

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.177 of 2022

=====

Ram Jee Prasad Son of Late Yamuna Ram Resident of behind Nagar Palika Bhawan, Koirpurwa, P.S.- Buxar Nagar, District- Buxar, Pin- 802101.

... .. Petitioner/s

Versus

1. The Union of India through the Secretary-cum-Director General Department of Posts, Government of India, Dak Bhawan Sansad Marg, New Delhi-110001.
2. The Chief Postmaster General Bihar Circle, Patna- 800001.
3. The Director Postal Services Central Region, Bihar Circle, Patna- 800001.
4. The Director Accounts (Postal) Patna.
5. The Superintendent of Post Offices Bhojpur Division, Arrah.
6. The Postmaster Buxar, H.O.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Om Prakash Singh, Advocate
For the Respondent/s : Mr. Sujeet Kumar Sinha, CGC

=====

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-11-2022

Heard learned counsels for parties.

2. On 18.10.2022 following order was passed:-

"Heard the matter for sometime.

Question for consideration in the present petition is whether petitioner is entitled to notional re-fixation of pay or regular fixation of pay with arrears of difference of pay or not? For the purpose of extending MACP benefit, the Government has issued Rules namely CCS (RP) Rules, 2008 in terms of Annexure-4. Para 13 (1)(a) reads as under:-

***"13. Fixation of pay on
promotion on or after 1-1-2006
(1) The method of fixation***



of pay on promotion after 1-1-2006- On promotion from one grade to another/ financial upgradation under ACP, a Government servant has an option under FR 22 (1)(1) to get his pay fixed in the higher post either from the date of his promotion, or from the date of his next increment, viz. 1st July of the year. The pay will be fixed in the following manner in the revised pay structure:-

(a) In case the Government servant opts to get his pay fixed from his date of next increment, then, on the date of promotion, pay in the pay band shall continue unchanged, but the grade pay of the higher post will be granted. Further re-fixation will be done on the date of his next increment i.e. 1st July. On that day, he will be granted two increments: one manual increment and the second on account of promotion. While computing these two increments, basic pay prior to the date of promotion shall be taken into account. To illustrate, if the basic pay prior to the date of promotion was Rs. 100, first increment would be computed on Rs. 100 and the second on Rs. 103."

In the light of the aforesaid provision, the petitioner submitted application relating to fixation of his pay in third MACP from the date of accrual of increment on 25.02.2010. The same was not acted on by the official respondent in considering the grievance of the petitioner relating to fixation of his pay in 3rd MACP from the date of accrual of increment. On the other hand, it has been extended from the date of his promotion and MACP. Re-fixation of pay read with 3rd MACP and date of increment which was due to the petitioner's would be beneficial. The



same has not been appreciated by the official respondents. Time and again, Hon'ble Supreme Court and Court's have held that beneficial clause is required to be Patna High Court CWJC No.177 of 2022(7) dt.18-10-2022 ³/₄ extended to its employees. For no fault of the petitioner the official respondent proceeded to re-fix the petitioner's pay in 3rd MACP with reference to date of promotion instead of date of increment as demanded by the petitioner. Thus, petitioner submitted representation and it was rejected and it was subject matter of dispute before the Tribunal. The order of the Tribunal at Para 3 reads as under:-

"3. After going through the pleadings and hearing the arguments, it is clear that though the applicant had given his option for getting his pay (on grant of 3rd financial upgradation) fixed from a later date (July of that year) this has not been done stating that no record is available in Buxar PO. The applicant has produced evidence of his having given his option and it has the stamped signature of the concerned Post Office acknowledge its receipt. In such a situation, it is not correct to deny the applicant the benefit of pay fixation as per his option only on account that the record (of his having given this option) is not available in that office. This leaves the only question to be addressed by this Tribunal to be that of the period of limitation. It is true that the applicant has not approached this Tribunal within the period of limitation from the date when his pay was wrongly fixed and thus his claim to have his pay revised from that date and the arrears of salary and other dues paid is obviously barred by period of limitation. However, we do take cognizance of the fact that there is a



continuous and recurring loss in the form of lower pension. Hence, we think that the interest of justice will be served by directing the respondent authorities to fix the pay of the applicant notionally, at the time of grant of 6th Pay Commission, from the date of his next increment, in the light of the option exercised by him. He need not be paid any arrears of such salary till one year before the date of filing of this OA. However, all the payments which are found due on such notional re-fixation (deducting what is already paid), for the period starting from one year before filing of this OA (04.07.2016) should be paid within three months of the date of receipt of this order. His future pension should also be revised accordingly. Any delay in payment beyond three months would make the Department liable to pay interest @ 8% (GPF rate of interest). The OA is, accordingly, partly, allowed. No costs."

In the light of the aforesaid order of the Tribunal the question for consideration is whether the petitioner is entitled to notional re-fixation or normal fixation of pay with reference to 3rd MACP read with date of increment or date of promotion. For want of time relist this matter on 16.11.2022."

3. Core issue involved in the present petition is that whether petitioner is entitled to MACP benefits w.e.f. 01.07.2009, the date on which he was extended increment, or w.e.f. 21.02.2009. In this regard, petitioner is stated to have made correspondence with the respondents. Some of the officials were stated to have raised audit objection that petitioner is not entitled



to have the benefit of ACP w.e.f. 01.07.2009. On the other hand, he is entitled to only w.e.f. 21.02.2009. The Tribunal has not appreciated the aforesaid contention of the petitioner that he is entitled to MACP benefits w.e.f. 01.07.2009, the date on which increment was accrued and it was extended to him.

4. Department while extending MACP benefits to its employee/ officer certain policy has been laid down. In fact, objects of extending MACP benefits is in favour of employees to certain financial benefits, if financial benefit is made to the petitioner in the event of extending MACP w.e.f. 01.07.2009, the date on which increment was extended. Respondent-department are raising too technical issue to contend that petitioner is entitled to MACP w.e.f. 21.02.2009. In fact, there is an option to be exercised by the employees. In this regard, petitioner is stated to have submitted representation. Same has not been appreciated.

5. In the light of these facts and circumstances, the Tribunal has committed error in not allowing the petitioner's Original Application read with relief as prayed having regard to the trivial issue of extending MACP benefits on a particular date. Moreover, if petitioner is provided MACP benefit w.e.f. 01.07.2009, the date on which he was granted increment is financial beneficial to him. If MACP is extended w.e.f.



21.02.2009 in that event there is certain financial loss to the petitioner.

6. Time and again Courts have held that beneficial legislation is required to be extended in favour of Class of beneficial persons.

7. In the light of these facts and circumstances, petitioner has made out a case so as to interfere with the order of Tribunal dated 28.08.2019 passed in O.A. No. 050/00480 of 2016. Hence, order of the Tribunal dated 28.08.2019 passed in O.A. No. 050/00480 of 2016 is set aside.

8. Concerned respondent is hereby directed to rectify the date of extending MACP benefits w.e.f. 01.07.2009 and extend all monetary and other benefits which were due to the petitioner. Further notional benefits granted is hereby set aside.

9. With the above observations, present writ petition stands allowed.

(P. B. Bajanthri, J)

(Purnendu Singh, J)

rakhi/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.11.2022
Transmission Date	

