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

Decided on : 31.07.2015

+ W.P.(C) 7177/2015 and CM No. 13197/2015

P. PERUMAL

..... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

+ W.P.(C) 7191/2015 and CM No. 13212/2015

OM PRAKASH

..... Petitioner

versus

UNION OF INDIA AND ORS.

..... Respondents

And

+ W.P.(C) 7199/2015 and CM No. 13225/2015

SHIVPAL SINGH

..... Petitioner

versus

UNION OF INDIA & ORS

..... Respondents

**Represented by: Mr Ankur Chhibber, Advocate for
the Petitioners**

**Represented by: Mrs Bharthi Raju, CGSC for
Respondents.**

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE V.K. SHALI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The petitioners in all these proceedings claim second financial upgradation in terms of the Assured Career Progression (ACP) Scheme promulgated on 09.08.1999 by the Central Government. The said ACP Scheme assures that subject to fulfillment of eligibility and qualification criteria, an employee who misses out his promotion in the regular promotion under the Rules would be granted two financial upgradations.

2. The respondents contend that some of the petitioners were given promotion in their turn as Lance Naik and Naik after they were re-mustered. It is, however, pointed on behalf of the petitioners that re-mustering is not relevant for the grant of the ACP benefits which have to flow independently from the date of appointment. The petitioners rely—for this purpose—on the judgment of this Court in ***Om Prakash and Ors. vs. UOI and Ors: W.P.(C) No. 388/2015***, decided on 05.03.2015. In ***Om Prakash and Ors.*** (*supra*), the Court had dealt with the identical objection to the claim for ACP benefits and overruled it in the following terms:-

“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shows that Clause III of the letter dated October 27, 2014 issued by the respondents has already been nullified and superseded by the clarification issued by the respondents on February 16, 2015 and the signal dated February 20, 2015.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.

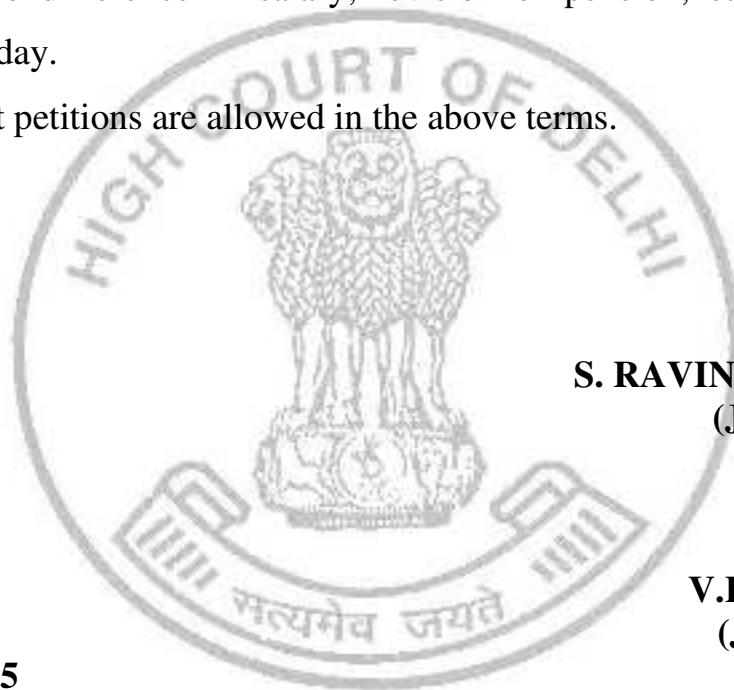
17. The ACP Scheme is clear. It envisages first ACP benefit after 12 years' service was rendered and the second benefit after 24 years' service was rendered if within the first twelve years no promotion could be earned and in 24 years' service a second promotion could not be earned. Since all petitioners 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 pre-promotional 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.”

3. In the light of the above position, following the decision of ***Om Prakash and Ors.*** (*supra*), a direction is issued to the respondents to grant the second financial upgradation under the ACP Scheme to all the petitioners within eight weeks. Where the petitioners have already retired, the respondents shall issue the necessary orders and release the arrears constituting the difference in salary, revision of pension, etc. within 12 weeks from today.

4. The writ petitions are allowed in the above terms.

Dasti.



**S. RAVINDRA BHAT
(JUDGE)**

**V.K. SHALI
(JUDGE)**

**JULY 31, 2015
BG**