

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8193 of 2015

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Chandra Deo Sharma, Son of Late Parshuram Singh. Resident of village -
Punadih, Via - Begampur, Patna City, P.S.- Didarganj, District - Patna.
..... Petitioner

Versus

1. The Union of India through the Secretary Ministry of Home Affairs, New Delhi.
2. The Director General of C.R.P.F., C.G.O. Complex, New Delhi.
3. The I.G., C.R.P.F., Bihar Sector Patna.
4. The D.I.G. Group Centre C.R.P.F., Mokama Ghat, Patna.
5. The D.I.G. Establishment (Directorate C.R.P.F.), New Delhi.
6. The Company Commander Administration, Group Centre C.R.P.F., Mokama Ghat, Patna.

..... Respondents

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Appearance :

For the Petitioner/s : Mr. Ebrahim Kabir, Adv.

For the Respondent/s : Mr. Satyavrat Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 22-06-2015

Heard learned counsel for the parties.

The prayer of the petitioner in this writ application reads
as follows:

“That this is an application for issuance of an appropriate writ, order or direction commanding the respondents to grant second ACP benefits to the petitioner who is sub-Inspector/ GD No. 810040192 presently posted in Group Centre C.R.P.F. Mokama Ghat, Patna with effect from 12.5.2005 and not from 24.1.2007 as has been granted to the petitioner wrongly/ illegally and also further to grant him 3rd MACP benefits after proper revision alongwith arrears which also has not been granted properly in accordance with law, because of which Junior to the petitioner are getting salary much more than the petitioner namely No. 810705595 SI/GD Satendra Tiwari and also



No. 810697709 SI/GD Mangal Kumar Singh who are also posted in the Group Centre C.R.P.F. Mokama Ghat only which is highly discriminatory and also for ordering respondents to produce letter No. P-7-52, 2009- Est dated 10.11.2009 para-1 and 7 issued by D.I.G. (establishment) Directorate C.R.P.F. New Delhi and quash the same as the same is illegal and the copy of which has not been granted to the petitioner.”

Learned counsel for the petitioner submits that it is wholly unfair on the part of the respondents to deny the benefit of ACP from due date i.e. 12.5.2005 even when the petitioner despite being declared in Shape-II was assigned arduous duty in Jammu area. Learned counsel explains that once the petitioner had performed the duty in Jammu area it will be presumed that his being declared as Shape-II did not stand in his way of performance in discharge of his duty and as such, in all fairness the petitioner despite being in medical category Shape-II ought to have been given the benefit of ACP from 12.5.2005 instead of 24.1.2007.

Learned counsel for the petitioner has next contended that as a matter of fact the policy decision of the Central Government depriving any and every person of the force the benefit of ACP on account of his being placed in medical category Shape-II is itself arbitrary. He submits that since the copy of that circular could not become available the respondents should be directed to produce

the same and upon its production the same may be quashed as it is wholly unreasonable and per se arbitrary.

Learned counsel for the respondents, on the other hand, has submitted that not only the case of the petitioner for grant of ACP was considered in the light of the Government of India decision but was also decided objectively, inasmuch as day the petitioner was declared medically fit in Shape-I he was immediately given the benefit of ACP but then the petitioner cannot claim ACP as a matter of right in the period he was in medical category Shape-II. Learned counsel for the respondents in fact also wants to justify the rationale of such Government of India decision by explaining that maintaining high physical standard in a discipline force has to be given utmost importance and it means anything that even a category Shape-II officer is assigned arduous duty. According to him, there is no rule that an officer in Shape-II category cannot be placed in Jammu area or for that purpose at a difficult place of posting.

In the considered opinion of this Court the respondents having considered the case of the petitioner on two occasions for grant of ACP and ultimately granting such benefit of ACP to him with effect from 24.1.2007 cannot be held to be liable for making any revision. The petitioner admittedly was in medical category



Shape-II in the year 2005 and this classification of the petitioner is not under challenge. Moment the petitioner had accepted his categorization as Shape-II, he had to bear the consequences of the Government decision laying down norms of grant of ACP. The impugned order, as contained in Annexure 3, itself refers to the Government decision dated 12.5.2005 clearly laying down that in order to earn ACP the person concerned must be in medical category, Shape-I. In that view of the matter, the denial of ACP to the petitioner in the year 2005 with effect from 12.5.2005 cannot be faulted as the ACP could not have been granted to the petitioner contrary to the Government policy.

As with regard to rationale of such policy this Court would not find anything arbitrary or illogical wherein the officer concerned is deprived of the benefit of ACP in the period he is not in the best of physical standard i.e. medical category, Shape-I. The reason for the same also is very clear. An Officer in the discipline force in order to perform his duty must be fully medically fit. ACP is nothing but substitute the promotion for want of sanctioned vacant post. The scheme of ACP or for that purpose time bound promotion in fact came as a substitute only in order to bolster the incumbent continuing in service with a hope to earn promotion even though not in post but at least by way of financial benefit.

These concept of time bound promotion and ACP invariably flowing from the reports of Pay Revision Committee, therefore, has always contained a clause that the incumbent in order to get the benefit of time bound promotion or ACP must be fully eligible to earn promotion. It is here that rationale gets fully explained that a person in inferior category medical fitness will not be entitled either for regular promotion or even for grant of ACP. This Court, therefore, would find it difficult to interfere with the well reason and uniform policy being made applicable all over the India in the discipline force.

The respondents in fact cannot be also made accused of being unreasonable so far it relates to the case of the petitioner. The petitioner was given such benefit of ACP with effect from 24.1.2007, moment he was declared medically fit and again placed in medical category, Shape-I.

Thus, for all these reasons this application must fail and is, accordingly, dismissed.

(Mihir Kumar Jha, J)

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