

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.234 of 2016
IN
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.

.... Appellant/s

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.

.... Respondent/s

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Appearance :

For the Appellant	:	Mr. Ebrahim Kabir, Advocate Mrs. Shruti Sinha, Advocate Mr. Aditya Raj, Advocate
For the U.O.I.	:	Mr. Satyavrat Verma, C.G.C.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 16-03-2017

Seeking exception to an order dated 22.06.2015 passed by the learned writ Court denying benefit of A.C.P. to the petitioner with effect from 12.05.2005 and only granting it with effect from 24.01.2007, this appeal has been filed under Clause 10 of Letters Patent.

Based on the policy of the Union of India, as contained in the Circular for grant of A.C.P., it is held by the learned writ Court



that the petitioner was kept in medical category Shape-II and so long as an employee is kept in the aforesaid category he is not entitled to the benefit of A.C.P. Only such employees are entitled to the benefit of A.C.P. who are declared medically fit and kept in category Shape-1. It was the case of department that, as per the policy, when the case of the petitioner was considered twice, in the year 2005, it was found that the petitioner was in category Shape-II and, therefore, he was not entitled to the benefit of A.C.P., but immediately after he came into category Shape-I, the benefit of A.C.P. was granted to him.

However, having heard learned counsel for the parties, we find that in para 11 of the writ petition the petitioner has made the following specific assertion :

“11. That the petitioner represented before the D.I.G. Group Centre C.R.P.F. Mokama Ghat Patna on 29.01.2015 mentioning that during that period even though he was Shape-2 he was posted in the District of Doda in Jammu and Kashmir while being in F/147 B.N. and was serving with his other colleagues who were in Shape-I, without any concession/relaxation been granted to him in performance of his duty working with them in difficult snow laden mountainous terrain that is performing/working equally with them rubbing shoulders without any handicap or any compliant of any kind with regard to his performance and had



also cleared A.R.C.F. and annual JDPET still he is getting much lower pay than his junior and not been granted his second ACP benefit from the said date i.e. 12.05.2005 from the date he is entitled, which is unfair praying for grant of the same from the said date.”

(Emphasis supplied)

Neither before the writ court nor before this court in the counter affidavit filed in this appeal there is rebuttal to the aforesaid contention of the petitioner. On the contrary, before the writ Court itself the petitioner has contended that even though he was categorized as an employee working in Shape-II, but actually the work performed by him is identical to that of Shape-I category employees, he was working without grant of any concession/relaxation in the difficult snow laden mountainous terrain with his other colleagues who were in Shape-I category, That being so, it is a case where even though technically on paper the petitioner is shown to be in Shape-II, but, in fact, the petitioner is performing all the duties performed by a Shape-I category employees and, if the contention of the petitioner as detailed hereinabove in para 11 of the writ petition, is not refuted by the respondents either before the writ court or before this Court, the petitioner should be treated to be an Employee placed in medical category Shape-I and granted the



benefit of A.C.P. to him with effect from 12.05.2005.

Accordingly, in view of aforesaid, we have no hesitation in holding that it is a case of discrimination. The petitioner is being discriminated in comparison to other similarly situated employees who were working with him in the category Shape-I while posted in District Doda, Jammu & Kashmir and, therefore, we allow this appeal and quash the impugned order dated 22.06.2015 passed in C.W.J.C. No.8193 of 2015 by the learned writ Court and direct the respondents for grant of A.C.P. to the petitioner with effect from 12.05.2005.

(Rajendra Menon, CJ)

(Sudhir Singh, J)

Narendra/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.03.2017
Transmission Date	

