RAF/RAJ/SS/SNR/TPA/WS/WB/OPS KMR/ OPS JHT/ISA MT ABU/CRPF ACDY KDR. The Deputy Director (Accts), PAO, CRPF. Sub :- REGARDING GRANT OF FINANCIAL BENEFITS UNDER APC/MACP SCHEME - CLARIFICATION. Please refer to this Dte letter No.P-VII-52/2012-Estt dated 8/10/2012 and signal No.P-VII-52/2013-Estt dated 3/7/2013.

2. As per guidelines issued vide this Dte letter/signal under reference, Head Constable (GD/Technical/Tradesmen) were allowed 2nd financial up-gradation

under ACP scheme (of Aug1999) from the date of qualifying promotional course and fulfilment of other eligibility conditions.

3. The issue has been further examined in consultation with MHA & Do PT and following clarifications are issue :i) ii) iii) Those Head Constables (GD/Technical/Tradesmen) who were detailed on promotional courses after completion of 24 years of service and successfully qualified the promotional course, they may be allowed 2nd financial up-gradation under ACP scheme (of Aug1999) from the date of completion of 24 years of service provided they fulfils other eligibility conditions on the relevant date of completion of 24 years of service. Since ACP scheme was operative from 9/8/1999 to 31/8/2008. Hence no HC (GD/Technical/Tradesmen) shall be allowed 2nd financial up-gradation under ACP scheme (of Aug1999) prior to 9/8/1999 and after 31/8/2008. The Head Constable (GC/Technical/Tradesmen) who have not qualified promotional courses shall not be eligible for 2nd financial benefit under ACP scheme as they have not fulfilled the promotion norms.

4. The cases of all affected personnel may be reviewed accordingly. SD/ 27/10/2014

12. Today we have been informed that the respondents have issued a clarification dated February 16, 2015 issued by Ministry of Home Affairs, wherein it has been clarified as under:-CRPF is allowed to grant 2nd Financial Up Gradation under ACP Scheme to all eligible, Constable/Head constable (Executive/Technical/Tradesmen) from the date they have completed 24 years of regular service, overlooking the condition of any prepromotional course criteria in those cases where such personnel could not be sent on pre-promotional course by CRPF, due to administrative reasons and not due to any reason owing to such a person concerned, as clarified by DoP&T.

13. A reading of the above clearly shows that Clause III of the letter dated October 27, 2014 issued by the respondents has already been nullified and superseded by the clarification issued by the respondents on February 16, 2015 and the signal dated February 20, 2015. Thus as of today, the requirement of undergoing the pre-promotional courses for grant of 2nd ACP benefit on completion of 24 years

service is not mandatory any more.

14. The only issue which now arises is what is the effect of some of the writ petitioners, such as Om Prakash, the writ petitioner of W.P.(C) No.388/2015, being re-mustered to the rank of Naik or in the cadre of driver trade or in the cadre of radio operator. As per learned counsel for the respondents the 24 year period of service has to be reckoned from the date they were re-mustered and not from the date they joined service initially.

15. Hitherto fore, between the rank of a Constable and a Head Constable there were two posts of Lance Naik and Naik, which posts were subsequently abolished and merged with that of a Head Constable.

16. Now, the department itself is not considering, the appointment given to Constables on re-mustering as Naik or a Lance Naik as a case of promotion, and thus we see no logic to reckon 24 years service from the dates noted hereinabove when some of the petitioners and the late husbands of the writ petitioners of W.P.(C) No.1717/2015 were re-mustered.

17. The ACP Scheme is clear. It envisages first ACP benefit after 12 years service was rendered and the second benefit after 24 years service was rendered if within the first twelve years no promotion could be earned and in 24 years service a second promotion could not be earned. Since all petitioners and late husbands of the writ petitioners of W.P.(C) No.1717/2015 had rendered more than 12 years service, reckoned whether with effect from their initial service or from the date they were re-mustered, when the ACP Scheme was introduced in the year 1999 all were granted the benefit of the first financial upgradation with effect from the year 1999 (such who earned a first promotion after 1999 were given anti-dated scales with effect from the year 1999) and when their claims for financial upgradation on completing 24 years service came up, the department only raised one issue : of they not having undergone the pre-promotional course which was essential to be successfully undertaken to earn a promotion. As per all these persons they were denied an opportunity to undergo the prepromotional course because the department had posted them at places from where they could not be relieved; and none of them had anything to do with their posting orders. This aspect has now

been taken care of by the two office orders dated October 27, 2014 and February 16, 2015.

18. We note that all the petitioners have completed the twenty four years of service though they have not undergone the pre-promotional courses. It is the case of the petitioners that they have never been detailed for the said prepromotional courses by the respondents. Thus they are squarely covered by the clarification issued by the respondents vide its clarification dated February 16, 2015.

19. The writ petitions are accordingly allowed issuing a direction to the respondents to grant second ACP benefits to the petitioners and late husbands of writ petitioners of W.P.(C) No.1717/2015 with effect from the date they completed twenty four years service reckoned from the date of initial appointment. The mandamus would be subject to the petitioners and late husbands of writ petitioners of W.P.(C) No.1717/2015 being otherwise found fit for promotion.

20. The necessary decision would be taken and conveyed to the petitioners within eight weeks from today. If petitioners (late husbands of writ petitioners of W.P.(C) No.1717/2015) are found eligible for being promoted and as a consequence would be entitled to the second ACP benefit, the same shall be extended to them within the same period. The arrears would be paid within six weeks of the decision being taken. If arrears are not paid within six weeks of the decision being taken the same shall be paid with interest @ 8% (simple) per annum.

21. No costs. (PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE
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