



2025:DHC:1477-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 06.03.2025

+ W.P.(C) 11267/2021
SURESH KUMAR & ANR.Petitioners

Through: Mr.Naushad Alam and
Ms.Ruchika Yadav, Advs.

versus

UNION OF INDIA & ANR.Respondents

Through: Mr.Vikram N. Goyal and
Mr.Nitin, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

CM APPL. 34683/2021 (Exemption)

1. Allowed, subject to all just exceptions.

W.P.(C) 11267/2021

2. This petition has been filed by the petitioners, praying for the following reliefs: -

“A. Issue a Writ in the nature of mandamus or other suitable writ or order or direction thereby commanding the Respondents to grant financial up gradations to the Petitioners under Office Memorandum (ACP) bearing No. 35034/1/97-Estt(D) dated 09.08.1999 in the Pay Scale of 5500-9000 of Post/Grade S-10 on completion of 24 years of service reckoned from the date of their initial appointments as CT/GD.

B. Issue a Writ in the nature of mandamus or other suitable writ or order or direction thereby commanding the Respondent to grant



the third financial up gradations to the Petitioners under MACPS (Office Memorandum bearing No. 35034/3/2008-Estt. (D) dated 19.05.2009 in the Pay Band (i.e, PB-2- 9300-34800 with Grade Pay of 4600 on completion of 30 years of service on 10.12.2010 and 09.05.2011 respectively followed by pay fixation under 7th Central Pay Commission w.e.f 01.01.2016;

C. Issue a Writ in the nature of mandamus or other suitable writ or order or direction thereby commanding the Respondent to pay the arrears of pay and other benefits and refix the pension which the petitioners are entitled to; and.”

3. The learned counsel of the respondents submits that since the petitioner no 1 was promoted to the post of NK (RO) on 01.10.1985 and the petitioner no 2 was promoted to the post of NK (RO) in October, 1988, their service for the purposes of the ACP and the MACP benefit must be counted from those respective date.

4. We are unable to accept the above submission. This Court has already considered and rejected the said submission in its Judgment dated 29.01.2016 passed in W.P.(C) 388/2015 titled as ***Om Prakash & Ors. v. Union of India & Ors***, holding as under:

“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,"

5. Review against the above Judgment was also dismissed by this Court, *vide* its Judgment dated 29.01.2016, holding as under:

"12. We have considered the rival contentions of the parties and on going through the documents and OM relied upon by the parties, it is clear that clarification No. 4, 5 and 6 relied upon by the respondents are not applicable in the present case whereas clarification No.1 squarely covers the case of the petitioners for the reason the petitioners were appointed as Constable (GD) in the CRPF and were thereafter remustered as Naik RO. However, in the year 1997 the post of Naik RO was merged in the rank of Head Constable (RO) and as per clarification No.1 of DOPT's OM dated 10.02.2000 it has been clearly spelt out 'since the benefit of upgradation under the ACP Scheme are to be allowed in the existing hierarchy, the mobility under the ACP Scheme shall be in the hierarchy existing after merger of pay scales by ignoring the promotion. An employee who got promoted from lower pay scale to higher pay scale as a result of promotion before merger of pay scale shall be entitled for upgradation under the ACP Scheme ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a vis the fresh entrant in the merged grade. Thus a bare perusal of the above clarification clearly shows that upgradation under the ACP



Scheme are to be allowed in the existing hierarchy. After 1997 the hierarchy prevalent in CRPF is that of Constable (RO) and then Head Constable (RO). As of today there is no post of Naik RO. Not only this, the clarification further clarifies that an employee who got promoted from a lower pay scale to a higher pay scale as a result of promotion before merger of pay scales shall be entitled for upgradation under the ACP Scheme ignoring the said promotion. Meaning thereby that in the present case the petitioner was appointed as Constable (GD) and was thereafter re-mustered as Naik RO in a higher pay scale but however, in year 1997 the post of Naik RO was merged with that of Head Constable (RO). Therefore, as per the clarification the re-mustering to the rank of Naik RO is required to be ignored for grant of ACP. As far as the judgments relied upon by the respondents is concerned the same do not deal with the issue in hand and therefore are of no consequence to the present case.”

6. The Special Leave Petition against the above Judgment, being SLP (C) No.24453-24458/2016, titled **UOI v. Om Prakash**, has recently been dismissed by the Supreme Court *vide* its Order dated 12.12.2024.

7. Accordingly, we direct the respondents to consider the case of the petitioners for the grant of the ACP and the MACP benefits in accordance with the above Judgments, taking into account petitioners' initial appointment to the rank of Constable (GD), that is, 11.12.1980 for petitioner no.1 and on 05.05.1981 for the petitioner no.2 is concerned.

8. The respondents shall issue consequential orders in implementation of the above, within a period of 12 weeks from today.

