

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15265 of 2013

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1. The Union Of India, Through General Manager, E.C. Railway, Chandra Shekharpur, Bhuwaneshwar, State Of Orrisa
 2. The General Manager, East Coach Railway, Chandra Shekharpur, Bhuwaneshwar, State Of Orrisa
 3. The Divisional Rail Manager, E.C. Railway, Kundra Road Division, Bhuwaneshwar, Orrisa
 4. The Divisional Personnel Office, E.C. Railway, Kundra Road Division, Bhuwaneshwar, Orrisa
 5. The Divisional Finance Manager, E.C. Railway, Kundra Road Division, Bhuwaneshwar, Orrisa Null Null

.... Petitioner/s

Versus

Shiva Nath Prasad Son Of Late Jagannath Prasad Resident Of Village- Gheghata, P.S.- Gheghata, District- Saran, At Present C/O Manoj Kumar, Sanjana Apartment, Flat No. 301, 3rd Floor, Arrah Garden, Jagdeopah, Patna- 14

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. ASHOK KUMAR KESHARI

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 10-03-2015

Railway has filed this writ petition questioning the order of the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the Tribunal) passed in O.A. No. 93 of 2008 being order dated 8.10.2012 whereby the Tribunal has directed that no recovery of money, wrongly paid, could be ordered as was the view of the Apex Court in case of **Syed Abdul Qadir V. State of Bihar, (2009) 3 SCC 475.**

The facts are not in dispute. The pay and emoluments of the private respondents were wrongly fixed, this was sought to be recovered from his retrial dues. It was so deducted. This action was challenged before the Tribunal.

Before the Tribunal, the case of the Railway was that by mistake of calculation, wrong payments had been made during service tenure, which, when detected, was recovered from retrial dues. The individual (private respondent) was unrepresented before the Tribunal at the time of final hearing. The Tribunal relied on the judgment of the Apex court in case of **Syed Abdul Qadir** (Supra) and granted relief to the petitioner there.

Shri Keshri assails the order of the Tribunal relying on judgment of the Apex Court in the case of **Chandi Prasad Unnyal** since reported in **(2012) 8 Supreme Court Cases 117**.

We are not impressed. In that case itself, the case of **Syed Abdul Qadir** (Supra) has been noticed in paragraph 12. In paragraph 15 their Lordships have clearly said that wherever payments are made in mistake, the State is allowed to recover, subject to two exceptions. One of them being the facts relating to **Syed Abdul Qadir** (Supra) and the other is in relation to **Col. B. J. Akkara's** case. In **Col. B. J. Akkara's** case payment was being sought to be recovered from retrial dues. That was not permitted by the Apex Court. The facts situation is the same in the present case. That being so, we see no reason to interfere with the order of the Tribunal. This writ petition merits no consideration and accordingly, it is dismissed.

(Navaniti Prasad Singh, J)

(Jitendra Mohan Sharma, J)

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