

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8370 of 2019

Uma Shankar Singh Son of late Chandrashker Prasad Singh, Resident of
Vikash Bihar Colney Dhanut, Police Station- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police (Budget /Appeal /Welfare), Bihar, Patna.
4. The Under Secretary to the Government, Department of Home(Police), Bihar, Patna.
5. The Commandant, Bihar Military Police-1, Patna.
6. The Principal Secretary, Department of Finance Government of Bihar, Patna.
7. The Deputy Inspector General of Police, Military Police, Central Zone, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Bindyachal Singh, Sr. Advocate Mrs. Smriti Singh, Advocate Mr. Janmejy Girdhar, Advocate
For the Respondent/s	:	Mr. Vipin Kumar Singh Mr. Md. N.H. Khan (SC-1)

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

9 21-09-2023 As prayed for, learned counsel for the petitioner is permitted to implead the DIG, Military Police, Central Zone, Patna as respondent no. 7.

2. Heard Mr. Bindyachal Singh, learned Senior Counsel duly assisted by Mrs. Smriti Singh, learned counsel for the petitioner and Md. N.H. Khan, Standing Counsel No. 1 for the State.

3. The present writ application has been preferred on behalf of the petitioner above named seeking the following



relief/s:

(i) for issuance of a writ in the nature of certiorari or any other appropriate writ for quashing the force order no. 47 dated 09.01.2019 contained in Memo No. 134 dated 10.01.2019 and all connected orders passed by the respondent authorities whereby it has been resolved that the petitioner is entitled to receive the 1st ACP from 25.03.2001 instead of 09.08.1999, 2nd MACP from 25.03.2011 instead of 01.01.2009 and accordingly it was held that the petitioner will be entitled to receive the 3rd MACP in the year 2021 instead of 01.01.2019;

(ii) for issuance of a writ in the nature of mandamus or any other appropriate writ for a direction to the respondent authorities to produce a copy of the Minutes of the Meeting of the Screening Committee and thereby for quashing the same, wherein it has been resolved that the petitioner is not entitled for receiving 3rd MACP benefits in light of the punishment given to him vide force order 247/98 and whereby it has been resolved that the petitioner is entitled to receive the 1st ACP from 25.03.2001 instead of 09.08.1999, 2nd MACP from 25.03.2011 instead of 01.01.2009;

(iii) for issuance of a writ in the nature of mandamus or any other appropriate writ directing the respondent authorities to abstain from making any recovery from the petitioner which has



been paid to him in the form of benefit of ACP from the year 1999 for the reason that the revised ACP benefits which has been determined by the department to be given to the petitioner from the year 2001 is unsustainable and unjustified;

(iv) for holding that any recovery made from the salary of the petitioner in the garb of granting the ACP/MACP benefits from a revised date is not permissible in the eye of law specifically when the said action has been taken for no fault of the petitioner.

4. The matrix of facts in the writ petition is/are as follows:-

(i) since the date of his appointment, the petitioner has been working sincerely as a Driver Constable in the BMP and has discharged his duties efficiently;

(ii) however, he was put under suspension from 25.08.1997 in contemplation of departmental proceeding to be initiated against him on account of the charges of indiscipline and dereliction of duty;

(iii) the departmental proceeding was conducted against the petitioner and on conclusion of the same, the charges were found to be true by the Inquiry Officer and accordingly, a punishment was imposed by the disciplinary



authority on the petitioner vide force order 247/98 dated 25.03.1998 for withholding of increment for one year and it was also stated that such withholding of increment will not affect any future increments of the petitioner;

(iv) the further case is that the petitioner became eligible for receiving 1st ACP after completion of 12 years of his service i.e. 31.03.1998 but due to the punishment of withholding of increment for one year on 25.03.1998 which was effective till 24.03.1999, the ACP benefits were not granted to the petitioner on the year on which he became entitled for the same;

(v) however, one year thereafter, the petitioner was granted the benefit of 1st ACP with effect from 09.08.1999 with grade pay 2400/- and pay scale of Rs. 5200-20,200;

(vi) thereafter, the petitioner continued in service and after completion of 20 years of his service, he became eligible for the MACP Scheme. Accordingly the petitioner was granted the benefit of 2nd ACP with effect from 01.01.2009 with grade pay 2800/- vide letter dated 28.02.2011;

(vii) in the meanwhile, the Pay Revision Committee suggested enhancement in the pay scale and grade pay of the employees and accordingly the pay scale of the petitioner was



enhanced with pay scale 9300-34,800/- and grade pay of Rs. 4200/- effective 01.01.2009;

(viii) after completion of further 10 years of service from the date of receipt of 2nd MACP i.e. 01.01.2009, the petitioner became entitled for receiving 3rd MACP on 01.01.2019;

(ix) the case of the petitioner was considered in the meeting of the Screening Committee for grant of 3rd MACP benefits but the same was rejected and it has been resolved that he is entitled to receive the 1st ACP from 25.03.2001 (instead of 09.08.1999), 2nd MACP from 25.03.2011 (instead of 01.01.2009) and accordingly it was held that the petitioner will be entitled to receive the 3rd MACP only in the year 2021 instead of 01.01.2019 in the light of the force order 247/98 by which he was inflicted with the punishment of withholding of one annual increment.

5. Learned Senior counsel submits that a bare perusal of Annexure-P/2 to the writ petition would show that while extending the punishment order, it was specifically stated that it will have effect for one year. Thus, his submission is that when the order is dated 25.03.1998, he was rightly extended 1st ACP effective from 09.08.1999. Accordingly, he was considered for



2nd ACP effective from 01.01.2009.

6. His submission is that without putting him on notice and/or giving any reason for shifting of the date, the order in question [(memo no. 134 dated 10.01.2019 was passed by the Commandant, Bihar Military Police, Bihar Patna (respondent no. 5)]. It is his categorical submission that at no point of time, he was given any information/notice and further the reason was also not there. He as such, submits that this affected the grant of 3rd ACP too as the same has been shifted to 2001 and 2011 respectively.

7. Learned Standing Counsel No. 1 with the help of the counter affidavit filed on behalf of the respondent no. 5 has taken this Court to paragraph-8 which read as follows:-

“ 8. that the major punishment awarded to a policemen affects the confirmation, promotion and ACP for three years ant not one year as stated by the petitioner.”

8. In paragraph-12, it has further been narrated as follows:-

“12. that it is humbly submitted that a meeting of screening Committee was convened on



25.02.2017 and a large number of police personnel who were wrongly getting the benefit of 1st and 2nd ACP ever after getting punishment, the committee rectified the mistake including the petitioner whose date of 1st ACP was shifted to 25.03.2001 in view of the punishment awarded in 1998 and accordingly his date of 2nd ACP was shifted to 25.03.2011 and he was found out of consideration at this state for 3rd M.A.C.P. which is clear from the minute of the Screening Committee issued vide Military Police, Central Zone, Range Order 66/2017. The name of petitioner is at Serial No. 52.”

9. He as such submits that this was passed on 10.03.2019 vide memo no. 219 (Annexure-A to the petition) where the petitioner is at Serial No. 52 and further his ACP has been shifted from 09.08.1999 to 25.03.2001 and the 2nd ACP effective 25.03.2011.

10. Learned Senior Counsel rebutted the said submission put forward by the learned Standing Counsel No. 1 and his submissions is that there is no document to support the statement made in paragraph-8 that despite the order dated 25.03.1998 specifying that it will have effect for one year, the same will in turn affect the confirmation/promotion/ACP for three years. He further submits that though the 2017 document



has been brought on record, there is no reason assigned to it and merely shifting of date according to the whims and caprices of the respondents has to be interfered.

11. At this stage, learned Standing Counsel No. 1 submits that in paragraph-14, it has already been incorporated that his representation is under active consideration and the same has been forwarded to the DIG, Military Police, Central Zone, Patna. Alternatively, he submits that the petitioner is free to file comprehensive representation which will be taken up and a reasoned order will be passed.

12. Having gone through the facts of the case, the documents on record, the submissions put forward by the learned Senior Counsel for the petitioner as also the Standing Counsel No. 1, it is clear that :

(i) the punishment vide order dated 25.03.1998 provided withholding of increment of one year and further will not affect future increments;

(ii) later, the petitioner was granted 1st ACP from 09.08.1999 and 2nd ACP from 01.01.2009;

(iii) subsequently, after years, his date of ACP has been shifted vide an order of 2017, without assigning any reason;



(iv) the case of the petitioner is that neither he was put on notice nor reason assigned.

(v) **accordingly, the case needs reconsideration.**

13. The petitioner has already filed representation and further as per the learned Senior Counsel, he will be filing a fresh comprehensive representation detailing out all the facts of the case as also the documents in support of his case.

14. If such representation is filed within eight weeks from today, the newly added respondent no. 7 shall consider his case, take into account all the facts incorporated in the representation/documents, the punishment order dated 25.03.1998 as also the observation of this Court and pass a reasoned order within next three months.

15. So far as the claim of the grant of 3rd MACP is concerned, the same will affect the order passed by the respondent no. 7.

16. The writ petition stands disposed of with the aforesaid observations.

(Rajiv Roy, J)

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