

WPA 28740 of 2022

Bhagwan Mishra
vs.
Union of India & Ors.

Mr. K.B.S. Mahapatra
Mr. Kashinath Bhattacharyya
Ms. Arifa Sultana

...for the petitioner.

Mr. Sukumar Bhattacharya
Ms. Sumitra Sarkar

...for the Union of India

The petitioner was working with the Central Industrial Security Force (CISF). The petitioner was dismissed from service. The petitioner appealed before the appellate authority. The petitioner's dismissal/removal was confirmed by the appellate authority. The petitioner was constrained to file a writ petition before this Hon'ble Court.

The Hon'ble Division Bench by an order dated September 7, 2007 was pleased to set aside the order of **removal** from service and directed the disciplinary authority to reconsider the entire matter and impose penalty proportionate to the charge, except the penalty of **dismissal/removal** from service.

Upon consideration of the petitioner's case afresh the authorities concerned was pleased to direct reinstatement of the petitioner by an order dated

November 23, 2008. The period between August 10, 2000 to October 3, 2008 was treated as 'Dies-Non' and the said period was not to be "counted on-duty", for any purpose.

The order dated November 23, 2008 passed by the authorities concerned was challenged in WP No. 10366(W) of 2009. By an order dated March 3, 2016 an Hon'ble Coordinate Bench of this Court was pleased to clarify the same. It was clarified that the petitioner would not receive any monetary benefits from August 10, 2000 till October 3, 2008. However, the aforesaid period would be taken into consideration for the purpose of *qualifying service* for his retirement and pensionary benefits. The said period would also be taken into consideration for other *service benefits* apart from monetary benefits. The authorities were directed to treat the petitioner as continuing in service for all other purposes.

The petitioner has prayed for grant of benefits under Career Advancement Scheme upon completion of 10 years, 20 years and 30 years of *qualifying service*.

Mr. Mahapatra, learned counsel appears on behalf of the petitioner and submits that the petitioner has been appointed on January 1, 1991 and therefore he has completed 10 years of *qualifying service* on January 1, 2001, 20 years of *qualifying*

service on January 1, 2011 and 30 years of *qualifying service* on January 1, 2021.

Mr. Bhattacharyya, learned counsel appearing on behalf of the respondents/Union of India submits that the benefits under the Assured career Progression Scheme (ACPs) were to be given to the petitioner in terms of Memorandum dated August 9, 1999 issued by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, Government of India. Under the said 1999 Memorandum, applicable to the petitioner, the first financial upgradation under ACPs was payable after 12 years of completion of regular service.

Therefore, the petitioner was entitled to the benefits of first ACPs with effect from January 1, 2003 upon completion of 12 years of *qualifying service* and not from January 1, 2001 upon completion of 10 years of service.

This Court finds that there is no infirmity in grant of benefits of 1st ACPs with effect from January 1, 2003. The Modified Assured Career Progression Scheme (MACPS) for CISF personnel was implemented vide Memo dated October 5, 2016 with effect from September 1, 2008. Under the said MACPS, 3 financial progressions were payable after the intervals of 10, 20 and 30 years of regular service.

Therefore, the petitioner is eligible for the 2nd MACP benefits after completion of 20 years of service from January 1, 2013. The petitioner will not be given the actual monetary benefits for the aforesaid period between August 10, 2000 till October 3, 2008.

The petitioner will be considered for payment of 3rd MACP benefits with effect from January 1, 2023. The arrears of such 2nd and 3rd MACP benefits shall be granted to the petitioner within a period of three months from the date of this order.

Since, the Hon'ble Coordinate Bench clearly recorded that only actual monetary benefits will not be granted to the petitioner during the aforesaid period when the petitioner was not on duty from August 2000 till October 2008, therefore the order of granting 2nd MACP from January 2014 and deferring payment of 3rd MACP benefits cannot be sustained.

Accordingly, the order dated March 2, 2021 by the Assistant Commandant is set aside and/or quashed.

With the directions aforesaid, **WPA 28740 of 2022 is disposed of.**

All parties are to act on a server copy of this order downloaded from the official website of this Hon'ble Court.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J)