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Om Raj and Ors. Vs. Union of India and Ors.

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Court : Delhi

Decided On : Mar-13-2015

Judge : Pradeep Nandrajog

Appellant : Om Raj and Ors.

Respondent : Union of India and Ors.

Judgement :

$~18 to 21 * IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of Decision : March 13, 2015 + W.P.(C) 2408/2015 OM RAJ AND ORS. Represented by: ..... Petitioners Mr.Ankur Chhibber & Mr.Prashant Sivarajan, Advs. versus UNION OF INDIA AND ORS. Represented by: ..... Respondents Mr.Kamal Kant Jha, Advocate with Mr.S.S.Sejwal, Law Officer W.P.(C) 2413/2015 VIJAY KUMAR PARASAD AND ANR. ..... Petitioners Represented by: Mr.Ankur Chhibber & Mr.Prashant Sivarajan, Advs. versus UNION OF INDIA AND ORS. Represented by: ..... Respondents Mr.Kamal Kant Jha, Advocate with Mr.S.S.Sejwal, Law Officer W.P.(C) 2415/2015 SHISH RAM Represented by: ..... Petitioner Mr.Ankur Chhibber & Mr.Prashant Sivarajan, Advs. versus UNION OF INDIA AND ORS. Represented by: W.P.(C) Nos.2408/2015, 2413/2015, 2415/2015 & 2430/2015 ..... Respondents Mr.Kamal Kant Jha, Advocate with Mr.S.S.Sejwal, Law Officer Page 1 of 9 W.P.(C) 2430/2015 SRIKRISHAN Represented by: ..... Petitioner Mr.Ankur Chhibber & Mr.Prashant Sivarajan, Advs. versus UNION OF INDIA & ORS Represented by: ..... Respondents Mr. Anurag Ahluwalia, CGSC with Mr.Bebesh Panda, Adv. for R-1 & R-4 CORAM: HON'BLE MR. JUSTICE PRADEEP

NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRADEEP NANDRAJOG, J.

(Oral) CM No.4330/2015 in W.P.(C)2408/2015 CM No.4334/2015 in W.P.(C)2413/2015 CM No.4343/2015 in W.P.(C)2415/2015 CM No.4373/2015 in W.P.(C)2430/2015 Allowed. W.P.(C) Nos.2408/2015, 2413/2015, 2415/2015 & 2430/2015 1. Counsel as above appear for the respondents and state that counter affidavits need not be filed because all relevant documents have been filed by the writ petitioners.

2. The writ petitions are being disposed of noting the dates given by the petitioners of having joined service and when they completed 12 years and 24 years service. We take on record the statement made by learned counsel for the respondents that these dates would be subject to verification by the respondents, to which learned counsel for the petitioners agrees.

3. The issue arising in the captioned writ petitions 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.

4. The facts as averred by the petitioners are as follows.

5. The Petitioner in WP (C) No.2430 / 2015 joined service in CRPF as a Constable (GD) on July 08, 1971. He was detailed for and completed the JCC course in the year 1986. He completed 12 years service on July 07, 1983. He was subsequently detailed for and completed SCC promotional course for the rank of Head Constable in the year 1993 and was promoted to the rank of Head Constable in the year 1994. He completed 24 years service on July 07, 1995.

6. The first writ petitioner in W.P. (C) No.2408/ 2015 joined service in CRPF as a Constable (GD) on July 31, 1975 and completed 12 years of service on July 31, 1987. Subsequently, he was detailed for and completed the JCC course in the

year 1991. In the year 1993 he was detailed for SCC promotional course and earned promotion to the rank of Head Constable in the year 1994. On July 31, 1999 he completed 24 years of regular service. The second writ petitioner in W.P. (C) No.2408 / 2015 joined service in CRPF as a Constable (GD) on January 14, 1971 and completed 12 years in service on January 14, 1983. He was detailed for and completed JCC course on 1985. In the year 1994 he was detailed for the SCC promotional course. He was promoted to the rank of Head Constable in the year 1994. He completed 24 years of service on January 14, 1995. The third writ petitioner of W.P. (C) No.2408 / 2015 joined service in CRPF as a Constable (GD) on January 10, 1972 and completed 12 years in service on January 10, 1984. He was detailed for and completed JCC course on 1986-87. In the year 1991 he was detailed for the SCC course. Due to his sheer hard work, he was promoted to the rank of Head Constable in the year 1992. He completed 24 years of service on January 10, 1996. The fourth writ petitioner in W.P. (C) No.2408/2015 joined service in CRPF as a Constable (GD) on February 03, 1972 and completed 12 years in service on February 03, 1984. He was detailed for and completed JCC course on 1986-87. In the year 1991 he was detailed for the SCC course. Due to his sheer hard work, he was promoted to the rank of Head Constable in the year 1992. He completed 24 years of service on February 03, 1996. The fifth writ petitioner in W.P. (C) No.2408/2015 joined service in CRPF as a Constable (GD) on January 01, 1972 and completed 12 years in service on January 10, 1984. He was detailed for and completed JCC course on 1986-87. In the year 1992-93 he was detailed for the SCC course. He was promoted to the rank of Head Constable in the year 1993. He completed 24 years of service on January 10, 1996. The sixth writ petitioner in W.P. (C) No.2408/2015 joined service in CRPF as a Constable (GD) on January 10, 1972 and completed 12 years in service on January 10, 1984. He was detailed for and completed JCC course on 1986. In the year 1992 he was detailed for the SCC course. Due to his sheer hard work, he was promoted to the rank of Head Constable in the year 1992. He completed 24 years of service on January 10, 1996. The seventh writ petitioner in W.P. (C) No 2408/2015 joined service in CRPF as a Constable (GD) on January 01, 1972 and completed 12 years in service on January 01, 1984. He was detailed for and completed JCC course on 1986-87. In the year 1991 he was detailed for the SCC course. Due to

his sheer hard work, he was promoted to the rank of Head Constable in the year 1992. He completed 24 years of service on January 01, 1996.

7. The petitioner in W.P. (C) No.2415/2015 joined service in CRPF as a Constable (GD) on October 14, 1980. He was re-mustered as ROG III Year in the year 1983-84. Thereafter, he was re-mustered as Naik/RO in May, 1984. He completed 12 years in service on October 14, 1992. He was detailed for ROG Grade-I Course in 2004. He completed 24 years of service on October 14, 2004. He earned promotion to the rank of Sub-Inspector on December 28, 2006. Thereafter, he was detailed for SSICC promotional course in 2010 and after successful completion of the same he was promoted to the rank of Inspector on July 03, 2010.

8. The first writ petitioner in W.P. (C) No.2413/2015 joined CRPF as Constable (GD) on June 13, 1981. In the year 1987, he underwent D&M course for conversion from the post of Constable (GD) to Constable Driver. He completed 12 years in service on June 13, 1993. Thereafter, he was promoted to the post of Head Constable Driver on October 10, 1997. He completed 24 years service on June 13, 1995. The second writ petitioner in W.P. (C) No.2413/2015 joined CRPF as Constable (GD) on December 01, 1975. He completed 12 years in service on December on December 01, 1987. He earned promotion to the rank of Head Constable on December 10, 1997 and completed 24 years in service on December 01, 1999.

9. 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 incumbent in the next higher grade; akin to an in-situ promotion.

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

11. 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 to undertake the pre-promotional course.

12. 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.

13. 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

14. It was also pointed out 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.

15. 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.

16. 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.

17. The issue of reckoning 12 years and 24 years for those who were re- mustered has already been decided by us on March 05, 2015 while deciding a batch of writ petitions, lead matter being W.P.(C) No.388/2015 in which we have held that the period would reckon from the date of initial appointment to the post of Constable.

18. The petitions are accordingly disposed of issuing a direction that the verification of the dates of employment and the dates when petitioners completed 12 and 24 years service as also fitness of the petitioners for grant of ACP benefit shall be completed within 12 weeks from today and such petitioners who are found eligible for grant of ACP benefit would be paid the arrears after refixation of their pays as also pension. Such petitioners who are found unfit for grant of the benefit would be conveyed the reasons for the same, and needless to state in said eventuality they would be entitled to remedy as per law.

19. No costs. (PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE MARCH13 2015 pg/mamta

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