

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11003 of 2016

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1. The Union of India through the Secretary, Ministry of Communication Department of Posts, Sanchar Bhawan, New Delhi.
 2. The Chief Postmaster General, Bihar Circle, Patna.
 3. The Director of Postal Services (HQ), O/o Chief Postmaster General, Bihar, Patna.
 4. The Superintendent of Post Offices, Arrah Postal Division, Arrah (Bihar).
 5. The Sub Divisional Inspector (Post), East, Arrah, Sub Division, Arrah (Bihar).
 6. The Director, Accounts, Patna (Bihar).

.... Petitioners

Versus

Bijay Kumar Srivastava Son of Sri Late Siddheshwar Prasad retired Sub Post Master, Arrah Kutchery, Post Office - Arrah H.O., District - Bhojpur (Bihar), Resident of Mohalla - K.G. Road, Nawada, Arrah, District - Bhojpur (Bihar).

.... Respondent

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Appearance :

For the Petitioners	:	Mr. Sanjay Kumar, ASG
For the Respondent	:	Mr. M.P.Dixit, Advocate
		Mr. S.K.Dixit, Advocate
		Mr. Sanjay Kumar Choubey, Advocate
		Mr. Shatendra Kumar, Advocate
		Mr. Sunil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 06-03-2017

Heard counsel for the petitioner Union of India as well
as the private respondent.

The order of the Tribunal is under challenge. The order
is dated 22.09.2014 passed in O.A. No. 476 of 2010. The order of the
Tribunal is to pay to the private respondent the benefit of third ACP,
which is under MACP Scheme, at par with his co-employees. This
part of the direction is under challenge.

The facts in short are that a punishment of recovery was



ordered against the employee vide order dated 09.04.2007. A sum of Rs.1,10,000.00 was to be recovered at the rate of Rs.3,500.00 per month in 31 equal installments. In the meantime, during the period, when the so-called punishment was subsisting, a consideration was made to grant benefit of MACP to other co-employees and the private respondent demanded parity, which was resisted by the Postal Department on the ground that such a right to demand and beget promotion cannot be accepted during the period of subsistence of the order of punishment.

Learned Assistant Solicitor General representing the Postal Department submits that the order of recovery was there. The recovery was to be effected in 31 equal installments and, therefore, the period of punishment was to subsist for 31 months. There was no occasion to consider any grant of benefit of promotion during this period.

From the Circulars, which have been considered by the Tribunal and even reproduced, it is evident that imposition of minor punishment is not supposed to act as a bar for consideration of promotion of an employee. Such a promotion cannot be granted during the period the punishment was subsisting.

The Court does not find any difficulty in the provision. Consideration is not barred. However, the benefit of such



consideration can only accrue after the period of the punishment expired.

In the present case, the period of punishment is not 31 months by virtue of fixing of equal installments. The punishment was recovery. No sooner the employee paid back the recovered amount, the period of punishment would be over and his right to beget the benefit of promotion will kick in.

The Tribunal to that extent had not committed any error by giving such a direction, but it is made clear that the benefit can only accrue to the private respondent from the next date of the date on which he paid back the entire amount which was ordered to be recovered from him

The writ application otherwise stands dismissed with above clarification.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

AFR/NAFR	NAFR
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