

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10999 of 2015

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1. The Union of India, through the Chairman, Railway Board, Rail Bhawan, New Delhi.
 2. The General Manager, East Central Railway, Hajipur, District - Vaishali (Bihar).
 3. The Chief Personnel Officer, East Central Railway, Hajipur, District - Vaishali (Bihar).
 4. The Divisional Railway Manager, East Central Railway, Danapur, P.O. - Khagaul, District - Patna.
 5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, P.O. - Khagaul, District - Patna.

.... Petitioners

Versus

M. P. Srivastava S/o Late Sheo Prasad Lal Ex-Assistant Personnel Officer, East Central Railway, Danapur, P.O. - Khagaul, District - Patna, resident of Sanjana Apartment Flat No. A - 102, Ara Garden Road Near Jagdeo Path, P.O. - B.V. College, District - Patna (Bihar).

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Sinha, Advocate
Mr. Ashish Sinha, Advocate
Mr. Abhimanyu Deo, Advocate
For the Respondent/s : Mr. M.P. Dixit, Advocate
Mr. S.K. Dixit, Advocate
Mr. Sanjay Kr. Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 18-07-2017

The court fails to appreciate as to why the present writ application was filed in the very first place assailing the order dated 27.05.2014 passed in O.A. No. 706/2011 by Central Administrative Tribunal (hereinafter



referred to as the "Tribunal"), Patna Bench, Patna.

The private respondent was the applicant before the Tribunal for payment of interest on withheld DCRG amount of Rs. 3,18,000/- (Rs. Three Lakhs Eighteen Thousand only) with effect from 30.11.2004 till the date of his actual payment because he dubbed the action of the petitioners to be bad in law.

The Central Administrative Tribunal, Patna Bench, Patna went into various submissions made on behalf of the parties as well as the circumstances under which gratuity or pension could be withheld against the government servant.

No doubt a proceeding was initiated for major punishment against the private respondent but no major punishment as such came to be awarded. The punishment of withholding of 5% pension for a period of five years was passed but the payment of gratuity was allowed and withholding it was not the punishment in question. It was in this background that the Tribunal had this to say in paragraph 14: -

14. From the perusal of above Rule, it emerges that sub-para (i), (ii), (iii)(a) and (iv) deals with penalties relating to minor penalties, whereas in the instant case the applicant was chargesheeted for major penalty. Thus, these rules are not applicable



in the case of the applicant. Moreover, Rule-9 of the Railway Services (Pension) Rules, 1993 has specifically stipulated the right of the President to withheld or withdraw the pension if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including service rendered upon reemployment after retirement which means pension or gratuity can be withheld or withdrawn either in full or in part, whether permanently or for a specified period after conclusion of the said disciplinary proceedings. Thus, the principles laid down in the case of State of Jharkhand & Others Vs. Jitendra Kumar Srivastava and Anr. is squarely applicable in the instant case and respondents have no authority to withheld the DCRG as Hon'ble Supreme Court relying on the case of D.S. Nakara and Ors. Vs. Union of India reported in (1983) 1 SCC 305 and after discussing Rule 43(b) of the Bihar (Pension) Rules, which is akin to Rule-9 of the Railway Services (Pension) Rules, 1993 has held that in the absence of any provision in the Rules, no DCRG can be withheld."

After having heard learned counsel for the petitioners and learned counsel for the respondent, we do not find any infirmity in the rationale and reasoning provided by the Tribunal in ordering payment of interest at the rate of 8% on the DCRG amount from the date it



was withheld i.e. 30.11.2004 till the actual date of payment made in favour of the private respondent.

Since DCRG does carry a statutory interest and there is obligation created to pay statutory interest upon the employer under various rules and legislations, the direction of the Tribunal to pay interest at the rate of 8% cannot be said to be a irrational order in the background that the respondent authority did not decide to withhold his DCRG as a measure of punishment but only deferred it during pendency of the departmental enquiry.

The writ application has not merit. It is dismissed.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

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