## IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.15245 of 2015**

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Yogendra Mishra, Son of Late Nand Kishore Mishra, resident of village-Brahmotra, P.O. & P.S. Pandaul, District- Madhubani, Bihar.

.... .... Petitioner

Versus

1. The Union of India through the General Manager, East Central Railway, Hazipur.
2. The F.A. & C.A.O. East Central Railway, Hazipur
3. The Divisional Railway Manager, East Central Railway, Samastipur.
4. The Divisional Railway Manager (P), East Central Railway, Samastipur.
5. The Accounts Officer, East Central Railway, Hazipur.
6. The Senior Divisional Finance Manager, East Central Railway, Samastipur.
7. The Senior Divisional Finance Manager, East Central Railway, Hazipur.
8. The Central Bank of India, through its Regional Manager, Regional Office, Darbhanga.
9. The CMD, Central Bank of India, Mumbai
10. The Branch Manager, Central Bank of India, Pandaul, District- Darbhanga.

.... .... Respondents

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**Appearance :**

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| For the Petitioner | : | Mr. Gautam Bose, Sr. Advocate<br>Mr. Ajay Kumar, Advocate<br>Mr. Vikash Jha, Advocate |
| For Respondents 1 to 7 | : | Mr. Bindhyachal Singh, Advocate |
| For Respondents 8 to 10 | : | Mr. Ajay Kumar Sinha, Advocate |

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**
**and**
**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date: 12-01-2017**

Annexure-1 is the order of the Central Administrative Tribunal, Patna Bench, Patna. The order is dated 17th July, 2015, passed in O.A. No. 279 of 2015.

The occasion for the petitioner to file the said OA arose when the Central Bank of India, especially, the Pandaul Branch at Madhubani decided to reduce the pension which was being authorised to the petitioner month to month and even recovery was initiated against him.

The short facts, which are required to be noticed, is that the petitioner was a Mail/ Express Guard in the Indian Railways. He was allowed to retire in the year 2005 on the basis of an application made earlier in the year 2001 because he was suffering from some kind of cancer. Petitioner was authorised pension on the pay scale of Rs. 5500-9000/-. The basic pay of the petitioner being Rs. 9175/-.

The detail of how his pension started, authorised and credited in his account is available in paragraph 3 of the impugned order, which is reproduced hereinbelow :

> "Respondents No. 1 to 7 contested the case by filing a written statement. According to the respondents, the applicant retired voluntarily on 16.09.2005 in the scale of Rs. 5500-9000/- at basic pay of Rs. 9175/- and subsequently as per rule, the pension was fixed at Rs. 8984/-. After commutation, it was fixed at Rs. 5391/-. That pursuant to the implementation of the 6th Pay Commission, the Bank revised the pension of the applicant suo-motu and without involving/ consulting the Railway. According to the respondents, from the ready reckoner, applicant's pension, after revision, had to be fixed at Rs. 13,537/- in place of the earlier Rs. 8984 as per column no. [1]. However, it had

> inadvertently been fixed in accordance with column no. [2] at Rs. 20305; that is how, he was getting higher pension at Rs. 37017/-, as claimed by the applicant. The calculation is as follows – [Rs.20305/- + Rs. 20305 (100% DA in June 2014] – Rs. 3593/- [commuted amount] = Rs. 37017/- while the applicant had to get Rs. 13573/- + Rs. 13537/- - Rs. 3593/- = Rs. 23481/-. According the respondents, when this error was detected, his pension was modified and excess payment which was received by the applicant, is being recovered and there is no infirmity in the revised order. According to the respondents, application's pension was fixed at Rs. 13,537/- w.e.f. 01.01.2006 from Rs. 8984/- and after commutation it was fixed at Rs. 9944/- and subsequently, the revised PPO was sent to the Bank."

Having heard learned Senior Counsel for the petitioner as well as the respondents, the counsel for the petitioner in a very fair manner accepts and submits that there was occasion to revise and revisit the pension of the petitioner because he ended up with a higher pension on a higher pay scale than what was available to him after the recommendation of the 6th Pay Commission due to mistake of the Bank.

The petitioner had drawn advantage of a higher pension all through after the revision was made in the 6th pay till the discovery was made in the year 2014.

It is not the case that there was a mistake committed by the employer in fixing the pay scale or the pension of the petitioner. As it is known that after the 6th Pay Revision Committee recommendations there was a standing instruction given to the Banks to revise the pension in terms of the revised scale of a retiree and there was some kind of mix up at the level of the Bank while revising the pension of the petitioner and enhanced pension kept accruing in favour of the petitioner for a long period of time i.e. 8½ years and only when this discovery was made in the year 2013 by the Railway that the remedial measures was taken by the Bank.

The issue is whether the petitioner as an honest citizen was duty bound to bring the fact of a higher revised pension accruing in his account month after month to the notice of the authorities which he did not do. He was a Government servant holding a responsible enough post and these days every Government servant is well aware as to his entitlement to the last penny. This Court, therefore, puts the onus on the petitioner that there was lack of honesty on his part in getting any clarification from the Bank or any authority as to why a pension of higher order to the extent of Rs.37017/- was accruing to him despite commutation to his pension also, which was authorised. Obviously, the petitioner was enjoying the bounty and the windfall.

He now cannot make a grievance when windfall has stopped and the clock is sought to be turned back because public money is involved.

The pension has been revised on the correct scale. Now it has to remain as such. No interference is warranted with the action. The thrust of the argument of the learned Senior Counsel for the petitioner is that the recovery should not be allowed to be made keeping in mind the ratio of the decision rendered in the case of ***State of Punjab and others Vs. Rafiz Masih*** reported in ***(2015) 4 SCC 334***.

The decision of Rafiz Masih (supra) was also pressed in the service by the petitioner before the Tribunal. It is not that the Tribunal did not consider the ratio and the declaration of law made by the highest Court. Reading of paragraph 5 of the said decision will certify that position. However, the Tribunal has gone ahead and decided the issue based on other decisions also rendered by the Hon'ble Apex Court from time to time and those decisions have been referred in paragraph 6 and paragraph 6 (which seems to be a typing mistake).

The Court feels that it was a case of clerical mistake made by the Bank while revising the pension of the petitioner and it is not a case of authorization of pension in favour of the petitioner on the enhanced scale. A bona fide mistake on accounting having occurred and having not been pointed by the petitioner so long as the discovery was not made, the equity is not available to the petitioner, in fact, any interference with the order of recovery will be amount to rewarding an employee who has otherwise been dishonest in not pointing out the glaring discrepancy of the benefit of pension which he continued to derive for almost 8½ years.

In the given facts, therefore, the Court is in agreement with the findings given by the Tribunal that this is not even a fit case where any kind of benefit of order of non-recovery should be passed.

Public money cannot be squandered in the manner in which the petitioner has derived benefit. He can only derive as much as what the rules and law entitles him to. The State has other obligations too to other citizens as well. No special privilege can be extended to an employee who, by his own showing, has been far from being honest in his conduct. The writ application has no merit therefore and it is, accordingly, dismissed.

**(Ajay Kumar Tripathi, J.)**

**(Nilu Agrawal, J.)**

Sudha/Rajesh

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