

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

**Civil Writ Jurisdiction Case No.14033 of 2017**

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1. The Union of India through the General Manager, E.C. Railway, Hajipur, District- Vaishali (Bihar).
  2. The General Manager (Personnel), E.C. Railway, Hajipur, District- Vaishali (Bihar).
  3. The Divisional Railway Manager, East Central Railway, Danapur.
  4. The Senior Divisional Engineer (Co-ordination), East Central Railway, Danapur.
  5. The Senior Divisional Personnel Officer, East Central Railway, Danapur.
  6. The Senior Divisional Financial Manager, East Central Railway, Danapur.

.... .... Petitioner/s

Versus

Badiuzzaman, Son of Late Zaffiruzzaman, Ex. Section Engineer, (P. Way), East Central Railway, Danapur Division, Resident of Mohalla- Darzitola, Sabjibagh, Post- Bankipur, P.S.- Pirbahore, District- Patna- 800001 (Bihar).

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Bijoy Kumar Sinha, Advocate  
For the Respondent/s : Mr. M.P. Dixit, Advocate

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**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

**ORAL JUDGMENT**

**(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)**

**Date: 04-10-2018**

Heard Mr. Bijoy Kumar Sinha, learned counsel appearing on behalf of the petitioners-Union of India and Mr. M.P. Dixit, learned counsel appearing on behalf of the respondent who was the applicant before the Central Administrative Tribunal, Patna Bench, Patna.



Counsel for the petitioners have challenged the order dated 05.05.2017 passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 163 of 2013 whereby and whereunder the recovery of Rs. 132245/- from the leave encashment of the petitioners has been quashed and set aside and the petitioners were directed to re-fix the settlement dues on account of voluntary retirement on the basis of the applicants' last pay drawn.

The facts of the case is that the respondent was appointed as Junior Engineer in August, 1985 in the pay scale of Rs. 1600/- to Rs. 2660/-. The applicant was promoted as Section Officer w.e.f. 18.01.1991 in the scale of 2000-3200. With the restructuring w.e.f. 01.03.1993 by the Railways, the respondent was found entitled to financial up gradation as well. The respondent was accordingly up graded to the post of Senior Section Engineer (P.Way) in the pay scale of Rs. 7450/- to Rs. 11500/-. The respondent-applicant requested for voluntary retirement on 08.02.2008. Subsequently, he submitted a request for withdrawal of application for voluntary retirement but since the same was under process, his request for withdrawal was not accepted and the respondent was treated as voluntary retired w.e.f. 31.05.2008. The respondent then sought payment of his pension which was not settled, hence, O.A. No. 616 of 2011 was preferred by the respondent-applicant which was disposed off on 25.08.2011 with a



direction to the Railways to examine the matter and other retiral dues of the applicant in accordance with law within a period of four months from the date of receipt/production of a copy of the order and pay the admitted dues within two months thereafter.

The respondent received an order dated 24.02.2012 which is Annexure-A/3 of the O.A. which was in compliance to the order passed in O.A. No. 616 of 2011 by which respondent was directed to fill the requisite forms for settlement of his dues stating that the delay was on the part of the respondent. The respondent then moved the Pension Adalat of the East Central Railway where for the first time, by order dated 17.12.2012 it came to be known to him that an amount of Rs. 132245/- has been deducted from the leave encashment due to alleged wrong fixation of pay at the time of adhoc promotion w.e.f. 01.03.1993 and that the settlement of the pensionary dues had been done by the Railways authorities and there was no error committed.

It is the order passed by the Pension Adalat dated 17.12.2012 by which the said deduction was known to the respondent for the first time that the respondent/appellant preferred O.A. before the Central Administrative Tribunal in O.A. 163 of 2013.

The Central Administrative Tribunal after hearing the parties was of the opinion that the Railways had not been able to explain under what Rule and by which calculation there was a wrong



fixation of pay w.e.f. 01.03.1993 because neither there was any document nor the extract of service book was filed by the railways before the Central Administrative Tribunal to justify the reason for recovery of Rs. 132245/-. The Central Administrative Tribunal thus quashed the recovery and directed the petitioner railways to refix all the retirement dues on the basis of the applicants' last pay drawn and make necessary payment within a period of three months of the receipt of the order after which interest at the rate of 8% per annum would be imposed for any further delay, till the date of payment.

The Railways have challenged the order dated 05.05.2017 passed in O.A. No. 163 of 2013 on the ground that recovery was due to wrong fixation of pay which is permissible in law and pension has been determined after correction of the pay scale admissible to the respondent and since the respondent had availed voluntary retirement from service, he stands on a different footing than an employee who retires on attaining due date of superannuation. According to the petitioner railways, the order dated 17.12.2012 passed by the Pension Adalat, East Central Railway calls for no interference and the order passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 163 of 2013 dated 05.05.2017 is fit to be set aside.

Learned counsel for the respondent, Mr. M.P. Dixit, however, submits that the alleged wrong fixation pertains to the year



1993 and 15 years before his date of retirement. He submits that no show cause was given to the respondent before making recovery and he came to know about the alleged wrong fixation of pay only in the year 2012 through Pension Lok Adalat i.e. 19 years after so called error and 4 years after his voluntary retirement. As such, the order of the Central Administrative Tribunal is in accordance with law.

Heard the parties.

In our opinion, the order of the Central Administrative Tribunal, Patna Bench, Patna passed in O.A. No. 163 of 2013 requires no interference as the recovery of Rs. 132245/- on account of alleged wrong fixation w.e.f. 01.03.1993, is without any foundation. The amount sought to be recovered from the respondent applicant is after 19 years of fixation and that too without any show cause asked. There is nothing on record to support the stand of the Railways that there was any infirmity in the fixation of pay nor any thing in this regard has ever been communicated to the respondent nor it had been filed before the Tribunal or even before this Court. In the circumstances so noted which goes uncontested, the order for recovery is arbitrary, passed in violation of principles of natural justice and has rightly been quashed by the Central Administrative Tribunal in O.A. No. 163 of 2013 vide the judgment and order impugned dated 05.05.2017. The petitioners are bound by the directions present in the order of the



Tribunal which also allows interest in case of delay, payable at the rate of 8% per annum till the date of payment.

Writ application is dismissed accordingly.

**(Jyoti Saran, J)**

**(Nilu Agrawal, J)**

Devendra/-

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