

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11619 of 2014

Rabi Shankar Prasad @ Rambh Shankar Prasad, son of Late Akhauri Naraian Prasad Singh @ Akhauri Narsingh Prasad, Retired Section Engineer (P.Way) under DRM, E.C. Railway, Sonpur, resident of Mohalla- Gandhi Nagar, Khadi Bhandar Chowk, Kanhauli, District- Muzaffarpur (Bihar)

.... Petitioner

Versus

1. The Union of India through the General Manager, E.C. Railway, Hajipur (Vaishali).
2. The Divisional Railway Manager, E.C. Railway, Sonpur (Saran).
3. The DRM/(Engg.) E.C. Railway, Sonpur (Saran).
4. The Divisional Railway Manager (P) E.C. Railway, Sonpur (Saran).
5. The Senior Divisional Finance Manager, E.C. Railway, Sonpur (Saran).

.... Respondents

with

Civil Writ Jurisdiction Case No. 9560 of 2014

1. Union of India through the General Manager, E.C. Railway, Hajipur (Vaishali).
2. The Division Railway Manager, E.C. Railway, Sonpur (Saran).
3. The D.R.M. (Engg.), E.C. Railway, Sonpur (Saran).
4. The Senior Divisional Finance Manager, E.C. Railway, Sonpur (Saran).

.... Petitioners

Versus

Rabishankar Prasad, S/o Late Akhauri Narain Prasad Singh, retired S.E. (P. way) under D.R.M., E.C. Railway, Sonpur, Resident of Mohalla Gandhi Nagar, Khadi Bhandar Chowk, Kanhauli, District Muzaffarpur (Bihar).

.... Respondent

Appearance :

(In CWJC No. 11619 of 2014)

For the Petitioner : Mr. Surya Kant Singh, Advocate.
Mr. Amar Nath Jha, Advocate.

For the Respondents : Mr. Bijoy Kumar Sinha, Advocate.

(In CWJC No. 9560 of 2014)

For the Petitioners : Mr. Bijoy Kumar Sinha, Advocate.

For the Respondent : Mr. Surya Kant Singh, Advocate.
Mr. Amar Nath Jha, Advocate.

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 31-03-2016

This order shall dispose of C.W.J.C. No. 11619 of 2014 filed by Rabi Shankar Prasad @ Rambh Shankar Prasad and C.W.J.C. No. 9560 of 2014 filed by the Union of India, both against the same order passed by the Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) on 7th of September, 2012 in O.A. No. 57 of 2011.

2. Rabi Shankar Prasad (hereinafter referred to as “the employee”) invoked the jurisdiction of the Tribunal pointing out that he voluntarily retired from Railway service on 31st of August, 2004. He has been held responsible for a loss of Rs. 6,16,695/- and is saddled with a recovery of Rs. 1,96,330/- by withholding the entire gratuity and further a sum of Rs. 5,97,377/- is sought to be recovered from the pensionary benefits. The recovery is being disputed in an Original Application before the Tribunal.

3. It is admitted that in respect of sum of Rs. 1,96,330/- , a Division Bench of this Court in C.W.J.C. No. 9374 of 2009, held that no show-cause notice is required to be served in respect of adjustments to be made for the losses as it is not the case of imposing any penalty.

4. The amount involved in the said petition was Rs. 1,96,330/-. It is the remaining amount out of Rs. 6,16,695/- in respect of which, the employee invoked the jurisdiction of the Tribunal. The learned Tribunal has allowed the Original Application holding that the recovery is sought to be made without issuing any show-cause notice, whereas such amount can be recovered only after taking recourse to Rule 9 of the Railway Services (Pension) Rules, 1993 (for short “the Rules”), if otherwise permissible in law.

5. The employee is in a writ proceeding challenging the said liberty granted to the Railways as it is contended that it is not permissible in law to recover any alleged loss from the pension payable, whereas the argument of the Railways is

that in terms of the earlier order of the Division Bench, no show-cause notice is required to be served.

6. We have heard learned counsel for the parties and find no merit in both the writ applications. Any recovery from the pension affects the civil rights of the employee. Therefore, the recovery cannot be effected without issuing any show-cause notice. The show cause is required either under Rule 9 of the Rules, if applicable or even as a part of the natural justice, but no recovery can be effected without giving opportunity of hearing to the employee.

7. In view of the said fact, we do not find any error in the order passed by the Tribunal which may warrant interference in the present writ applications.

8. The writ applications are, thus, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P.K.P./Sujit
N.A.F.R.

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