IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8005 of 2016

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Shyama Prasad Yadav son of Late Ram Ashray Rai Retired Commercial Superintendent I, N.E., Railway Chapra Junction under DRM, N.E. Railway, Varanasi, resident of village - Rahar Diyara (Nazarmira), P.O. - Sonpur, P.S. - Sonpur, District - Chapra.

.... Petitioner/s

Versus

1. The Union of India through General Manager, N.E. Railway, Gorakhpur.
2. The Divisional Railway Manager, N.E. Railway, Varanasi.
3. The Divisional Railway Manager (Commercial), N.E. Railway, Varanasi.

.... Respondent/s

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Appearance :
For the Petitioner/s : Ms. Shilpi Keshri, Advocate
For the Respondent/s : Mr. D.K. Sinha, Sr. Advocate
Mr. Bijoy 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: 24-04-2017

Heard counsel for the petitioner and the learned senior counsel for the Railways.

2. The only reason why this Court is inclined to interfere with the impugned order dated 22.12.2015 passed in O.A. No. 562 of 2014 by the Central Administrative Tribunal, Patna Bench, Patna is that in the garb of accounting or so called commercial debit entry outstanding to the extent of Rs. 7,87,068/- plus Rs. 28,768/- recovery cannot be effected from the DCRG of an employee without holding a proper valid enquiry either under Rule 9 or Rule 15 of the

Railways Services (Pension) Rules, 1993 or Rule 6(1) of the Railway Servant (Discipline and Appeal) Rules, 1968.

3. While going through the records, no doubt in the previous direction issued by the Central Administrative Tribunal, it was treated to be a case of accounting and, therefore, an enquiry or fact finding was permitted, but then that fact finding or enquiry was nothing but a question and answer session based on which a liability has been worked out against the petitioner and recovery from DCRG has been ordered. Since gratuity is sacrosanct and it cannot be touched without due process of law for effecting recovery, the manner in which the railway-authorities have gone about it, therefore, the Tribunal has committed a patent error in overlooking the fact that ultimately it is the gratuity which is being attached by the Railways in the name of adjustment of commercial debit to the tune of Rs. 7,87,068/- plus Rs. 28,768/-.

4. The impugned order, therefore, dated 22.12.2015 is required to be quashed and is quashed.

5. Writ is allowed.

6. However, the Court is also of the opinion that since the commercial debit accounting must be reconciled and cannot remain outstanding, the Railway-authorities are free to hold an enquiry within the frame-work of law noticed in the earlier part of the

order. If they have to make adjustment or recovery only from the DCRG, there is no other way the DCRG can be used or utilized for recovery without following the due procedure.

7. Looking at the outstanding figure and amount which needs reconciliation, the Court gives an opportunity to the Railways with direction to the petitioner to co-operate in the exercise, if it is initiated by the Railway-authorities in furtherance to the exercise of reconciliation and steps for recovery.

8. Before parting, it is, however, clarified that the DCRG amount, which has been attached or withheld or adjusted in furtherance to the earlier exercise, is a non-est exercise in the eye of law, therefore, the same is required to be released in favour of the petitioner, but with a rider that an undertaking will be given by the petitioner that mere release will not create right in his favour and it will be subject to the outcome of the exercise, as directed above.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.04.2017
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