

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6464 of 2009

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Kamal Deo Mishra, son of Late Harihar Mishra, resident of village-Bakatpur, PO- Bakatpur, via-Motipur, PS- Kanti, District- Muzaffarpur, retired Assistant Sub-Inspector, Railway Protection Force, Northeast Frontier Railway, Purnea, Bihar Petitioner

Versus

1. The Union of India through the Secretary, Railway Board, Ministry of Rail, Government of India, Rail Bhawan, New Delhi
 2. The General Manager, Northeast Frontier Railway, Maligaon, Guwahati
 3. The Chief Security Commissioner, Railway Protection Force, Northeast Frontier Railway, Maligaon, Guwahati
 4. The Senior Security Commissioner, Railway Protection Force, Northeast Frontier Railway, Katihar
 5. The Senior Divisional Financial Manager, Northeast Frontier Railway, Katihar
 6. The Assistant Security Commissioner, Special Intelligence Branch, Railway Protection Force, Northeast Frontier Railway, Katihar
- Respondents
- =====

Appearance :

For the Petitioner : Mr. M.P.Dixit, Advocate

For the Railway : Mr. Arvind Ujjwal, Advocate

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL ORDER

4 10-03-2016

I.A No.- 2298 of 2012

This interlocutory application has been filed for amendment in the writ application as the petitioner wants to induct another relief as stated in paragraph 2 of this application.

It is contended that, during the pendency of this writ application, an order dated 20.05.2010 came to be passed by the authority which has been appended as Annexure-A to the counter affidavit filed by the respondents, as a result of which, the total amount of death-cum-retiral gratuity has been adjusted against the

over-payment on the account that A.C.P. was wrongly awarded to the petitioner in the pay scale of Rs. 5500-9000.

Having regard to the facts and circumstances of this case and also the fact that during pendency of this writ application, Annexure-A dated 20.05.2010 came to be passed by the authorities, this interlocutory application is allowed.

Let the relief mentioned in paragraph 2 of this application forms part of this writ application.

C.W.J.C. NO. 6464/2009

Heard parties and perused the records of this case.

The petitioner initially filed this writ application for release of entire amount of death-cum-retiral gratuity (D.C.R.G.) amounting to Rs. 3,36,290/- which was withheld in view of certain clarification being required vide Annexure-5 issued by the Senior Security Commissioner. However, the writ petition was amended by introducing another relief for quashing of the memorandum issued by the Senior Security Commissioner (R.P.F.) holding that the petitioner was wrongly upgraded in the pay scale of Rs. 5500-9000, w.e.f., 25.07.2007 as he would only be entitled for the benefit of financial up-gradation, w.e.f., 01.10.1999 in the pay scale of Rs. 4000-100-6000 and, thus, the entire death-cum-retiral gratuity has been adjusted against the over-payment to the

petitioner.

The petitioner, who was appointed as constable in R.P.F. on 13.05.1968, was promoted to the post of Assistant Sub Inspector, w.e.f., 25.07.2000 in the pay scale of Rs. 4000-6000 and he was also granted benefit of A.C.P. in view of the instruction of Railway Board circulated vide Annexure P/1 appended with the rejoinder to the counter affidavit in the next pay scale of Rs. 5500-9000.

It is contended that the petitioner thereafter retired on 28.02.2009 and after his retirement, the aforesaid step of reduction of scale and adjustment of D.C.R.G. has been done by the authorities concerned, which seems to be the illegal.

A counter affidavit has been filed on behalf of the respondents taking stand that since the petitioner was already promoted to the post of Assistant Sub Inspector, w.e.f., 25.07.2000, he was not entitled for financial up-gradation to the pay scale of Rs. 5500-9000 as he has already got the benefit of A.C.P. , w.e.f, 1.10.1999 in the pay scale of Rs. 4000-6000.

The impugned memorandum issued by the department also reflects the aforesaid fact. However, learned counsel for the petitioner has submitted that though the petitioner was entitled for getting the benefit of A.C.P. on 01.10.1999 but he was not given



that and he was promoted to the post of Assistant Sub Inspector. Thereafter, the scheme of A.C.P. was introduced by the Railway Board on 23rd July, 2001, w.e.f, 1.10.1999. Therefore, till the petitioner was granted promotion, in fact, there was no scheme of A.C.P. applicable in case of R.P.F. Therefore, the Railway Board had issued further instruction which is contained in Annexure-P/1 appended to the rejoinder for the purpose of removal of such difficulty and it has been stated in clear terms in the instruction of the Railway Board that those A.S.I.s who have jumped the intermediary grade, i.e. of the Head Constables on account of promotion under Rule 72, can be considered for financial up-gradation in the pay scale of Sub-Inspector, i.e., Rs. 5500-9000 on completion of their 24 years of service. In view of that the petitioner, though, was promoted to the post of A.S.I. without having held the post of Head Constable, was given the said benefit of A.C.P. in the scale of Rs. 5500-9000.

But the authority concerned, without considering the aforesaid instruction of Railway Board, has held that petitioner would not be entitled for such benefit.

I find force in the submissions raised on behalf of the petitioner. A counter affidavit has been filed on behalf of respondents taking a stand that petitioner was only entitled for a



pay scale of Rs. 4000-6000 after grant of A.C.P. benefit from the due date, i.e., 01.10.1999 but they completely forgot that he was already promoted on the post of Assistant Sub Inspector before the introduction of the such A.C.P. scheme in the year 2001 with retrospective effect from 01.10.1999. So petitioner, in lieu of promotion, was already getting that scale of Rs.4000-6000, therefore, if the ACP benefit is to be given in view of the instruction of the Railway Board then that would be on the next scale only which would be Rs.5500-9000 but this issue has not at all been considered by the authority concerned while dealing with the case of the petitioner and order has been passed for adjustment of DCRG after holding the petitioner to be entitled to the pay scale of Rs.4000-6000.

In above view of the matter, this writ application succeeds. The impugned memorandum as contained in Annexure-A series to the counter affidavit dated 20.05.2010 is quashed and set aside. The mater is remitted back to the authority concerned to take fresh decision after consideration of Annexure-P/1 and while doing that, they would also have to consider the decision of the Apex Court rendered in ***AIR 2015 Supreme Court 696 State of Punjab and others etc. v. Rafiq Masih (White Washer) etc.*** holding in clear terms that recovery from employees of Class III

and IV services would be impermissible especially in case they have already retired.

It is expected that the whole exercise would be completed within a period of three months from the date of receipt/ production of a copy of this order.

(Dr. Ravi Ranjan, J.)

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