

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18002 of 2011

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1. Ashok Kumar II S/O Sri Krishna Kant Prasad R/O Saket Vihar, Mitra Mandal Colony, Anisabad, Patna-2, Posted As Data Entry Operator, Grade 'B', At The Data Processing Division, Now Data Capturing Centre, Directorate Of Census Operation, Bihar, Patna
 2. Anup Kumar Sinha S/O Late Hardeo Narayan Lal R/O Mohalla- Pathrighat, P.S.- Alamganj, Patna, Posted As Data Entry Operator, Grade 'B', At The Data Processing Division, Now Data Capturing Centre, Directorate Of Census Operation, Bihar, Patna
 3. Devnandan Prasad Yadav S/O Late Hari Singh Yadav R/O Vikas Nagar, Sandalpur Road, Patna-6, Posted As Data Entry Operator, Grade 'B', At The Data Processing Division, Now Data Capturing Centre, Directorate Of Census Operation, Bihar, Patna
 4. Bhola Nath Singh S/O Late Mahabir Prasad R/O Bikhna Pahari, Patna-4, Posted As Data Entry Operator, Grade 'B', At The Data Processing Division, Now Data Capturing Centre, Directorate Of Census Operation, Bihar, Patna
 5. Balram Das S/O Sri Virendra Narayan Das R/O Village And P.O.- Balaur, P.S.- Manigachi, Distt.- Dharbhanga, Posted As Data Entry Operator, Grade 'B', At The Data Processing Division, Now Data Capturing Centre, Directorate Of Census Operation, Bihar, Patna

.... Petitioner/s

Versus

1. The Union Of India Through The Registrar General Of India Kota House, Annexe-1, 2/A Man Singh Road, New Delhi
2. The Director, Directorate Of Census Operations Bihar, Patna, Boring Canal Road, Patna Now Situated At Bihar State Co-Operative Bank Building, Ashok Raj Path, Patna-800004
3. The Joint Director, Directorate Of Census Operations Bihar, Patna, Boring Canal Road, Patna, Now Situated At Bihar State Co-Operative Bank Building, Ashok Raj Patha, Patna-800004
4. The Deputy Director (Adm.) Directorate Of Census Operations, Bihar, Patna, Boring Canal Road, Patna Now Situated At Bihar State Co-Operative Bank Building, Ashok Raj Path, Patna-800004
5. The Assistant Director (Adm.) Director Of Census Operations, Bihar, Patna, Boring Canal Road, Patna, Now Situated At Bihar State Co-Operative Bank Building, Ashok Raj Path, Patna-800004

.... Respondent/s

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Appearance :

For the Petitioner/s : M/S.SHYAMA PRASAD MUKHERJEE,SENIOR
ADVOCATE AND PRADIP KUMAR,ADVOCATE

For the Respondent/s : MR. SANJAY KUMAR(ASST.SG)

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)
Date: 10-09-2015



The five petitioners are Data Entry Operators in the Directorate of Census, posted in Bihar. The A.C.P. came in their Department with effect from 9-8-1999. They have been in continuous service without problem for over twelve years. Their claim is that they are entitled to A.C.P. from 1999 itself. It appears that their cases were considered for grant of A.C.P. in the year 2000. To the authorities it was pointed out that in the year 1995-96 all had adverse entries in their A.C.Rs. They were, thus, not granted A.C.P. because five years from the period when adverse entries are made, they are not entitled to any promotion, and hence not competent to get A.C.P. They were then granted A.C.P. after due consideration with effect from 2002. Being aggrieved, they had moved the Central Administrative Tribunal, Patna Bench. The Central Administrative Tribunal held that their claim to A.C.P. of the year 1999 which was, in fact, to be considered in the year 2000, having been rejected, a Review Board had to reconsider the matter after one year. Thus, their application before the Tribunal was allowed. The authorities considered the matter again and granted them A.C.P. with effect from 2001. The petitioners filed a review application before the Tribunal, which was rejected and rightly so. This is what brought them to this Court.

2. Sri Shyama Prasad Mukherjee, learned senior counsel in support of the writ petition submits that there is no dispute that there were adverse entries in the character rolls of all the five petitioners entered in 1995-96. This is done in terms of All India Service(Confidential) Rules 1970. Rule 10 of the said Rules itself provides that once an adverse entry is made in the A.C.R., it has to be communicated to the person, and if the person files a representation against such



an entry, the representation must be decided as far as possible within three months. Sri Mukherjee then submits that there is an Executive Clarification issued in the year 1978, which clearly states that so long a representation against an adverse entry remains pending, the adverse entry cannot be taken note of against the person concerned. The submission of Mr. Mukherjee would then be that in the year 2000 their representations were pending as against the adverse entries. That being so, the authorities committed a mistake in not ignoring the adverse entries in the A.C.Rs., and had the authorities followed this procedure, they should have got their A.C.P in 2000 itself.

3. On the other hand, Mr. Sanjay Kumar, learned counsel for the Central Government submits that the representations of all the five petitioners were rejected by the Government on 2-5-2001, and it is because of that they were granted A.C.P. with effect from 2002. He submits that once the representations have been rejected, now the A.C.Rs cannot be ignored. This Court must, therefore, not grant a relief on a technical plea of default when that relief is not available in substance.

4. Having considered the matter in law, the submission of Mr. Mukherjee is correct, but when we come to fact, we are unable to accede to the request of the grant of any relief. The reasons are thus. Rule 10 of the aforesaid Rules, which provides that a representation against an adverse entry has to be disposed of as far as possible within three months, can only be held to be Directory, for there are consequences for failure contemplated therein. If that being Directory, then it is incumbent upon the authorities to either deal with the matter within three months or not having dealt with the representation within three months, to ignore the A.C.R. or the adverse entries therein. The Executive Circular of 1978 is merely a Clarificatory Circular. Had the Government not

rejected the representations, even though belatedly, then this Court could have found in favour of the petitioners that in view of the Executive Clarification, the adverse entries in the A.C.Rs. would have required to be ignored so long the representations remained undisposed. But, the fact is that the representations were indeed rejected in the year 2001, as indicated above. The representations having been rejected, the fact is that the adverse entries in the A.C.Rs remain an impediment in the career prospects of the petitioners. Can upon the technicality of representations not being disposed of in time, now in view of the aforesaid facts, the Court can ignore the adverse entries? Surely it cannot. This is a *fait accompli*. Once the adverse entries remain, in our view, it would not be proper for this Court to interfere, because if we were to hold that in the year 2000 A.C.P. be granted, then by virtue of representations being rejected in 2001 for the adverse entries made in 1995-96, this would create a serious anomaly. It would virtually amount to granting A.C.P. notwithstanding the adverse entries in the A.C.R. No Court can violate the statutory order for statutory scheme. Thus, the representations, though belatedly having been rejected, the petitioners cannot be granted the relief of A.C.P.to be granted in the year 2000. Thus, we are unable to grant any relief to the writ petitioners.

5. The writ petition is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

BK.Roy/-

(Nilu Agrawal, J)

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