

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
Circuit Sitting: Indore

Original Application No.201/00051/2016

Jabalpur, this Tuesday, the 31st day of December, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Bhushan Nirkhe, S/o Shri Triyambak Rao Nirkhe,
Aged 61 years, Occupation-Pensioner,
R/o Sanjeevani, A-10, Aadinath Vihar,
Mandsaur, Pincode 458001 (MP)

-Applicant

(By Advocate –**Shri C.B.Patne**)

V e r s u s

1. Union of India, through Secretary to the
Govt. of India, Ministry of Finance, Department of Revenue,
North Block, New Delhi-110001

2. Narcotics Commissioner, 19 Mall Road,
Morar, Gwalior-474006(MP)

-Respondents

(By Advocate –**Smt. Seema Sharma**)

(Date of reserving the order:-20.12.2018)

O R D E R

By Ramesh Singh Thakur, JM:-

The applicant is aggrieved against the non grant of first, second and third financial upgradation under the MACP Scheme in the pay scale of Rs. 4000-6000/- with effect from 09.08.1999, Rs. 5000-8000/- with effect from 01.08.2000 and Rs. 5500-9000/- with effect from 01.08.2006 respectively.

2. The applicant has prayed for the following reliefs in this Original Application:-

“8. Relief Sought:-

- (a) To call for the relevant record of the case from the respondents.
- (b) To command the respondents to grant the applicant benefit of first MACP in the pay scale of Rs. 4000-6000/- w.e.f. 9.8.1999 and benefit of second MACP in the pay scale of Rs. 5000-8000/- w.e.f. 1.8.2000 and third MACP in the pay scale of Rs. 5500-9000/- w.e.f. 1.8.2006 and to refix his pay and post retiral benefits and to release arrears thereof together with interest @ 12% per annum.
- (c) To allow this application with costs.
- (d) To pass such other order(s) as may be deemed appropriate in the facts and circumstances of the case, to grant relief to the applicant.”

3. The applicant was initially appointed to the post of Sepoy (Constable) on 30.07.1976 and he got promoted to the post of Sub Inspector vide order dated 09.08.2006 (Annexure A-1). The applicant was granted first financial upgradation in the pay scale of Rs. 2650-4000/- w.e.f. 09.08.1999 and thereafter the applicant was granted second financial upgradation in the pay scale of Rs. 3050-4590/- w.e.f. 01.08.2000. The applicant submitted that the similarly situated persons were promoted from the post of Sepoy to the post of Sub Inspector by the DPC held in the year 1998-1999, were allowed second financial up-gradation in the pay scale prescribed for the post of Inspector. However, for the reasons best known to the respondents, the DPC for the year 1999-2000 was not

conducted in due time resulting in financial stagnation to the applicant as he could not be considered for grant of second financial up-gradation.

4. The applicant further submits that he came to be promoted to the post of Sub Inspector against the vacancies for the year 1999-2000, i.e. prior to 01.08.2000 that is the date on which the applicant was conferred the benefit of second financial upgradation under MACP of 1999. Accordingly, the applicant is also entitled for first and second financial upgradations in view of the law laid down by the Division Bench of Punjab and Haryana High Court at Chandigarh in the matters of Union of India and others vs. Rajpal and another in civil Writ Petition No. 19387/2011 (O&M) vide order dated 19.10.2011 (Annexure A-2). The applicant has not been communicated any adverse or average ACR in his entire service tenure warranting withholding of these financial benefits. The applicant submitted a representation dated 07.11.2012 (Annexure A-3) for fixation of seniority in the grade of Sub-Inspector but nothing could be done by the respondents so far.

5. The respondents have filed their reply in which they have submitted that the applicant was a sepoy in the pay scale of Rs. 2610-3540 at the time of consideration of his case for grant of 1st financial upgradation under ACP scheme and has been given the

first financial upgradation under ACP Scheme with effect from 09.08.1999 in the scale of Rs. 2650-4000. the 2nd financial upgradation under ACP's was granted to the applicant w.e.f. 30.07.2000 in the scale of Rs. 3050-4590 from Rs. 2650-4000 by the screening committee held on 01.06.2000. The Assured Career Progression Scheme (ACP) is applicable w.e.f. 09.08.1999 and as per that scheme 2 benefits can be granted after completion of every 12 years. A copy of ACP Memorandum is annexed as Annexure R/1.

6. The respondents further submitted that Modified Assured Career Progression Scheme (MACP) is applicable w.e.f. 01.09.2008 and as per MACP 3 benefits can be granted only after completion of every 10 years, thus on completion of 30 years service, 3rd financial upgradation was granted to the applicant under MACP w.e.f. 01.09.2008 in the grade pay of Rs. 2800/- (PB-1) by the Screening Committee held on 26.07.2012 (Annexure R/2). The respondents further submitted that the contention of the applicant regarding similarly situated persons is not correct as the applicant was promoted as Sub-Inspector w.e.f 10.08.2006, whereas others were promoted as Sub Inspector in the year 1998.

7. The respondents further submits that according to vacancy of 1998, the applicant was not eligible for promotion thus the

applicant was not considered for the vacancy year 1999-2000 on the basis of finding of the DPC held on 02/03.08.2006. According to Para 17.10 of the consolidated instructions under Chapter-3 titled as "Departmental Promotion Committee" of Swamy's compilation on Seniority and Promotion (Annexure R-3), the general principal is that, promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion whichever is later. In this case, the applicant was promoted as Sub-Inspector w.e.f. 10.08.2006 on the basis of finding of the DPC held on 02/03.08.2006. Hence the applicant is not entitled for the promotion as Sub-Inspector earlier to the date of his joining viz. 10.08.2006.

8. The respondents further submits that as per the relief clause of the application, the applicant is claiming the benefits w.e.f. 09.08.1999, 01.08.2000 and 01.08.2006 and this Original Application has been filed by the applicant before this Tribunal on 12.01.2016.. Hence this application may be dismissed on the ground of delay.

9. Heard the learned counsel for the parties, perused the pleadings and the documents annexed therewith.

10. From the pleadings it is crystal clear that the applicant was granted benefit after 10 years and was given first ACP on

09.08.1999. The second financial up-gradation under ACP was granted to the applicant with effect from 01.08.2000. The Assured Career Progression Scheme ('ACP') is applicable with effect from 09.08.1999. It is an admitted fact by both the parties that the applicant was appointed to the post of Sepoy (Constable) on 30.07.1976 and he got promoted to the post of Sub Inspector vide order dated 09.08.2006 (Annexure A-1). The contention of the applicant is that the similarly situated persons were promoted from the post of Sepoy to the post of Sub Inspector by the DPC held in the year 1998-1999. A similar treatment should have been given to the applicant also. It has been contended by the applicant that for the reasons best known to the respondents, the DPC for the year 1999-2000 was not conducted in due time resulting in financial stagnation to the applicant as he could not be considered for grant of second financial up-gradation despite the fact that the post of Sub-Inspector for the year 1999-2000 applicant should have been confer the benefit of second financial up-gradation under MACP of 1999.

11. The applicant has relied upon the judgment passed by the Division Bench of Punjab and Haryana High Court at Chandigarh in the matters of Union of India and others vs. Rajpal and another

in civil Writ Petition No. 19387/2011 (O&M) vide order dated 19.10.2011 (Annexure A-2).

12. On the other side the contention of the respondent department is that the applicant was a sepoy in the pay scale of Rs. 2610-3540 at the time of consideration of his case for grant of 1st financial upgradation under ACP scheme and has been given the first financial upgradation under ACP Scheme with effect from 09.08.1999 in the scale of Rs. 2650-4000. the 2nd financial upgradation under ACP's was granted to the applicant w.e.f. 30.07.2000 in the scale of Rs. 3050-4590 from Rs. 2650-4000 by the screening committee held on 01.06.2000. So as per that scheme 2 benefits can be granted after completion of every 12 years. A copy of ACP Memorandum is annexed as Annexure R/1.

13. It has been specifically contended by the respondents that Modified Assured Career Progression Scheme (MACP) is applicable w.e.f. 01.09.2008 and as per MACP 3 benefits can be granted only after completion of every 10 years, thus on completion of 30 years service, 3rd financial upgradation was granted to the applicant under MACP w.e.f. 01.09.2008 in the grade pay of Rs. 2800/- (PB-1) by the Screening Committee held on 26.07.2012 (Annexure R/2).

14. It has been specifically denied by the respondents that similarly situated persons has been given the second ACP. Due to the fact that other persons were promoted as Sub Inspector in the year 1998 and the applicant has been promoted with effect from 10.08.2006. According to vacancy of 1998, the applicant was not eligible for promotion thus the applicant was not considered for the vacancy year 1999-2000 on the basis of finding of the DPC held on 02/03.08.2006.

15. The replying respondents have specifically relied on Para 17.10 of the consolidated instructions under Chapter-3 titled as “Departmental Promotion Committee” of Swamy’s compilation on Seniority and Promotion (Annexure R-3). The general principle is that, promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion whichever is later. As the applicant was promoted as Sub-Inspector with effect from 10.08.2006 on the basis of recommendation of the DPC held on 02/03.08.2006. Hence the applicant is not entitled for promotion to Sub Inspector earlier to the date of his joining i.e. 10.08.2006.

16. So the facts are very clear as the applicant was promoted on 10.08.2006, whereas the other persons were promoted in the year 1998. As per Para 17.10 of the consolidated instructions under

Chapter-3 titled as “Departmental Promotion Committee” of Swamy’s compilation on Seniority and Promotion. The relevant portion of which reads as under:

Date from which promotions are to be treated as regular:

“17.10: The general principle is that, promotion of officers included in the panel would be regular from the date of validity of the panel or the date of their actual promotion, whichever is later.”

17. In view of the above situation as the DPC was held on 02/03.08.2006 and the applicant was promoted and joined on 10.08.2006, so in view of the above para 17.10 the applicant has been rightly given the second ACP in the year of 1999-2000. According to the year of 1998 the applicant was not considered because the applicant was not eligible for promotion.

18. From the reply it is very clear that the other persons were promoted in the year 1998 and the applicant was promoted in the year 2006. Under ACP scheme second financial up-gradation is to be given after 12 years. MACP has come into effect with effect from 01.09.2008 and the applicant is entitled for IIIrd up-gradation after completion of 30 years of service and the same was granted to the applicant with effect from 01.02.2008.

19. In view of the above position, we do not find any ambiguity or illegality in the order passed by the competent authority. Hence,

the Original Application has no merit and the same is dismissed.

No order as to costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member