



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP-23413-2018
Date of decision: 08.07.2025**

SATPAL SINGH

.....Petitioner

VERSUS

UNION OF INDIA AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Rajesh Sehgal, Advocate and
Ms. Disha Sehgal, Advocate
for the petitioner.

Ms. Garima Kuthiala Prashar, Advocate for
Mr. Chander Mohan Sharma, Advocate
for respondents No.1 to 5-Union of India.

VINOD S. BHARDWAJ, J. (Oral)

The present writ petition has been filed impugning the order dated 28.06.2018 whereby the claim of Second ACP Financial Upgradation dated 15.02.2017 was denied to the petitioner since he did not possess the essential qualification for the Modified Assured Career Progression Scheme.

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner was enrolled in the Border Security Force (BSF) on 15.02.1983 and he successfully underwent training at STC BSF Kharga



Camp, whereupon he was assigned the trade of General Duty with 22 BN BSF unit. The petitioner is claimed to have rendered unblemished service during his tenure with the respondent-authorities. It is further contended that the respondent-authorities had notified the grant of ACP/Financial upgradation to employees upon completion of the specified period of service. The petitioner submitted an application in August 2015 to the Company Commander seeking grant of the financial upgradation as per the scheme. However, the said representation was rejected by the respondents vide order dated 10.09.2015 on account of the petitioner not possessing the prescribed educational qualification on 15.10.2011 when the ACP Scheme was in force. The petitioner retired from service on 16.04.2016 and thereafter served a notice of demand dated 19.02.2018 praying for the grant of the benefit of financial upgradation on the ground that the reasons recorded earlier were factually incorrect and, accordingly, prayed for its setting aside, while reiterating his entitlement to the benefit of the Second Financial Upgradation under the ACP Scheme in the scale of Rs. 5500-175-9000.

3. The respondents, vide their communication dated 28.06.2018, declined the petitioner's claim on the ground that the benefit of financial upgradation under the ACP Scheme is available to a BSF personnel upon completion of 12 to 24 years of service and only on fulfillment of promotional conditions. For seeking the Second ACP on completion of 24 years of service, possession of educational qualification equivalent to matriculation was essential, which the petitioner did not possess.



4. It was noted that the petitioner passed his BSF First Class, which is equivalent to matriculation, on 15.10.2011 i.e. on a date after the ACP Scheme became inapplicable. The petitioner had also not cleared the mandatory courses required for promotion to a higher rank, namely MR STD-1st and PPC List D.

5. Learned counsel appearing on behalf of the petitioner relies upon the Office Memorandum No. 35034/1/97-Establishment (D) dated 09.08.1999 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions and contends that the above Short Career Progression Scheme for Central Government Civilian Employees, which has been relied upon in the impugned communication dated 28.06.2018, does not prescribe that clearance of BSF First Class or matriculation qualification is mandatory for grant of financial upgradation. He submits that, in terms of Clause VI of the said Office Memorandum, a person is only required to fulfill the normal promotional norms for entitlement to benefits under the ACP Scheme. The qualification stipulated in the impugned communication, therefore, is not supported by the said Office Memorandum and hence rejection of his claim is liable to be set aside. The relevant extract thereof reads thus:-

“6. Fulfillment of normal promotion norms (benchmark, departmental examination, seniority-cum-fitness in the case of Group 'D' employees, etc.) for grant of financial up-gradation, performance of such duties as are entrusted to the employees together with retention of old designations, financial up-gradation as personal to the



incumbent for the stated purposes and restriction of the ACP Scheme for financial and certain other benefits (House Building Advance, allotment of Government accommodation, advances, etc) only without conferring any privileges related to higher status (e.g. invitation to ceremonial functions, deputation to higher posts, etc) shall be ensured for grant of benefits under the ACP Scheme;”

6. Learned counsel thus submits that the petitioner fulfilled the normal promotional norms as prescribed under the applicable rules and guidelines wherein there is no mandate that a person must be a matriculate or should have cleared the BSF 1st Class examination as a condition precedent for grant of financial upgradation.

7. It is further submitted that the primary object of the ACP Scheme is to mitigate stagnation in the cadre and facilitate career progression. Such benefits cannot be denied by imposing conditions, such as clearance of departmental examinations or pre-promotional courses since the same are extraneous to the scheme's purpose. In this regard, reliance is placed upon the judgment of a Division Bench of this Court in ***LPA No. 1865 of 2015*** titled as ***State of Haryana & Ors. v. Parmanand & Ors.***, wherein it was held that any stipulation making clearance of departmental examinations or promotional papers a condition precedent for grant of ACP benefits is contrary to the object underlying the scheme and directed release of the benefits.



8. Counsel further argues that the respondents were duty-bound to apprise the petitioner of the schedule and details regarding the BSF 1st Class Examination as well as the pre-promotional courses. The failure of the respondents to provide such information resulted in the petitioner being deprived of the opportunity to appear for the said examination or courses. It is undisputed that the petitioner cleared the BSF 1st Class examination, which is equivalent to matriculation, in the year 2011, hence, he fulfilled the essential conditions for grant of the benefit.

9. Reliance is also placed on the decision of the Division Bench of the Delhi High Court in CWP-5278 of 2013 (Inspector Ram Avtar Sharma v. Union of India), where the Court directed relaxation in the requirement of successful completion of pre-promotional courses for the grant of ACP benefits, where the respondents failed to inform the petitioner about the conduct of such courses. In compliance with the said judgment, the respondents issued instructions dated 22.09.2014 granting relaxation to officials for grant of the 1st ACP (Head Constable) and 2nd ACP (Constable to Sub Inspector).

10. It is submitted that the ratio of the said decision is squarely applicable to the present case and the requirement of possessing matriculation/BSF 1st Class qualifications along with completion of pre-promotional courses cannot operate to the petitioner's detriment in absence of any communication or detailing by the respondents regarding the conduct of the examination or courses. Such omission disentitles the respondents



from alleging non-compliance of these promotional conditions to deny him the benefit of financial upgradation under the ACP Scheme.

11. Learned counsel further relies upon the judgment of the Division Bench of the High Court of Himachal Pradesh reported as **2014 ILR (HP) 447** titled “**Govind Ram v. Union of India**”, decided in **CWP-8272 of 2014** on **21.11.2014**. It was held therein that the responsibility to ensure that an employee undergoes the mandatory pre-promotional courses lies with the respondents. In circumstances where an employee never refused to undertake such courses or deployment, any lapse in conducting the mandatory requirements, that were to be held by the respondent alone, must be attributed to the respondent-employer. The Court directed the release of financial upgradation benefits, deeming the mandatory condition of undergoing the pre-promotional courses as waived, by necessary implication. This principle was invoked herein to submit that, in the present case, any failure on the part of the respondents to inform or facilitate the petitioner to undergo the mandatory pre-promotional courses cannot be held against him, and the benefit of financial upgradation ought to be granted accordingly. The relevant para thereof reads thus:-

“3. Petitioner was promoted as Head Constable in the year 2001. He superannuated in the year 2009. The Ministry of Finance, Government of India vide order dated 23.8.2012 agreed to the proposal of the Ministry of Home Affairs, Government of India for implementation of the Delhi High Court orders for the grant of benefit of Assured Career Progression Scheme.



Similarly, Ministry of Home Affairs Issued office order dated 27.8.2012 stating that the Ministry of Finance has agreed to implement the orders of the Delhi High Court for the grant of benefit of Assured Career Progression Scheme. In furtherance of office orders dated 23.8.2012 and 27.8.2012, respondent No. 3, i.e. Director General (SSB) sent a copy of office orders 23.8.2012 and 27.8.2012 to all the concerned including the Commandants of all the Battalions for information and necessary compliance. Respondent No. 3 on 3.5.2013 requested all the concerns including the Commandants of all the Battalions to confirm grant of financial up-gradation under Assured Career Progression Scheme to the post of Sub Inspector to all the eligible Constables/Head Constables including retired personnel in accordance with the original Assured Career Progression Scheme of the year 1999. Representation was made by the petitioner. Representation was rejected by the respondents on 16.9.2014 only on the ground that as per instructions, petitioner was not entitled to grant of 2nd financial up-gradation benefits w.e.f. 9.8.1999 without fulfilling the normal promotion norms/qualifying mandatory pre-promotional course in accordance with original ACP Scheme and MHA letter dated 19.6.2001. Memorandum dated 16.9.2014 is contrary to the scheme. Petitioner was entitled to benefit of ACP scheme immediately after the completion of 24 years as per para 15, as quoted herein above. It was for the respondents to ensure to make the petitioner to undergo mandatory pre-promotional course. It is not the case of the respondents that the petitioner was sent to undergo mandatory pre-



promotional course and he has refused to undergo the same. According to the scheme, the financial upgradation under the ACP Scheme was purely personal to the employee and has no relevance to his seniority position. It merely contemplates placement on personal basis in the higher pay scale and was to be treated actual/functional promotion of the employees concerned. Petitioner has earned only one promotion throughout his career when he was promoted as Head Constable in the year 2001. The condition, if any, Imposed in the ACP scheme would be deemed to have been waived.”

12. Per contra, learned counsel appearing on behalf of the respondents submits that the petitioner was not eligible for the next promotional avenue since he had neither qualified the BSF 1st Class Education nor did he possess a matriculation certificate, both of which were essential qualifications for being promoted and to be considered for the grant of the 2nd Financial Upgradation in the pay scale of Rs. 5500-175-9000. The denial of such benefit was thus rightly effected by the respondent-authorities. Learned counsel further relies on the specific averments contained in para 7(i) of the written statement filed by the respondents to argue that the department had, on multiple occasions, sought nominations from willing personnel for undergoing BSF 1st Class Education. It is submitted that the petitioner never expressed his willingness to undergo the said training or to appear in the requisite examination. It is urged that the petitioner cannot now be permitted to take advantage of his own omission or inaction and then claim parity with those who complied with the



requirements. Attention is also drawn to the letter dated 10.01.2023 issued by the Frontier Headquarters, BSF, which prescribes the mandatory conditions for promotion from the post of Head Constable (General Duty) to that of Sub-Inspector (General Duty). Learned counsel submits that these conditions were well within the knowledge of all eligible personnel, including the petitioner, and having failed to comply with the same, the petitioner cannot now claim exemption or relaxation. The relevant extract of the aforesaid letter is as under:-

“Further, as per FHQ BSF (Pers Dte) L/No. 17/08/2/2002/Pers/BSF/5413-5713 dated 10.01.2003, fulfillment of the following conditions was mandatory for promotion from HC (GD) to the rank of SI (GD):-

- a) Essential qualification is minimum matriculation/10th class pass or equivalent.*
- b) Should be qualified in the following:-*
 - i) Basic training as prescribed at entry level.*
 - ii) Map Reading Standard*
 - iii) Pre-promotion course as prescribed for the post (i.e. platoon Comdr Course). Candidate will undergo the same as per cutoff date of seniority fixed by FHQ BSF.*
 - iv) Medical Category-SHAPE-I.*

13. Learned counsel for the respondents further submits that although the condition of qualifying the pre-promotional courses, namely PPC List ‘D’ and Map Reading–Standard 1st, was waived by the



respondents vide letter dated 22.09.2014 as an essential prerequisite for grant of 2nd Financial Upgradation under the ACP Scheme, yet, other qualifying conditions still remained intact. These included the requirement of being in medical category SHAPE-1 and possessing the minimum educational qualification of matriculation or its equivalent, i.e. BSF 1st Class. She submits that the obligation to acquire the essential minimum qualifications rested solely upon the petitioner and that there is no material on record to show that the petitioner ever made any effort to acquire the said qualification during the currency of the ACP Scheme. Merely because the petitioner later cleared the BSF 1st Class in the year 2011, at a time when the ACP Scheme was no longer in force, cannot vest in him a right to seek financial upgradation with retrospective effect. She submits that the petitioner cannot be permitted to claim the benefit of a higher standard pay scale under the ACP Scheme while failing to meet the essential eligibility criteria.

14. Learned counsel further submitted that the benefits, to which the petitioner was legitimately entitled, have already been extended to him and all subsequent financial advancements under the Modified Assured Career Progression (MACP) Scheme have been released. It is contended that the petitioner, having accepted and availed the financial benefits under the MACP Scheme, would be precluded and disentitled from staking a claim to the financial upgradation under the earlier ACP Scheme. The argument, in substance, is that the petitioner cannot be permitted to approbate and



reprobate and simultaneously derive benefit under two distinct service progression schemes.

15. No other argument has been raised before this Court.

16. I have heard learned Counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present writ petition.

17. Undisputedly, the mandatory requirement of undergoing the pre-promotional course was dispensed with by the respondents vide instructions dated 22.09.2014. The ground on which the petitioner has been held ineligible and denied the benefit of 2nd ACP/financial upgradation is non-possession of the qualification of matriculation and/or BSF 1st Class, which is stated to be a condition for promotion. It is evident from the record that the requirement of possessing matriculation or its equivalent stems from a communication dated 10.01.2003 issued by the Frontier Headquarters and not from any codified service rules. It is the specific plea of the respondents that personnel were apprised regarding the conduct of the BSF 1st Class examination and invited to volunteer themselves therefore, but the petitioner allegedly failed to do so. This assertion, however stands unsupported by any contemporaneous record and remains unsubstantiated, vague and evasive. The respondents have not produced or even referenced any particular communication or record emanating from the headquarters intimating the conduct of the said examination or inviting nominations from amongst willing personnel. No document evidencing the alleged call for nominations



has been appended with the reply filed to the writ petition. It is further to be noticed that the present writ petition was instituted as far back as in the year 2017 and despite lapse of considerable time of eight years, no justification or explanation has been furnished by the respondents for withholding documents, which were in their exclusive possession and which would have fully established their defence. It is trite law that where the best evidence in the possession of a party is withheld, an adverse inference is liable to be drawn against such party. The deliberate non-disclosure of correspondence, record and proof of communication claimed to have been issued to personnel calling upon them to appear for the BSF 1st Class examination warrants invocation of such adverse inference in the present case. This Court is thus constrained to record a finding that no such communication or detailing ever took place from the end of the respondents with regard to the conduct of the BSF 1st Class examination or the pre-promotion course. The proposition of law laid down by the Hon'ble Delhi High Court in ***Ram Avtar Sharma v. Union of India (CWP No. 5278 of 2013)***, which has undisputedly been implemented by the respondents through their own instructions dated 22.09.2014, would squarely apply to the petitioner's case as well, particularly insofar as the requirement of pre-promotional qualification is concerned.

18. Insofar as the submission advanced on behalf of the respondents to the effect that the petitioner is not entitled to the benefit of the 2nd Financial Upgradation under the Assured Career Progression (ACP) Scheme of 1999, having already been conferred the benefits under the Modified



Assured Career Progression (MACP) Scheme, is concerned—this Court is not inclined to accept the said argument at this stage. It is to be noted that such a plea neither forms part of the pleaded case of the respondents nor has it been cited as a ground or reason in the impugned communication dated 28.06.2018. It is equally well-settled that an administrative order must stand or fall on the reasons assigned therein. A public authority cannot be permitted to supplement the reasons of an order during oral submissions. It is not open to the Counsel for the respondents to rely upon grounds that are extraneous to the decision-making process or which do not find mention in the decision under challenge. The legitimacy and sustainability of administrative action must be tested on the reasons expressly recorded in support thereof and cannot rest upon improvised arguments by counsel at the bar.

19. A Division Bench of this Court has held in the matter of “***State of Haryana versus Parmanand and others***” bearing LPA No. 1865/2015 decided on 05.03.2025, that insistence on acquisition of eligibility and qualification prescribed for promotion as pre-requisite to claim ACP is contrary to the object. The career progression Schemes aim to compensate for stagnation by way of a financial upgradation and its objective gets defeated by imposing such conditions. Relevant extract thereof reads thus:-

“6. Explicitly, the object of framing the Rules of 1998 as well as the Rules of 2008 was to ensure that no Government servant stagnates without any financial upgradation for more than 10 years unless he has already



availed 03 financial upgradations in his career. It goes undisputed between the parties that these Rules are applicable to the respondents. The appellants have also not disputed the factum of the completion of requisite service tenure by the respondents for grant of 2nd/3rd ACP Scales, as the case may be. The sole objection, as set-forth by the appellants to deny the above-said benefit to the respondents, is that they had not cleared/passed the departmental test/exam for the post of 'Kanungo'. However, they (appellants) have not denied the fact that some similarly placed 'Patwaris' were granted ACP Scales by exempting them from clearing/passing the departmental test.

7. *In **Amresh Kumar Sinha & Ors (supra)**, Hon'ble the Supreme Court has relied upon the observations made by the Three Judges' Bench of the Apex Court in **Union of India & Anr (supra)** and has held that "the qualification of graduation was prescribed for the promotion to the post of Accounts Officer rather than for grant of in-situ promotion on the non-functional post or for extending the benefit of ACP which was purely and simply in the nature of grant of monetary benefit without actually effectuating any promotion to any higher post and the appellants were to be extended the benefit of ACP".*

8. *It is worth-while to mention here that while answering the reference in **Kamlanand Thakur versus The State of Bihar and others, 2025(1) SLR 695**, the Full Bench of Patna High Court has also relied upon the afore-quoted verdict of the Apex Court and has observed as under:-*



“48. Thus, the questions stand answered as follows :-

(A.) Rule 157(3)[J] of the Bihar Board’s Miscellaneous Rules, 1958, requiring passing of Departmental Accounts Examination for promotion, is not applicable in case of grant of A.C.P. benefits under the A.C.P. Rules, 2003;

(B.) Rule 157(3)[J] of the Bihar Board’s Miscellaneous Rules, 1958 is confined to passing of preliminary examination/final examination in Accounts only for the purpose of confirmation, crossing the efficiency bar and promotion to Selection Grade only and not for regular promotion;

(C.) Rule 4(5) of the A.C.P. Rules, 2003 even though provides that the prescribed requirements and mode of sanction of financial progression under the scheme (A.C.P.scheme) shall be the same which are prescribed under the Recruitment/Service Rules for regular promotion against vacancies and if the Rules/Resolutions prescribe passing of Department Examination or any qualification for promotion, that shall also be an essential condition for sanction of benefit under the scheme will not affect the claim for grant of A.C.P. after completion of twelve/twenty four years of service for the reason that such financial progression under the A.C.P. scheme is only in situ promotion and nothing more. This is even notwithstanding any such requirement of passing any Departmental Examination or acquiring any



educational qualification for promotion under the Service/Recruitment/Promotion Rules.”

*The above-quoted observations, as made by Hon’ble Supreme Court in **Amresh Kumar Sinha & Ors (supra)** and by the Full Bench of the Patna High Court in **Kamlanand Thakur (supra)**, are fully applicable to the instant appeals and in view of these observations and also the fact that some ‘Patwaris’, who were similarly placed, have been exempted from passing the afore-referred exam/test and have been granted the benefit of ACP Scales, it is held that the respondents-writ petitioners cannot be deprived of the benefit of ACP Scales on account of their not having cleared/passed the departmental test/exam for the post of ‘Kanungo’.*

20. Accordingly, the present writ petition is allowed and the impugned order dated 28.06.2018 is set aside. The respondents are directed to extend the benefit of the 2nd ACP to the petitioner, in accordance with the provisions of the ACP Scheme of 1999, within a period of three months of the receipt of a certified copy of this order, failing which, the petitioner shall be entitled to receive the benefits alongwith interest @ 6% per annum from the date of filing of the present writ petition till its actual disbursement.

(VINOD S. BHARDWAJ)
JUDGE

JULY 08, 2025
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No