

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11005 of 2017

- =====
1. Pramod Prasad Son of Late Dashrath Singh Lab Assistant, Office of the Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna - 800001 (Bihar).
 2. Smt. Jyoti Kumari Roy Daughter of Late Rambhajju Ram Junior Stenographer, Office of the Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna - 800001 (Bihar).
 3. Satya Priya Jha, Son of Sri Chandra Shekhar Jha, Lab Assistant, Office of the Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna - 800001 (Bihar).
 4. Ajay Kumar Son of Late Ishwari Prasad Singh Lab Assistant, Office of the Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna - 800001 (Bihar).
 5. Nand Kishore Pandit @ Nawal Kishore Pandit Son of Sri Ram Das Pandit Lab Assistant, Office of the Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna - 800001 (Bihar).
 6. Suresh Kumar Son of Late Khublal Prasad Lab Assistant, Office of the Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna - 800001 (Bihar).
 7. Pramod Kumar Son of Sri Dwarika Prasad Lab Assistant, Office of the Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna - 800001 (Bihar).
 8. Rajesh Paswan Son of Late K. Paswan Lab Assistant, Office of the Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram



Charitra Singh Path, Patna - 800001 (Bihar).

9. Basant Ram Son of Late Kameshwar Ram Chaukidar / Peon, Office of the Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna - 800001 (Bihar).

.... **Petitioners**

Versus

1. The Union of India through the Secretary, Ministry of Health & Family Welfare, Government of India, Nirman Bhawan, New Delhi - 110011.
2. The Director General of Health Services, Government of India, Nirman Bhawan, New Delhi - 110011.
3. The Director, National Vector Born Disease Control Programme, 22, Shamnath Marg, New Delhi - 110011.
4. The Deputy Director (Administration), Office of the Director General of Health Services, Government of India, Nirman Bhawan, New Delhi - 110011.
5. The Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna - 800001 (Bihar).
6. The Senior Pay & Accounts Officer, Ministry of Health & Family Welfare, 15/1, Chourangee Square, Kolkata - 700069.

..... **Respondent 1st Set.**

7. Arun Kumar Upadhyay Son of Late S.N.Upadhyay Driver, Office of the Senior Regional Director, Regional Office for the Health & Family Welfare, Government of India, 5th Floor, Indira Bhawan, Ram Charitra Singh Path, Patna - 800001(Bihar).

.... **Respondents 2nd Set.**

=====

Appearance :

For the Petitioners	:	Mr. Munna Pd Dixit, Advocate Mr. S.K. Dixit, Advocate Mr. Sanjay Kumar Choubey, Advocate
For the Respondents	:	Mr. S.D. Sanjay, A.S.G. Mr. Satyavrat Verma, C.G.C.

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And



HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)
Date: 07-09-2017

Heard learned counsel for the petitioners and
learned counsel for the respondents.

2. The impugned order under challenge in the present writ application is dated 05.05.2017 which has been passed in O.A. No. 545/2013. The batch of petitioners in the writ application were all applicants before the Central Administrative Tribunal (hereinafter referred to as the “Tribunal”), Patna Bench, Patna and they filed the Original Application (in short the “O.A.”) to set aside the decision dated 05.04.2013 and other analogous orders like order dated 01.08.2013, because the respondents authorities decided to re-work the benefit of ACP and MACP on the ground that the applicants can claim the benefit of MACP or ACP only from the date of absorption.

3. Arguments were made before the Central Administrative Tribunal, Patna Bench that the matter being squarely covered and answered by other Benches like Bangluru and Guwahati, Central Administrative Tribunal, Patna Bench, Patna, should also fall in line and pass an order



in conformity by holding such decision to re-work the grant of ACP or MACP from the date of absorption instead date of entry into service to be bad.

4. One thing is common through all the decisions of the Bangluru Bench, Guwahati Bench and Patna Bench that is an earlier decision rendered by the Hon'ble Supreme Court in C.A. No. 444-450 dated 10.09.2003 which arose out of writ petitions decided by the High Court of Karnataka at Bangluru.

5. Since the understanding and the interpretation which has been given by different Benches of the Tribunal to the order of the Apex Court, the court would like to reproduce the extracted portion of the decision of the Hon'ble Apex Court hereinbelow:

"We have heard the learned counsel for the parties.

These appeals arise out of the judgment and order dated 20th April, 2001 in W.P. Nos. 2722/2001 and 12391-12396/2001 passed by the High Court of Karnataka at Bangalore.

We have considered the reasons recorded by the High Court as well as the order dated 12th March, 1996 passed by the Regional Director absorbing the respondents which reads as follows:-

"Consequent upon the merger of the Malaria Operations Field Research Scheme (MOFRS), known as P. Falciparum Monitoring Scheme as per Govt. of India, Ministry of Health & F.W. letter No. T.14011/4/93-MAL dated 29th September, 1995, Shri P. EKANTHAM



designation LABORATORY ASSISTANT in the MOFRS attached to this office is transferred on the strength of NMEP, which is presently approved upto the end of 8th Five Year Plan period w.e.f. 29.09.1995 (F.N.) in the same pay scale of Rs. 975-25-1150/- in a temporary capacity at the same duty station. He will draw the same pay and allowances as admissible prior to his transfer on the strength of NMEP.

The above transfer of Shri E. EKANTHAM to the post of Laboratory Assistant is subject to the Medical Examination Certificate of Fitness as well as the character and antecedents verification certificate from the appropriate authority, if not done already.

He will be entitled for other benefits as applicable to other employees of Govt. of India as per the locality of his posting. Other conditions regarding the counting of past service and other retirement benefits and carry forward of leave is under consideration."

We see no reason to interfere with the judgment impugned herein. The appeal is disposed of accordingly. There shall be no order as to costs.

However, it is made clear that with regard to Assured Career Progression respondents would be entitled to get benefit only from the date of absorption."

(Emphasis supplied)

6. The Central Administrative Tribunal, Patna Bench, Patna after considering the submission on the issue and especially focusing on the observation of the Hon'ble Apex Court in the concluding part of the order quoted above has gone by the wisdom that, so far as the issue regard to Assured Career Progression is concerned, the employee was



to derive benefit only from the date of absorption. The word “from” the date of absorption seems to have been understood and interpreted by some other Benches of the Tribunal as if it is word “upon”.

7. Learned counsel appearing for these petitioners wanted the Tribunal to take the same view, but, however, the Central Administrative Tribunal, Patna Bench, Patna has gone by simple interpretation to the word used by the Hon’ble Apex Court by insisting that the benefit of ACP or MACP can only be derived from the date of absorption. So far as past service is concerned, that will be taken into consideration for the purposes of retiral benefits and carry forward leave etc.

8. In our opinion, the Central Administrative Tribunal, Patna Bench, Patna committed no error of law because the Hon’ble Apex Court in it’s order had in very clear terms categorized the two benefits. One in relation to past service and the other in relation to grant of ACP or MACP. The Hon’ble Apex Court confined the benefit of past service only for the purposes of post retiral dues etc. but when it came to applicability of ACP or MACP it was categorically stated that



the benefit will accrue only 'from' the date of absorption and not 'upon' the date of absorption.

9. Learned counsel for the petitioners thereafter dwelt upon the principles and decisions rendered by the Hon'ble Apex Court as to how the Central Administrative Tribunal, Patna Bench, Patna has crossed the boundaries of maintaining consistency as well as not following the principles of stare decisis. If other coordinate Benches of other Tribunals across the country like Bangluru Bench or Guwahati Bench had taken a view, there was no occasion for the Patna Tribunal to take a different path.

10. As a proposition of law, there cannot be a quarrel that precedents have to be respected and consistency in decision making is the rule and not the exception. However, if some Tribunals have however taken a contrary view by replacing the word "from" with the word "upon" in Hon'ble Apex Court order, then, the Tribunal has explained the reason as to why it went by what the Hon'ble Apex Court had categorically stated and not by interpretation the other Benches of the Tribunal have given.

11. The Tribunal has, therefore, this to say in paragraph-



12 on the issue as to the reason in coming to the conclusion in not allowing the benefit of ACP or MACP from the date of entry in following terms:

“12. Thus, we have a situation where the same judgment of the Hon’ble Supreme Court has been cited by both the parties and also cited by all the Tribunals. Yet the operative part of the judgment in various Tribunals differs. In our opinion, there is no scope of confusion. We have cited the Hon’ble Supreme Court judgment in entirety in para 7 above. While allowing all the benefits for counting past service, the Hon’ble Apex Court has made specific observation that for ACP the service has to be counted from the date of absorption. At that time, MACP had not come into existence. The same ratio has to apply for its successor scheme MACP also. Accordingly, the prayer challenging withdrawal of MACP and re-fixation is dismissed. However, as far as the recovery is concerned they are low paid employees and it is not a question of error in fixation but counting of qualifying service. Therefore, it is fair that no recovery be made for the past excess payment. Accordingly, it is directed that the respondents shall not make any recovery for the excess payment already made. The OA is thus disposed of. No order as to costs.” **(Emphasis supplied)**

12. The decision of the Tribunal seems to be in order. The Tribunal has not committed any error or not violated the principles of precedents. We are also in agreement with the decision of the Tribunal that the benefit of ACP or MACP can only accrue from the date of absorption and not from the



date of entry, upon absorption.

13. The writ application has no merit. It is dismissed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.09.2017
Transmission Date	NA

