

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 1113 of 2019

Matwar Swansi, aged about 66 years son of Late Rameshwar Shiv Swani,
resident of Near Telephone Exchange, P.O. and P.S. Bundu, District- Ranchi

... **Petitioner**

-Versus-

1. State of Jharkhand through Chief Secretary, Government of Jharkhand, Project Building P.O. and P.S. Dhurwa, District- Ranchi.
2. Secretary Water Resource Department, Government of Jharkhand, Project Bhawan, P.O. and P.S. Doranda, District- Ranchi
3. Secretary Finance Department, Government of Jharkhand, Project Bhawan, P.O. and P.S.- Doranda, District- Ranchi
4. Accountant General, Government of Jharkhand, Accountant General Office, P.O. and P.S.-Doranda, District- Ranchi
5. Chief Engineer, Water Resource Department, Government of Jharkhand, Sector-3 Jagannathpur, P.O.-Dhurwa, P.S.-Jaganathpur, District- Ranchi
6. Commissioner, South Chota Nagpur Division, P.O.-Court Compound, P.S.-Kotwali, District- Ranchi

... **Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	: Ms. Khalida Haya Rashmi, Advocate
For the Respondent-State	: Ms. Ruby Pandey, A.C. to S.C.-II
For Respondent No. 4	: Mr. Sudarshan Shrivastava, Advocate

06/08.07.2020. Heard Ms. Khalida Haya Rashmi, learned counsel for the petitioner, Ms. Ruby Pandey, learned counsel for the respondent-State and Mr. Sudarshan Shrivastava, learned counsel for respondent no.4.

This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard on merit.

The petitioner has preferred this writ petition for quashing the order dated 23.03.2018 passed by respondent no.5, whereby, the benefit of 2nd A.C.P. has been extended to the petitioner w.e.f. 07.07.2009 in the pay band of Rs.5,200-20,200/- and grade pay of Rs.2,000/- and for granting 2nd A.C.P. and its consequent benefits as per the rules formulated by the Government. The prayer for granting the benefit of 3rd M.A.C.P. is also made.

The case of the petitioner is that he was appointed on the post of Survey Khalasi on 20.08.1973 under Work Charge and, thereafter, his service was regularized as a Peon on 09.12.1982 in the scale of Rs.350-425/-. On 01.01.1986, pay scale of the petitioner was revised under 4th Pay Commission in the pay scale of Rs.871-1,010/-. The benefit of Junior Selection Grade was given to the petitioner on revised pay scale of Rs.800-1,150/- w.e.f. 09.12.1986. On 07.07.1989, the petitioner was promoted as Treasurer Guard and his pay scale has been fixed from Rs.1010-1030/- and next increment date was fixed on 07.07.1990. The benefit of 1st A.C.P. was granted to the petitioner w.e.f. 07.07.2001 in the pay scale of Rs.2,650-65-3300-70-4000/- computing regular service of 12 years from 07.07.1989.

The case of the respondent-State is that the petitioner was appointed on the post of Survey Khalasi on 20.08.1973 under work charge establishment. The services of the petitioner was regularized on the post of Peon w.e.f. 09.12.1982. The petitioner was appointed to the post of Treasurer Guard in the pay scale of Rs.800-1150/- w.e.f. 07.07.1989. The pay scale of the petitioner was further fixed from the basic pay scale of Rs.1,010/- to next pay scale of Rs.1,030/-. The petitioner was granted benefit of 1st A.C.P. w.e.f. 07.07.2001 after completion of 12 years of service on the promoted post of Treasury Guard i.e. from 07.07.1989. The pay scale granted as per the 1st A.C.P. was also verified by the concerned authorities as well as by the Department of Finance. The petitioner was granted benefit of 2nd M.A.C.P. w.e.f. 07.07.2009 in the pay scale of Rs.5,200-20,200/-, grade pay of Rs.2,000/- after completion of regular service of 20 years from the date of joining on the post of Treasurer Guard i.e. dated 07.07.1989 in the light of letter dated 14.08.2002 issued by the Finance Department, Government of Jharkhand. The above A.C.P. given to the petitioner, is approved by the letter

dated 18.04.2009 by the office of Finance Department, Government of Jharkhand. There is no higher hierarchy of the post of Peon. So the post of Treasurer Guard is not the promotional post of Peon and it is substantive post on which the petitioner was working. For granting 1st A.C.P. and 2nd A.C.P., continue service of the petitioner is computed from the date of joining on the post of Treasurer Guard from 07.07.1989, which is correct and under the provision of law. The post of Treasurer Guard is not the cadre post of Peon. The petitioner retired on 30.06.2013. Before retirement, he had not completed 30 years of service on the post of Treasurer Guard, therefore, he is not entitled for the benefit of 3rd M.A.C.P.

Ms. Khalida Haya Rashmi, learned counsel for the petitioner assailed the impugned order on the ground that the petitioner is entitled for counting the service from the year 1982, whereas, his case was considered from the year 1989 for such benefits, which is not in accordance with law and rules for granting the benefit of A.C.P. She further submits that the respondents have wrongly computed the period of service of the petitioner. The petitioner is entitled for the benefit of 3rd M.A.C.P. as he has already completed 30 years of service.

Ms. Ruby Pandey, learned counsel for the respondent-State submits that the post of Treasurer Guard is a new post and it is not a cadre post of Peon and thus the respondents have rightly computed regular service from 07.07.1989 for the purpose of granting A.C.P. benefits.

Mr. Sudarshan Shrivastava, learned counsel for respondent no.4 refers to Annexure-4 to the writ petition, which is an order passed by a coordinate Bench of this Court and submits that in that writ petition, the petitioner has confined his prayer for granting the benefit of 2nd A.C.P. only and at this stage, now the prayer of the petitioner is misconceived.

This Court has examined Annexure-7, brought on record by way of filing

reply to the counter affidavit, filed by the petitioner, whereby, it transpires that the post of Treasurer Guard is a post of direct recruitment. The petitioner was appointed on that post on 07.07.1989. The petitioner has earlier moved before this Court in W.P. (S) No. 7208 of 2013, which was disposed of vide order dated 06.10.2017, whereby, direction was issued to consider the case of the petitioner and in that case, the petitioner has confined his prayer for fixation of pay scale after granting 2nd A.C.P. in the scale of Rs.2750-4400/-. The benefit of 3rd M.A.C.P. has not been pressed in that writ petition by the petitioner. Pursuant to the order of the writ Court, the respondents have passed a reasoned order dated 23.03.2018, contained in Annexure-5 to the writ petition. In view of the Finance Department's Letter No.6/Promotion-02-5207/Department dated 14.08.2002, the petitioner was appointed on the post of Treasurer Guard on 07.07.1989 and, accordingly, from that day, the service of the petitioner was counted and the benefit of 1st A.C.P. was granted w.e.f. 07.07.2001 and the benefit of 2nd A.C.P. was also granted w.e.f. 07.07.2009. The petitioner has already retired on 30.06.2013. It transpires from Annexure-7 of the reply to the counter affidavit, filed by the petitioner that the post of Treasurer Guard is a substantive post. The petitioner has not been able to demonstrate as to how the post of Treasurer Guard is the cadre post of Peon. Moreover, Annexure-C of the counter affidavit, filed by the respondent-State, issued under the signature of Additional Secretary to the Government, Finance Department, Government of Jharkhand, suggests that this is a matter of appointment and not of promotion. Thus, there is no illegality in the impugned order dated 23.03.2018 passed by respondent no.5.

Accordingly, this writ petition stands dismissed.

(Sanjay Kumar Dwivedi, J.)