IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5643 of 2017

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Binod Bihari Das 'Vimal', Son of Late Pulkit Lal Das, Resident of Village- Belarahi, P.S.- Jhanjharpur, District- Madhubani, Presently residing at Mohalla- Gandhi Nagar, Road No.- 1, Khadi Bhandar Chowk, Muzaffarpur.

.... Petitioner

Versus

1. Union of India, through the General Manager, East Central Railway, Hajipur.
2. The Financial Advisor cum Chief Accounts Officer, East Central Railway, Hazipur.
3. The Divisional Railway Manager, East Central Railway, Sonepur.
4. The Divisional Railway Manager, (Commercial), East Central Railway, Sonepur.

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Gautam Bose, Sr. Advocate
		Mr. Pravin Chandra Prasad, Advocate
For the Railway	:	Mr. Uma Kant Prasad Verma, Advocate

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

Date: 11-07-2017

Heard Sri Gautam Bose, learned Senior Advocate assisted by Sri Pravin Chandra Prasad, learned counsel for the petitioner and Sri Uma Kant Prasad Verma, learned counsel for the Railway.

2. The sole petitioner, in the present case, is seeking quashing of the order dated 10.03.2017, passed in O.A. No. 546 of 2013, by a Division Bench of Central Administrative Tribunal (hereinafter referred to as the "CAT"), Patna Bench, Patna and also for a direction to the respondents to pay Rs. 1,48,900/- which has been withheld from the retiral dues of the petitioner.

3. Brief facts of the case which are not in dispute are as under: -

I. Petitioner happens to be an employee of Railway and while he was posted as Commercial Superintendent, Parcel Office, East Central Railway, Muzaffarpur during the year 2009-10, he had been involved in four bookings of Van Parcel Unit (in short 'V.P.U.') from the additional counters. The V.P.Us. were booked for carrying Litchi during the season as usual from Muzaffarpur to Lokmanya Tilak Terminal.

II. The petitioner booked all the four V.P.Us. charging at Standard Scale (Scale-"S"), whereas, as per the Freight Marketing Circular bearing no. 1/2007, he should have charged at Premium Rate Scale ("P-Scale"). This resulted in a monetary loss of approximately Rs. 1,18,900/- to the Railway.

III. The petitioner retired from service on 31.03.2013 as Commercial Superintendent no. 1, East Central Railway, Muzaffarpur. Upon his retirement, when he received a statement of payment of his retiral dues issued on 05.02.2013, it transpired that the respondents authority have withheld a sum of Rs. 1,48,900/- from the amount of gratuity, which was said to be the under charged debit amount for booking of V.P.U. of 2009-10.

A photocopy of statement of payment of retiral dues has been annexed as Annexure-9 to the writ application.

Stand of petitioner.

4. The petitioner moved before the CAT, Patna Bench, Patna vide O.A. No. 546/2013, and prayed for a direction to the respondents to pay Rs. 1,48,900/- to the applicant upon holding that the applicant is not responsible for under charged debit in question and no recovery can be made from the applicant. According to the petitioner, Rule 962 and 1820 of the Indian Railway Commercial Manual provide for charging of the under charged amount of freight from consignee at the receiving station at the time of delivery of goods which was not done in the present case, and therefore, the receiving station was also responsible. His main thrust of argument centers around the circular dated 24.01.2017, issued by the Ministry of Railway, Government of India, to all the General Manager, regarding chargeability of V.P.U. booking at Scale-"P" in place of Scale-"S" was not circulated in the Parcel Office and even the Senior Officers and Inspectors/Supervisors had no knowledge of the said circular which resulted in booking of the V.P.Us. at the rate Scale-"S".

Stand of the respondents

5. On the other hand, the respondents have taken a categorical stand in paragraph 13 of their written statement that the instruction, as contained in the circular no. 1/2007, was received under East Central Railway, Muzaffarpur and the same was circulated to the concerned station including the posting place of the applicant through letter no. C/386/1/RC/CG/2007 dated 21.02.2007, which was duly received in the office where the applicant was working. Therefore, the plea with regard to the non-receipt of the relevant circular and the same not having been circulated, as stated by the applicant, is completely false, baseless and incorrect. A copy of letter dated 21.02.2007 has been enclosed with the written statement of the respondents as Annexure-R/2.

6. Although, the petitioner who was applicant before the CAT, Patna Bench, Patna filed a reply to the written statement filed by the respondents, but the categorical statement made in paragraph-13 of the written statement has not been substantially denied, as it will appear from the statement made in paragraph-7 of the reply of the petitioner which is reproduced hereunder: -

> "7. That the statement made in paragraph no. 9, 11 and 13 of written statement are not true and the same is denied."

7. Further, learned counsel for the respondents has submitted that it is in fact well known to an employee of the rank of this petitioner that every year for the purpose of booking of Litchi additional counters are opened at Muzaffarpur. The Senior Officers and Senior Supervisors duly brief the entrepreneurs as well as the employees about the norms/rules relating to the booking and a copy of the same is also made available to them. This fact about opening of additional counter every year at Muzaffarpur during the Litchi season has also been admitted by the petitioner in his show cause, therefore the submission of the applicant/petitioner that he was not aware of the said circular is not fit to be accepted. The petitioner was given a opportunity to show cause and pursuant thereto the petitioner also submitted his show cause, therefore, the principles of natural justice has also been complied with.

8. It is further pointed out that the under charging of V.P.Us., by the petitioner and some other Commercial Superintendents posted during the relevant time at Muzaffarpur, came to the notice of the respondents when the same was pointed out by the Senior Travelling Inspector of Accounts, pursuant to the same the debit memo was prepared. In the meantime, a sum of Rs. 1,00,000/- (Rupees One Lac) was recovered from one of the entrepreneurs which had already been adjusted against the total debit amount accumulated against all the Commercial Superintendents.

Impugned order

9. A Division Bench of CAT, Patna Bench, Patna considered the submissions of the petitioner, the relevant rules pointed out by both the parties and came to a conclusion that the practice of booking of Litchi at Muzaffarpur during the season was well known to the petitioner as it was going on for several years and as the Commercial Superintendents, Parcel Office, the applicant, was expected to know the rate applicable for booking. The CAT, Patna Bench, Patna, therefore, refused to accept the ground of lack of knowledge as justification for under recovery.

10. We have carefully gone through the pleadings of the parties and the materials available on record as also the finding of fact in the writ application, the petitioner has not set-forth any ground to assail the order of the learned Tribunal, however in course of submission, the learned Senior counsel for the petitioner has put emphasis on his stand as to lack of knowledge about the circular.

11. It is not in dispute that the petitioner was posted as Commercial Superintendent at Muzaffarpur in the Parcel Office. The respondents have substantiated their argument by specific pleading that the said circular was received in the Office where the applicant was working, therefore the stand of the applicant that he had no knowledge of the circular cannot come to his rescue.

12. We are in agreement with the finding recorded by the learned Tribunal, no infirmity or illegality in the order passed by the CAT, Patna Bench, Patna, could be noticed by this Bench, result thereof the writ application is held to be devoid of merit and the same is hereby dismissed.

13. No order as to costs.

(Rajeev Ranjan Prasad, J.)

I agree.
(Ajay Kumar Tripathi, J.)

Rajeev/-

(Ajay Kumar Tripathi, J.)

AFR/NAFR	AFR
CAV DATE	29.06.2017
Uploading Date	11.07.2017
Transmission Date	N.A.