IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16755 of 2017

Surendra Kumar Singh, S/o Sri Jitendra Singh, resident of Village and P.O.- Bhuswar, P.S.- Bibutipur, District- Samastipur.

.... Petitioner/s

Versus

1. The Union of India through the Secretary Ministry of Communication and IT Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. The Chief Post Master General Bihar Circle, Patna.
3. The Director Accounts (Postal), Patna, G.P.O. Campus, Patna.
4. The Sr. Accounts officer, Postal Accounts, Patna.
5. The Superintendent of RMS, NB Division, Samastipur.
6. The HRO, RMS, NB Division, Samastipur.

.... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Kumar Pandey, Advocate Mr. Mritunjay Kumar, Advocate
For the Respondent/s	:	Mr. S.D Sanjay (ADDL. SOC. GEN.) Mr. Satyavrat Verma, CGC

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)
Date: 04-01-2018

Heard learned counsel for the petitioner and the learned Additional Solicitor General assisted by Mr. Satyavrat Verma.

2. O.A. No. 715 of 2015 was filed for the following reliefs:

> "(A) Letter dated 09/09/2015, issued by HRO RMS NB Division Samastipur, as contained in Annexure-A/6, may be

quashed and set aside.

(B) Observation/ Order dated 02/09/2015 recorded by Sr. A.O., Postal Accounts, Patna, in the document dated 3/9/15, which is erroneous as well as without any basis, issued in violation of DoP&T OM dated 05.04.2010, as contained in Annexure-A/7 may be quashed and set aside.

(C) The pay fixation allowed to applicant in pursuance to DoP&T OM dated 04.05.2010, as contained in Annexure-A/2 may be declared correct."

3. The Tribunal dismissed the O.A. application primarily holding that the fixation of the salary made of the present petitioner on his re-employment after retirement from Air Force was contrary to the OM in vogue. The relevant OMs have been extracted in detail in the impugned order. The Tribunal after considering the detailed provisions of the OM with regard to the fixation held as under:

"10. The confusion arises because the applicant is under the presumption that he can get the benefit of full pension mentioned under para 4(d) (i) and pay protection as in para 4(b) (ii) of the DoP&T OM dated 05.04.2010. This presumption is erroneous, because 4(b) (ii) specifically refers to the cases where the entire pension and pensionary benefits are not ignored for pay fixation. In all cases where the pension is fully ignored, the relevant provision is para 4(b) (i) which provides that the initial pay on re-employment shall be fixed as per the entry pay in the revised pay structure of the re-employed post.

11. Therefore, the above provisions leave no ambiguity that in cases where pension is to be entirely ignored, as is the case with the applicant, the initial pay on re-employment has to be fixed as per the entry pay. We hold that the fixation of pay at the entry level was in

accordance with the Rules, and later revision and payment of arrears was erroneous.

12. If some other departments have fixed the pay of re-employed ex-serviceman in a different manner that would not confer any right on the applicant. The right and entitlement of the applicant has to be adjudicated in terms of relevant rules which the applicant has himself cited on the basis of which we have already held that there was no error made by the pay fixation authorities initially, and later revision upwards and payment of arrears was erroneous.

13. It is also clear that the erroneous revision upwards and payment of arrears of 4.46 lakhs happened because without waiting for the advice of Director (Accounts), the administrative officials on their own took this

decision on the fresh request made by the applicant in June 2015."

4. In the writ application, no serious challenge is thrown to the finding given above with regard to the wrong fixation of pay on a wrong reading or understanding of the OM. Since the fixation of pay itself was held to be erroneous, the payment of arrears amounting to Rs. 4.46 Lakhs obviously becomes untenable because what the petitioner was not entitled to or what occurred in favour of the petitioner due to wrong fixation cannot be allowed to be retained, as that would be unjust enrichment and contrary to the entitlement of the employee.

5. No doubt effort was made even before the Tribunal to seek advantage of the decision rendered in the case of **State of Punjab & Ors. Vrs. Rafiq Masih** reported in **AIR 2015 Supreme Court 1267**, but reading of the said decision would show that the parameters, which have been laid down by the Hon'ble Apex Court where recovery is not permissible does not apply to the facts of the case of the present petitioner. He does not come within any of the exceptions indicated in the concluding part of the said decision, since the petitioner is continuing in employment, has not superannuated or at verge of superannuation and fixation of pay has been held to be wrong both by the

authorities and upheld by the Tribunal. Therefore, no employee can derive benefit of a wrong fixation and retain the outcome of the wrong fixation under any interpretation of law.

6. The Court is in agreement with the view and the opinion expressed by the Tribunal and, therefore, the writ is fit to be dismissed and is dismissed.

(Ajay Kumar Tripathi, J.)

(Nilu Agrawal, J.)

Arjun/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.01.2018
Transmission Date	N.A.