

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2095 of 2016**

- Koushal Prasad Koushik S/o Late Shri Mohanlal Koushik, aged about 62 Years, Retired Sr. Commercial Clerk, Railway Enquiry, Raipur 492001 (Chhattisgarh) R/o : Village : Sambalpuri, P.O. Sakri, (Near CG SAF Battalion) Tehsil : Takhatpur, Thana : Chakrabhata, Bilaspur 495001 (Chhattisgarh)

---- Petitioner**Versus**

1. Union Oof India Through : The General Manager, S.E.C.Railway, Bilaspur Zone, G.M's Office, Bilaspur 495004 (Chhattisgarh)
2. The Sr. Divisional Personnel Officer, S.E.C. Railway, Raipur Division, DRM's Office, Khamtarai, Raipur 492004 (Chhattisgarh)
3. The Sr. Divisional Security Commissioner, Railway Protection Force, S.E.C. Railway, Bilaspur Pin Code No. 495004 (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri B.P. Rao, Advocate
For Respondents	:	Shri Abhishek Sinha, Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****03.04.2017**

1. This writ petition under Article 227 of the Constitution of India is addressed against a decision of the Central Administrative Tribunal. A former employee of the department of the Railways is the Petitioner.
2. We have heard the learned counsel for the Petitioner and the learned counsel for the department.
3. Three issues arose before the Tribunal. The first was as to the entitlement of the Establishment to recover the amounts which were allegedly over paid. The second was as to whether any direction to

refund such amount should also be coupled with eligibility of the Petitioner to claim interest thereon. The third was as to whether any interference was called for with the re-fixation of salary on a particular fact situation.

4. The Tribunal went in favour of the applicant / employee insofar as the refund issue is concerned and found against the eligibility of the Establishment to effect recovery. Accordingly, refund was ordered. It was noted that at the relevant time the ratio of the decision of the Apex Court in case of **Chandi Prasad Uniyal Vs. State of Uttarakhand, (2012) 8 SCC 417** held the field and therefore, the establishment cannot be mulcted with the liability to pay interest on account of the non payment of the undisputed amount. It was thus that the claim for relief of interest was refused. In exercise of Article 227 of the Constitution of India, we are satisfied that the reasons stated for such decision of the Tribunal in para 6 of its order dated 17.12.2015 does not warrant interference.
5. The third issue is referable to the claim of the applicant that he is entitled to re-fixation of pay. The fact matter remains that the grant of 2nd ACP and 3rd MACP and its effect on the total emoluments due to the Petitioner was considered in the light of the law relating to re-fixation of pay at the time of superannuation as governed by the law laid down by the Apex Court in the case of **Sushil Kumar Singhal Vs. Pramukh Sachiv Irrigation Department and others, 2014(3) SLJ 62**. We may note here that the Petitioner was removed from service on 09.01.1989, that punishment was set aside, and the facts and factors considered by the Tribunal would clearly show that the Petitioner's claim was not only one that could not have been allowed in terms of the law but was also belated with reference to the date of

suspension and revocation of suspension. In this view of the matter, we do not find any ground to interfere with that aspect of the impugned order as well.

6. For the aforesaid reasons, we find no error of jurisdiction or illegality either in appreciating the relevant facts or in applying the relevant laws by the Tribunal. This application under Article 227 of the Constitution of India, therefore fails.
7. In the result the writ petition is dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge