

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14084 of 2016

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1. The Union Of India through general Manager, East Central Railway,
Dhanbad (Jharkhand)
 2. The Divisional Railway Manager, East Central Railway, Dhanbad
(Jharkhand)
 3. The Additional Divisional Railway Manager, East Central Railway,
Danapur, (Jharkhand)
 4. The Senior Divisional Finance Manager, East Central Railway,
Dhanbad (Jharkhand)
 5. The Senior Divisional Finance Manager, East Central Railway Dhanbad
(Jharkhand)

.... Petitioners

Versus

Raj Kishore Singh son of Late Ramadhar Singh, Ex-Senior Commercial Clerk, East Central Railway, Dhanbad (Jharkhand) Resident of Village & Post Office-Rampur Khajuria, P.S. Dumaria Ghat, District- East Champaran (Bihar)

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Naresh Dikshit, Advocate.
For the Respondent/s : Mr. M.P. Dixit, Advocate
Mr. S.K. Dixit, Advocate
Mr. Sanjay Kr. Choubey, Advocate
Mr. Shailendra Kumar, Advocate
Mr. Sunil Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

4. 17-07-2017 Heard learned counsel for the petitioners and

learned counsel for the respondent.

The applicant is the private respondent in this



writ application. He filed O.A. No. 176/2010 before the Central Administrative Tribunal (hereinafter referred to as the “Tribunal”), Patna Bench, Patna, because the petitioners decided to pass order dated 26.03.2008 compulsorily retiring him from service with effect from 27.03.2008, as well as withholding of pension of 1/3rd and grant of only 2/3rd as a measure of disciplinary action.

The Tribunal heard the parties and came to a considered opinion as to whether the petitioners went wrong in exercise of power of punishment of compulsory retirement as well as withholding of 1/3rd of pension. The reasons read as follows: -

“4. In a case of this nature, when a proceeding is initiated against a delinquent employee under Railway Servants [Discipline & Appeal] Rules, there cannot be a penalty not envisaged under Section 6 of the said Rule. Removal from service and compulsory retirement are treated as major penalties. Even reduction to the lower stage in the time scale of pay with cumulative effect also amount to major penalty. There cannot be a penalty of compulsory retirement coupled with cut in pension because when



the proposed penalty was imposed at that time, the delinquent employee was a Railway servant and as such imposition of compulsory retirement was within the power of the Disciplinary Authority. Had a departmental proceeding initiated under Railway Servants Pension Rules after retirement of the applicant, certainly competent authority could have passed the order of cut in pension Presidential assent is required for such cut in pension, as required under Rule 9 of Railway Service [Pension] Rules, 1993. Even there is no order whether there was any cut in pension. The only order passed by the respondents is that the applicant was punished with compulsory retirement with provision of 2/3rd pension as a welfare measure for his family. The order will prima facie shows that the 2/3rd pension was allowed to the applicant besides compulsory retirement. Such a punishment is not tenable under law even if the order of compulsory retirement is allowed to stand. There cannot be any other order not envisaged under Section 6 of the Railway Servants [D&A] Rules. Had the Disciplinary Authority reduced the pay of the applicant in the time scale



of pay for specified period or even reduced to a time scale of pay, grade or post, the pay of the applicant could have been accordingly fixed and calculated after his retirement. Since the applicant was compulsorily retired with effect from 27.03.2008, this has to be treated as a compulsory retirement simpliciter as cut in pension could not have been passed during service period of an employee, as such cut in pension can only be passed after superannuation of an employee. Cut in pension order can not be handed over to an employee who is very much in service on the date of passing of such order. To sum up, since there is no provision of cut in pension in Railway Servants [Discipline & Appeal] Rules under the definition of penalties, such a punishment could not have been passed, which needs to be quashed in part in the larger interest of justice. Since the departmental appeal is pending before the Appellate Authority which is yet to be disposed of, we refrain from passing any order on the merit of the case of compulsory retirement, as it may prejudice the mind of the Appellate Authority. Hence ordered.”



The Divisional Railway Manager, therefore, was in error by passing the order impugned by clubbing the two punishments when the two provisions read differently and require separate proceeding.

The writ application, therefore, is dismissed, as no legal infirmity emerges from the order of the Tribunal for setting aside the punishment of withholding of pension to the extent of 1/3rd.

(Ajay Kumar Tripathi, J.)

(Rajeev Ranjan Prasad, J.)

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