IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11925 of 2016

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1. The Union of India through the Registrar General and Census Commissioner, India, Ministry of Home Affairs, 2/A Mansingh, Road, New Delhi, 11006
2. The Under Secretary to the Government of India, Ministry of Home Affairs, 2/a Mansingh Road, New Delhi, 110066
3. The Director of Census Operations, Bihar, Ministry of Home Affairs, Bihar State Co-operative bank Bhawan, Ashok Rajpath Ptna-800004
4. The Joint Director of Census Operations, Bihar, Ministry of Home Affairs, Bihar State Co-operative bank Bhawan, Ashok Rajpath Ptna-800004

.... Petitioners

Versus

1. Lakshmi Narayan Das, son of Late Mandeo Lal Das, resident of Mohalla PC Colony, Kankarbagh, District Patna
2. J.K. Verma, son of Sri Tej Narayan Prasad Srivastava, R/o Mohalla Purbi Gola Road, Chandrashekhar Nagar, PO Danapur, District Patna
3. Sandeep Kumar Sinha, son of Sri P.N. Sinha, Mohalla Bajranpuri, Gaighat, P.S. Alamganj, District Patna
4. Saket Bihari, son of Brij Nandan Prasad, At+PO Mahendru, P.S. Sultanganj, District Patna
5. Sanjay Kumar Mishra, son of Late Sadhu Saran Mishra, At Sadlli Chak, P.O. Mittan Chak, P.S. Gopalpur, District Patna
6. Vonod Kumar @ Vinay Kumar, son of Late Shyam Bihari Lal, Mohalla Telegraph Colony, P.S. Budha Colony, District Patna.

.... Respondents

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Appearance :

For the Petitioners	:	Mr. S.D. Sanjay, Addl. Sol. Gen
		Mr. Anshay Bahadur Mathur, CGC
For the Respondents	:	Mr. P.K. Shahi, Sr. Advocate
		Mr. Mayank Rukhaiyar, 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: 17-02-2017

Union of India is the party aggrieved by the order dated 19.11.2015, passed in OA 895/2011 with M.A. 429/2012 by the Central Administrative Tribunal, Patna Bench, Patna. The decision of the respondent authorities to take away the benefit of second ACP and the corresponding replacement scale on the recommendation of the 6th Pay Revision Committee has been set aside by the Tribunal and therefore, the OA application.

The grant of financial upgradation as a measure of stagnation and provision for such a policy is not a matter of dispute. The dispute is whether the private respondents, who were applicants before the Tribunal, could be extended that benefit in the very first place because there was something adverse against them in their ACRs. for the years 2002-03 and 2003-04.

The so called 'average' recorded in the ACR for the years in question was never communicated to any of the private respondents and it seems that they were not adverse enough for the concerned authority to take a decision to grant them benefit of ACP because it was granted and for more than five years the respondents derived benefit of such upgradation.

The problem arose when the replacement scale for the pay, which the respondents were deriving by virtue of grant of second ACP, was considered and the exercise began. It was at that stage that the petitioners of this writ application decided to withdraw the benefit of the second ACP and as a corollary thereof refusing to grant the replacement scale of the 6th Pay Revision.

After considering the details, the Tribunal has opined as under :

> *"12. This is not a case of correction of pay-fixation or error in computation. This is a case of re-evaluation of some persons and some denial of a benefit which they had availed for about five years. Thus, this is not a case of wrongful financial gain to some employees because of mistakes but a qualitative re-assessment of someone's eligibility for financial up gradation. Therefore, the right of the respondents to make amends has to be examined in the light of other factors we have mentioned.*
>
> *13. In our view, the balance of convenience lies in favour of the applicants. The financial up gradation is in the nature of mitigation of stagnation. After giving the benefit once and withdrawing after five years on the ground of some stale un communicated ACRs does not appear fair to our judicial conscience. Accordingly, we direct that the applicants will be restored and given the same benefits which they had been given earlier vide the order(s) of the authorities in 2007 granting them ACP. Consequently, the replacement shall also be granted to them as has been granted to similarly situated employees. OA is thus disposes off with no order as to costs."*

In the opinion of this Court, the Tribunal has taken a correct approach and view on the issue. It was not a case of wrongful financial gain to some employees because of a mistake, but it was a case of qualitative reassessment of somebody's eligibility after the benefit had already been accorded years ago.

It is the reappraisal and effort to revisit the grant that the Tribunal decided to quash the impugned order i.e. the decision to withdraw the benefit.

The Tribunal has committed no wrong in doing so. In fact, non-interference with such a decision of the Union of India would have caused undue financial damage as well as right of the private respondents to beget what they were given at the relevant time.

Learned Senior Counsel representing the private respondents draws the attention of this Court to a decision rendered in the case of ***Prabhu Dayal Khandelwal Vs. Chairman, Union Public Service Commission and others*** reported in ***(2015) 14 SCC 427***, especially with regard to paragraph 8. The said paragraph reads as under :

> *On the issue, whether the representations filed by the appellant against the reports for the years 1995-1996, 1996-1997 and 1998-99 need to be taken to their logical conclusion, we are of the view, that since almost two decades have passed by since the aforesaid annual confidential reports were recorded, it would be too late in the day to require the authorities to adjudicate upon the*

representations made by the appellant as against the uncommunicated annual confidential reports.

The submission of the learned Senior Counsel, therefore, is that adverse entries relating to a distant place of time cannot be, therefore, really looked into after the benefit was granted as an exercise of reconsideration.

Be that as it may, the order of the Tribunal does not require to be interfered with. Writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	25.02.2017
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