

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9619 of 2016

=====

Sadanand, Son of Ram Swarup, resident of village - Chak Hussainee, P.S. Mansi,
District - Khagaria, worked as Head Trackman under Senior Section Engineer, E.C.
Railway, Rail Path, Khagaria (Bihar)

.... Petitioner

Versus

1. The Union of India through the General Manager, East Central Railway,
Hajipur (Bihar)
2. The Divisional Railway Manager, East Central Railway, Sonapur
3. The Divisional Railway Manager (Personnel), East Central Railway, Sonapur
Division, Sonapur (Bihar)
4. The Senior Section Engineer, E.C. Railway, Rail Path, Khagaria, Bihar

.... Respondents

=====

Appearance :

For the Petitioner : Mr. Arun Kumar, Advocate

For the Respondents : Mr. Umesh Tiwari, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 13-02-2017

Since the Central Administrative Tribunal, Patna Bench, Patna refused to direct the respondent Railway authorities to pay salary to the petitioner for the period when he was in judicial custody, the petitioner has decided to challenge the order dated 30th July, 2015, passed in O.A. 722/2013.

The petitioner does not dispute the fact that he was in judicial custody in Khagaria Jail from 03.11.2005 till 30.05.2008 under Section 304-B of the Indian Penal Code. Petitioner, who was railway employee and has superannuated now with effect from



31.01.2011, did not bother to inform the railway establishment about such a development. Only after his acquittal that he approached the authorities to permit him to join.

In the above background, the respondent authorities suspended the petitioner for the period he was in judicial custody and after his superannuation have refused to pay him salary for the period of custody.

The submission of the counsel for the petitioner is that he is entitled to payment of salary for the period he was in custody because he has been acquitted by the trial court and the acquittal amounts to washing away his period of custody from the retrospective date.

The proposition urged at the Bar on behalf of the petitioner cannot be disputed, but the factual position also cannot be overlooked. The petitioner's judicial custody was justified by a judicial order. His period as under-trial prisoner was justified in law and that period of incarceration even after acquittal cannot be washed away.

When a question was put to the petitioner's counsel as to whom was the petitioner serving during the period of judicial custody and as to what kind of work was being done during the period of judicial custody for which he should be paid salary by the



Railways, he does not have a very clear submission to make.

By simple logic, while the petitioner was in judicial custody, he could not be serving the establishment of the Railways, therefore, if the Railway authorities have treated that period as a period of no work no pay then in the given facts the said principle cannot be said to have been erroneously applied. The Court is of the opinion that since the petitioner was under valid detention in Khagaria Jail by virtue of a judicial order, he cannot be treated to be in employment for that period for the purposes of payment of salary though after acquittal joining was accepted.

It will be an abbreviation of law to pass any order by interfering with the order impugned of the Tribunal to pay any salary to the petitioner for the period he was in custody. However, for other purposes, that period will not come in the way of settlement of his post retiral dues as well as continuance of service, which is not an issue since the respondents have treated the petitioner's continuance after acquittal and the entire length of service has been counted for the purposes of pension.

One thing is of significance that the respondent authorities have treated the period of his custody as a period under suspension and they have even decided to pay him subsistence allowance, even that may be a debatable issue, but the Court will not



go into that aspect of the matter since that was not the issue on which the OA was dismissed.

The writ application has no merit. The order of the Tribunal is not required to be interfered with. Writ is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	15.02.2017
Transmission Date	

