

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2208 of 2019

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Tej Narayan Malviya S/o- Late Kashi Nath Malviya R/o-Village-Juguri, P.O-
and Police Station- Chandan, District- Banka Petitioner/s

Versus

1. The State of Bihar through Secretary, Road Construction Department, Bihar, Patna
 2. The Superintendent Engineer Mechanical Division, Road Construction Department, Bhagalpur
 3. The Superintendent Engineer, Mechanical Circle Road construction Department, Patna
 4. The Executive Engineer Mechanical Engineer, Mechanical Division, Road Construction Department, Bhagalpur Respondent/s
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Appearance :

For the Petitioner/s : Mr. Soni Shrivastava, Advocate
For the Respondent/s : Mr. Chitranjan Sinha, PAAG-2

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 11-02-2019

Heard the learned counsel for the petitioner and the State.

The petitioner has challenged the order dated 19.09.2018 contained in Memo No. 272 passed by the Superintending Engineer, Mechanical Circle, Road Construction Department, Patna (Respondent No. 3) whereby the office order granting 2nd A.C.P. and M.A.C.P. to the petitioner has been recalled; the date of such financial progression has been shifted forward; and a process of recovery of excess amount, wrongly paid to the petitioner, has been initiated.

Learned counsel for the petitioner has submitted that the petitioner had joined the Department of Road Construction



in the year 1984 on the post of Compilation Clerk. After completion of 10 years of his service, he was allowed first time-bound-promotion, which was withdrawn on the ground that he had not passed the accounts examination. At that time, a direction also was issued for recovery of Rs. 1,27,383/-, made to him. The aforesaid order was quashed by a Bench of this Court on 09.05.2016 passed in C.W.J.C. No. 14384 of 2011.

Later, the provision of time-bound-promotion was abandoned and in its place, rules were framed for giving financial progression to the employees who had worked on a particular post without there being any avenue of promotion and enhancement of pay. This was an anti-stagnation measure for which, the aforesaid rules under the provisions of Article 309 of the Constitution of India was framed.

It appears that the petitioner was paid the first A.C.P. w.e.f. 30.07.2010. Later, second A.C.P. and M.A.C.P. also was paid to him. After such payments were made to the petitioner, on the objection raised by the District Accounts Officer, Bhagalpur, the order impugned has been passed holding that



the petitioner was paid the second A.C.P. and M.A.C.P. unauthorizedly from a date when he had not passed the Hindi Noting and Drafting Examination. As has been noted earlier, the process of recovery of excess payment has been initiated by the order impugned.

Learned counsel for the petitioner submits that grant of A.C.P. is not a promotion in any sense of the term as there is no vertical promotion with no enhancement of pay. The benefits which accrued to the petitioner was only by way of financial up-gradation. However, for the aforesaid benefit to accrue to an employee, he is required to be eligible for being promoted to a higher post. Learned counsel for the petitioner has submitted that there are no cadre rules for Compilation Clerk and there are no promotional avenues available in that service as per his information. In the absence of any promotional avenue or rule in that regard, the date of grant of second A.C.P. and M.A.C.P. could not have been shifted forward on the sole plea of the petitioner not having passed the departmental accounts and noting examination.



It has further been submitted that passing of examination is not a condition precedent for grant of A.C.P., which proposition is no longer alive for any discussion. The passing of such examination is only for the purposes of promotion to a higher post and not for continuation on the same post. If there are no rules and there is no clarity whether passing of such examination would enable the person to have the advantage of the financial up-gradation under the scheme for grant of A.C.P., there is no reason why the benefit which has already accrued to the petitioner, would be shifted to a later date. The petitioner is further aggrieved by the fact that not only the date has been shifted forward but the process of recovery of excess payment has been initiated.

It has been submitted that no such recovery could be made in view of the judgement passed by the Supreme Court in ***State of Punjab and Ors. Versus Rafiq Masih (Whilte Washer) etc. [2015(1)PLJR(SC)261]***.

The petitioner has also questioned the order on the ground that he was never afforded any opportunity to represent his case and the order impugned has been slapped



on his face without being aware of the fact that he is to refund the money which has been paid to him by the departmental order.

Under the aforesaid circumstances, since the petitioner was never heard over the aforesaid issue, this Court directs the petitioner to make a representation before the Superintending Engineer, Mechanical Circle, Road Construction Department, Patna (Respondent No. 3) within a period of three weeks from today, who shall dispose off the aforesaid representation, with a speaking order, within a period of six weeks thereafter. Till the disposal of the representation referred to above, no recovery from the salary of the petitioner shall be made.

With the aforesaid observation / direction, this writ petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	14.02.2019
Transmission Date	

