

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15124 of 2015

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K. C. M. P Sinha, son of late Shyam Narayan Prasad, retired Chief Office Superintendent, Office of the Senior Divisional Security Commissioner, Railway Protection Force, East Central Railway, Danapur District - Patna (Bihar) Resident of Village & Post - Chandi PS - Chandi District - Nalanda (Bihar).

.... Petitioner/s

Versus

1. The Union of India through the General Manager, East Central Railway, Hajipur, District - Vaishali (Bihar).
2. The General Manager (Personnel), East Central Railway, Hajipur, District - Vaishali (Bihar).
3. The Divisional Railway Manager, East Central Railway, Danapur, P.O. - Khagaul, District - Patna - 801105 (Bihar).
4. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O. - Khagaul, District - Patna - 801105 (Bihar).
5. The Senior Divisional Financial Manager, East Central Railway, Danapur, P.O. - Khagaul, District - Patna - 801105 (Bihar).
6. The Senior Divisional Security Commissioner, East Central Railway, Danapur, P.O. - Khagaul, District - Patna - 801105 (Bihar).

.... Respondents

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Appearance :

For the Petitioner : Mr. Munna Prasad Dixit (M.P. Dixit)
Mr. Sanjay Kumar Dixit, Advocate
Mr. Sanjay Kumar Choubey, Advocate
Mr. Shailendra Kumar, Advocate
Mr. Sunil Kumar, Advocate

For the Respondents : Mr. Vivek Anand Amritesh, Advocate

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 27-06-2016

The order dated 12th August, 2015 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No.853 of 2013 is subject matter of challenge in the present writ petition wherein an Original Application filed by the petitioner challenging re-

fixation of his pay and pension remained unsuccessful.

2. The stand of the respondents is that the pay of the petitioner was wrongly fixed in the year 1991 which mistake continued till the date of superannuation of the petitioner on 31st of March, 2013. Therefore, the respondents are entitled to re-fix his pay and pension and also recover the excess amount paid to the petitioner.

3. The Tribunal dismissed the Original Application though the Supreme Court judgment reported as State of Punjab & Ors. Vs. Rafiq Masih (White Washer) and Ors., (2015) 4 SCC 334 was referred to by it.

4. Learned counsel for the petitioner has vehemently argued that in the light of the judgment in the Rafiq Masih's case (supra), no recovery could be affected after superannuation of the petitioner even if there was wrong fixation of pay. It is further argued that the fixation of pay was found to be wrong without giving any opportunity of hearing to the petitioner which violates the principles of natural justice.

5. We have heard learned counsel for the parties and find that the order of the Tribunal cannot be sustained. The Hon'ble Supreme Court in Rafiq Masih's case (supra) has held that there cannot be any recovery from the retrial benefits on account of wrong fixation of salary when such fixation was not on account of any fraud or

misrepresentation on the part of the employees. The Hon'ble Supreme Court has laid down the following guidelines as to when the recovery is to be effected:

“18. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

6. In view of the above judgment, we find that the part of the order whereby the recovery was found to be sustainable cannot be sustained and is, therefore, set aside.

7. Having said so, we find that in respect of alleged wrong fixation of pay and consequently pension, the same has been affected without granting any opportunity of hearing to the petitioner. Thus, the said order is set aside so as to enable the respondents to comply with the principles of natural justice. If after hearing the petitioner, the respondents find that the pay was wrongly fixed leading to fixation of pension, in that situation, the reduced pension will be payable soon after the date of superannuation. This exercise be completed within six months from today.

8. With the aforesaid observation and direction, the writ petition stands allowed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	
CAV DATE	N. A.
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