

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5862 of 2016

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1. The Union Of India through the Secretary, Ministry of Defence, South Block, New Delhi.
2. The Under Secretary, (AFT/AG-1), Ministry of Defence (AG), B-Wing, Sena Bhawan, New Delhi.
3. The Director General, NCC, HQ, DGN CC/Pers (C), West Block-IV, R.K. Puram, New Delhi.
4. The C.D.A. Eastern Command, Patna Bihar.
5. The Dy. Director General NCC, Directorate, Bihar & Jharkhand, Ministry of Defence, Rajendra Nagar, Patna Petitioners

Versus

1. Pramod Kumar Sinha, Son of Late Paras Nath Sinha, Resident of Village & P.O- Mohanpur, P.S.- Punpun, District- Patna Respondent

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Appearance :

For the Petitioners : Mr. S.D. Sanjay, Adl. S.G. with
Mr. Rajesh Kumar Verma (CGC)
For the Respondent : Mr. Santosh Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
and
HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)

Date: 28-11-2016

Heard learned Additional Solicitor General for the petitioners and learned counsel for the respondent.

2. The writ application has been filed challenging the order dated 20.05.2014 passed in O.A. No. 615 of 2011 by the Central Administrative Tribunal, Patna Bench, Patna, by which the writ petitioners have been directed to issue revised orders allowing the benefit of 3rd MACP to the respondent by counting the period of service rendered as LDC (Lower Division Clerk) in lieu of combatant towards 30 years of service required for grant of the 3rd MACP benefit along with the arrears as also interest admissible under the Rules. The O.A. had been filed by the applicant-respondent challenging the stand of the respondents-petitioners that at the time of granting 3rd MACP the service rendered by the applicant in lieu of combatant for two years was not to



be considered since the respondent was appointed as LDC (Lower Division Clerk) on ad hoc basis in lieu of combatant post with effect from 01.12.1983 at ASC Center (N) Gaya and subsequently adjusted against regular vacancy and transferred to National Cadet Corps Directorate, West Bengal, Sikkim and Andaman, Calcutta on 02.12.1985.

3. Under the assured career progression scheme (ACP) introduced by the Government of India, Ministry of Personnel, Public Grievance and Pension, on 09.08.1989 civilian employees were eligible for two financial up-gradations on completion of 12 years and 24 years of service respectively, if, in the meantime, they had not received any regular promotion. The respondent was granted first up-gradation, under assured career progression scheme, with effect from 09.08.1999. As per the case of the respondent in his application he was not entitled to first assured career progression because he was promoted to the higher scale prior to the promotion. Thereafter, the second assured career progression was granted to him, on completion of 24 years of service taking into consideration his service rendered in lieu of combatant by the order of the DDP, NCC, which was, however, objected to by the CDA, Patna, in terms of O.M. dated 09.08.1999 stating that the respondent was entitled for second financial up-gradation under the assured career progression scheme with effect from 02.12.2009, but, on account of introduction of MACP Scheme with effect from 01.09.2008, the earlier assured career progression scheme got superseded and the applicant became entitled to second financial up-gradation under MACP on



completion of 20 years of regular service.

4. Aggrieved by the same, the respondent filed the O.A. before the Tribunal with the aforesaid result.

5. The learned Additional Solicitor General, appearing for the Union of India submits that the Tribunal has committed a grave error of law in allowing the benefit of 3rd MACP to the respondent-petitioner after counting the period of service as LDC (Lower Division Clerk) in lieu of combatant towards 30 years of service required for allowing the 3rd MACP benefit. It is submitted that the issue is no longer res integra and is covered by the decision of a Division Bench of this Court dated 08.08.2016 in **C.W.J.C. No. 3071 of 2016 (The Union of India & Ors. Vrs. Sumitra Nandan Prasad)**, which in turn has relied upon the decision of the Supreme Court in the case of **State of Haryana Vrs. Haryana Veterinary & AHTS Association & Anr.: (2000) 8 SCC, 4**, after holding that the judgment in the case of **Union of India & Ors. Vrs. M. Mathivanan (2006) 6 SCC 57** was not applicable in view of the different language to be found under the assured career progression scheme and under the MACP. It was pointed out by the Division Bench that in the case of assured career progression the requirement was only of 12 years of “service” or 24 years of “service” whereas under the MACP scheme, the requirement is of 10 years, 20 years and 30 years of continuous “regular service”. Under the assured career progression the ad hoc service could be counted, but, not so under the MACP scheme in which only the “regular service” is to be counted.

6. The learned counsel for the respondent although has



supported the order of the Tribunal, but, is unable to distinguish the decision of this Court in the case of ***Sumitra Nandan Prasad*** (supra), in the facts and circumstances of the case.

7. From the decision of the Division Bench of this Court in ***Sumitra Nandan Prasad*** case (supra) it is evident that the respondent was entitled to second assured career progression benefit with effect from 01.12.2007 on completion of 24 years of “service” including the service rendered as LDC (in lieu of combatant) but for the benefit of 3rd MACP, the respondent-petitioner would only be entitled to count the period of “regular service” from 02.12.1985 and the prior two years service rendered as LDC in lieu of combatant cannot be counted for the said purpose.

8. For the aforesaid reasons, the writ application is allowed, the impugned order dated 20.05.2014 of the Tribunal is set aside and it is directed that the respondent-petitioner shall be given the benefit of the second up-gradation under the assured career progression scheme from 01.12.2007 and benefit of 3rd MACP from 02.12.2015.

(Ramesh Kumar Datta, J)

(Birendra Kumar, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	12.01.2017
Transmission Date	

