

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.8756 of 2016**

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Dinesh Prasad Son of Molvi Mahto, Resident of Village- Saibani, P.O. Saibani,  
P.S.- Bakhtiyarpur, District- Patna

.... .... Petitioner/s

Versus

1. The Union of India through the Chief Postmaster General, Department of Post, Patna.
2. The Assistant Superintendent of Post Barh Sub Division Nalanda.
3. The Superintendent of Post Offices, Nalanda, District Bihar Sharif.
4. The Post Master, Bihar Sharif Head Office Nalanda.
5. The S.P.M. Athamal Gola S.O.
6. The G.D.S./B.P.M. Naya Bigha, B.O. in A/C with Athmalgola S.O.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Shailesh Kumar, Advocate  
Mr. Ramji Kumar, Advocate  
For the Respondent/s : Mr. Awadhesh Kumar Pandey, SCGC  
Mr. Ravinder Kumar Sharma, CGC

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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: 04-02-2017

Dismissal of the O.A. application, which was OA 696 of 2014, vide order dated 04<sup>th</sup> March, 2016 by the Central Administrative Tribunal, Patna Bench, Patna is the cause of action for the petitioner to file the present writ application. Petitioner was a Dak Sewak. He was found to be involved in misappropriation to the tune of Rs. 39,70,350/- relating to payments in MGNREGA. Not only a First Information Report has been lodged and instituted, but a departmental proceeding has also been initiated. Since the petitioner



had superannuated, in the meantime, he demanded settlement of his post retiral dues which the respondents have refused to settle due to pendency of departmental proceeding as well as a criminal case.

2. The stand taken by the counsel for the petitioner before this Court is in similar terms as it was before the Tribunal. The basic stand is that since the petitioner has not yet been found guilty of any grave misconduct or negligence during the period of his engagement, keeping in mind the ratio of a decision rendered by the Hon'ble Supreme Court, the post retiral dues ought to be settled.

3. The Tribunal has answered the said submission by relaying upon the provision of Rule 10-A of GDS (Conduct and Engagement) Rules, 2011 wherein the power is vested in the President to withhold dues of such employees. The relevant provision, as quoted by the Tribunal, is reproduced hereinbelow:

*“5. Here in the instant case, there is categorical rule authorizing President to withhold dues of the applicant under Rule 10-A of GDS (C & E) Rules, 2011 which reads as follows:*

*“10-A (1) The departmental proceedings under Rule 10, if instituted while a Sevak was in service shall after the discharge of the Sevak on attaining the age of sixty –five years be deemed to be proceedings under that rule and shall be continued and concluded by the authority by which the proceedings were commenced in the*



*same manner as if the Sevak had continued in service and in such case the function of the Disciplinary Authority shall be only to reach a finding on the charges and to submit a report shall be taken in the same manner as in the case of review petitions of the Sevaks addressed to the President and no departmental appeal shall lie against such decision.*

*(2) The President reserves to himself the right of withholding group insurance amount, security amount, post-engagement benefits like ex gratia gratuity and severance amount of a Sevak, by ordering recovery from these amounts in case a Sevak is found guilty of grave misconduct or negligence during the period of his engagement.”*

4. The fine submission made by the counsel for the petitioner that the petitioner has not yet been found guilty of grave misconduct or negligence is of no help since that stage can only come, provided the petitioner allows the two proceedings to reach finality. The anxiety of the petitioner is to race against time and get the benefit before any finality is achieved in any of the two proceedings.

5. Last of the submissions made by the counsel for the petitioner is that at least provisional pension etc. ought to be settled.



6. If the rules permit such provisional settlement, the Court will not come in the way. However, the impugned order dated 04<sup>th</sup> March, 2016 does not require any interference. The writ application is otherwise dismissed.

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

**(Nilu Agrawal, J.)**

Arjun/-

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