

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.4511 of 2019**

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Saryu Pandey, aged about 71 years, Gender Male, Son of Late Ram Singashan Pandey, Resident of Village Badiha-Shankarpur, P.O. Shankarpur, P.S. Indrapuri, District Rohtas.

... .. Petitioner/s

Versus

1. The Accountant general ( A & E ), Bihar, Birchand Patel Path, Patna.
2. The Senior Accounts Officer, Office of the Accountant General (A & E), Bihar, Birchand Patel Path, Patna.
3. The State of Bihar through the Principal Secretary, Water Resources Department, Sinchai Bhawan, Patna.
4. The Under Secretary, Finance Department, Bihar, Patna.
5. The Chief Engineer, Water Resources Department (now named as, Sinchai Srijan), Dehri, District Rohtas.
6. The Superintending Engineer, Sone Canal Modernisation Circle, Dehri, District Rohtas.
7. The Executive Engineer, Sone Barrage Division, Indrapuri, District Rohtas.
8. The Treasury Officer, Dehri, District Rohtas.

... .. Respondent/s

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**Appearance :**

For the Petitioner	:	Mr. Ajay Kumar, Advocate
For the State	:	Mr. Rewati Kant Raman, AC to SC11
For the A.G.	:	Mr. S.M. Ehtesham, Advocate

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL JUDGMENT**

**Date : 12-04-2021**

Heard Mr. Ajay Kumar, the learned counsel for the petitioner, Mr. Rewati Kant Raman, the learned AC to SC11 and the learned counsel appearing on behalf of the Accountant General.

2. The petitioner by filing this writ petition seeks following reliefs:



For a direction to the Accountant General, Bihar, Patna to revise the pension of the petitioner after granting 1st ACP and 2nd ACP duly sanctioned by the Chief Engineer through the office order dated 02.02.2007 and further to direct the Account General not to slash down the pension of the petitioner from the scale of Rs.3050/- to Rs.4590/- to Rs.2650/- to Rs.4000/- without affording any opportunity to the petitioner. The petitioner further seeks direction to the Accountant General, Bihar to issue fresh PPO in pursuance of the order dated 02.02.2007 (Annexure-3) by which the Chief Engineer duly sanctioned the grant of 1st ACP and 2nd ACP to the petitioner in the next scale of Rs.3050/- to Rs.4590/- and further direct to make payment of interest.

3. During the pendency of this writ petition, the petitioner filed I.A. No.1 of 2019 with a prayer for quashing the impugned order dated 10.04.2019 and 15.04.2019 (Annexure-14 series), which have been issued during the pendency of this writ petition and further to quash the order dated 08.12.2003, issued under the signature of the Chief Engineer by which the Chief Engineer ordered for cancellation of 1st ACP to the petitioner w.e.f. 01.03.1984 and held that the petitioner is entitled to get pay in the pay scale of Rs.825/- to Rs.1200/-.



4. I.A. No.1 of 2019 is allowed accordingly and ordered to be part of the writ petition.

5. The petitioner was appointed on the post of Pump Attendant on 02.04.1968 in the work charge establishment of Water Resources Department, Government of Bihar in the scale of Rs.75/- to Rs.85/-. After third pay revision, the scale of Pump Attendant was replaced in the scale of Rs.165/- to Rs.204/- and the petitioner was given the same scale w.e.f. 01.01.1971. Petitioner was assigned higher responsibility of Pump Operator Grade-I w.e.f. 01.03.1974 under the same work charge w.e.f. 01.04.1977 and on the same post, the service of the petitioner was regularized. The scale of Rs.3050/- to Rs.4590/- was given to the Pump Operator Grade-I and the same was duly verified by the District Accounts Officer, Rohtas, Sasaram on 10.03.2000. The petitioner retired on 30.04.2004 as Pump Operator Grade-I and the petitioner was granted pension vide PPO No.410683, dated 06.08.2004 in the pay scale of Rs.3050/- to Rs.4590/-.

6. Learned counsel for the petitioner submits that after retirement of the petitioner in the year 2004, the Chief Engineer granted 1st ACP and 2nd ACP to the petitioner in the subsequent scale of Rs.3050/- to Rs.4590/- and the next scale admissible to the Pump Operator Grade-I vide order dated 02.02.2007 and sent the



same to the Accountant General with the service book of the petitioner for issuance of revised PPO but the Accountant General slash down the pension of the petitioner in the scale of Rs.2650/- to Rs.4000/- holding that the pay scale of the Pump Operator is Rs.2650/- to Rs.4000/- w.e.f. 01.01.1996 and since the petitioner was promoted from the Pump Attendant to Pump Operator Grade-I, the petitioner is not entitled to get 1st and 2nd ACP.

7. Mr. Ajay Kumar, the learned counsel for the petitioner further submits that the petitioner had no knowledge about issuance of Annexure-15, the order dated 08.12.2003 as contained in Memo No.6350, dated 08.12.2003 by which the 1st ACP granted to the petitioner was cancelled and, therefore, the petitioner seeks quashing of the aforesaid order. It is further submitted that the Chief Engineer without hearing the petitioner issued the order as contained in Memo No.546, dated 10.04.2019 (Annexure-14) and the order as contained in Memo No.767, dated 15.04.2019 by which the petitioner was granted second time bound promotion in the scale of Rs.2750/- to Rs.4400/-. All these orders have been passed without hearing the petitioner and, therefore, these orders are fit to be quashed and the petitioners are entitled to get 1st ACP and 2nd ACP in the scale of Rs.3050/- to Rs.4590/- and the next scales after granting 1st ACP and 2nd ACP vide order



dated 02.02.2007, passed by the Chief Engineer, Water Resources Department, Government of Bihar.

8. Learned counsel for the petitioner further submits that in the case of Akhileshwar Prasad (CWJC No.14287 of 2008), this Court directed to re-fix the pension of the petitioner and other retiral benefits on the basis of last pay drawn which include benefit of RPT. The learned counsel further placed his reliance on the judgment of Mahendra Nath Choudhury (CWJC No.9254 of 2006) decided on 06.05.2008 by a Single Bench of this Court that the period rendered under the work charge establishment has to be counted for grant of pensionary benefit and for grant of ACP and second time bound promotion. The consequential benefits should also be given to the petitioner.

9. Contending the submissions of the petitioner, Mr. Rewati Kant Raman, the learned AC to SC-11 submits that the petitioner was appointed on the post of Pump Attendant in the year 1968 on daily wages and during six years of his service, the petitioner got many promotions and he was regularized on the post of Pump Operator Grade-I. The Water Resources Department has committed gross irregularity in granting promotion to the petitioner to the different post up to the post of Pump Operator Grade-I. When the petitioner was granted many promotions, the



petitioner was not entitled to get 1st ACP and 2nd ACP. Assured Career Progression scheme is meant for only those employees who did not get any promotion during his service tenure and in order to avoid stagnation of an employee, Assured Career Progression scheme was brought into but the petitioner is not entitled to get. Accordingly, when the Chief Engineer vide order dated 02.02.2007, after retirement of the petitioner in the year 2004, granted 1st ACP to the petitioner after completion of 12 years of service and 2nd ACP after completion of 24 years of service and revised his pay scale. The Accountant General rightly raised objections with regard to grant of 1st and 2nd ACP to the petitioner and, therefore, the pension of the petitioner has rightly been revised. The authority has also revised their order in the year 2003 and vide order as contained in Letter No.546, dated 10.04.2019 and order as contained in Memo No.767, dated 15.04.2019 contained in Annexure-14 and 14A, Annexure-15 the order issued by the then Chief Engineer, Water Resources Department on 08.12.2003 as contained in Memo No.6350 by which the ACP granted to the petitioner was withdrawn before retirement of the petitioner but this letter was concealed at the time of retirement of the petitioner and the pension of the petitioner was wrongly fixed in the scale of Rs.3050/- to Rs.4590/-.



10. Having heard the submissions of both sides and on perusal of the records, I find that admittedly the petitioner was appointed on the post of Pump Attendent on daily wages in work charge establishment of Water Resources Department on 02.04.1968. The post of Pump Attendent is the basic grade post and later on in due course of time, the authority given many promotions to the petitioner in the ladder of Pump Attendent and he was asked to work as Pump Operator, Grade-I w.e.f. 01.03.1974, which was the highest post in the ladder of Pump Attendant. On the same post the service of the petitioner was regularized w.e.f. 01.04.1977. Subsequently, after implementation of pay revision, the scale of the petitioner was changed and petitioner was granted the scale of Rs.3050/- to Rs.4590/-. The petitioner retired from service on 30.04.2004 in the scale of Rs.3050/- to Rs.4590/-. The authority sanctioned the pension of the petitioner in the scale of Rs.3050/- to Rs.4590/- and, accordingly, the Accountant General vide PPO No.410683 sanctioned the pension to the petitioner w.e.f. 01.05.2004 in the scale of Rs.3050/- to Rs.4590/-.

11. From perusal of Annexure-3, it appears that the then Chief Engineer, Water Resources Department, Dehri granted 1st ACP and 2nd ACP to the petitioner and other employees on



completion of their 12 years and 24 years of service from different dates and thereafter the service book of the petitioner was sent to the Accountant General. The Accountant General raised objection vide Letter No.1320 and wrote letter to the Secretary, Finance Department, Government of Bihar about illegal grant of pay scale and ACP to the petitioner pointing out that the pay scale of Pump Operator is Rs.2650/- to Rs.4000/-. The office of the Accountant General also raised objection with regard to grant of different pay scales to the Pump Operator working in the different division of the Irrigation Department (Annexure-4A).

12. The answering respondents by filing counter affidavit brought on record the letter dated 08.12.2003 contained in Memo No.6350 which shows that when the case of the petitioner was considered and verified for grant of 1st ACP, it transpired that the petitioner was appointed on the post of Pump Attendant in the pay scale of Rs.75/- to Rs.85/-. The same scale was converted w.e.f. 01.01.1971 to Rs.165/- to Rs.204/- and from 01.04.1981 to Rs.375/- to Rs.480/-. The petitioner got promotion w.e.f. 01.03.1974 in the scale of Rs.205/- to Rs.284/- and it was decided that in view of Letter No.920 dated 08.03.1990 the petitioner was illegally granted 1st ACP w.e.f. 01.03.1984 and, accordingly, the same was rescinded. When the fresh fixation of salary of the



petitioner was brought to the notice of the Accountant General, the Executive Engineer as well as the Chief Engineer, Water Resources Department, Circle Dehri, Bihar considered the case of the petitioner and revised the pay of the petitioner, therefore, I find that there is genuine anomaly in fixation of salary and grant of promotion and thereafter fixation of salary of the petitioner in different scales. However petitioner has raised objection that all these three orders as contained in Annexure-15, Annexure-14 and Annexure-14/1 are passed without hearing the petitioner, therefore, I find that the respondents have committed illegality in passing the order affecting the fixation of salary and grant of promotion to the petitioner without hearing the petitioner, therefore, the orders as contained in Annexures-14, 14/1 and 15 are bad on account of the same are passed in violation of principles of natural justice, therefore, the order dated 10.04.2019, 15.04.2019 and 08.12.2003 are set aside. The matter is remitted to the Chief Engineer to pass order afresh in accordance with law after hearing the petitioner within four months from the date of receipt of this order. Till then the petitioner shall be allowed to withdraw his pension on the basis of the PPO issued by the Accountant General to the petitioner immediately after his retirement. It is not a case of reducing the pension of the petitioner on account of some anomaly found in



grant of promotion to the petitioner. The pension of the petitioner was revised. The petitioner was not granted pension in pursuance of the order of the Chief Engineer granting the petitioner the 1st and 2nd ACP in the year 2007.

13. Accordingly, this writ petition is allowed in the terms aforesaid.

**(Prabhat Kumar Jha, J)**

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14/06/2021
Transmission Date	NA

