

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8298 of 2019

Md. Wasique, aged about 69 years, S/o late Md. Siddique, Retired Chief Office Superintendent under Chief Workshop Manager, E.C. Railway, Samastipur, Resident of Ward No. 26, Islam Nagar, Near Midland School, P.S. and District- Araria- 854311, Bihar.

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, E.C. Railway, Hajipur, (Vaishali).
2. The Chief Workshop Manager, E.C. Railway, Samastipur.
3. The Divisional Railway Manager (P), E.C. Railway, Samastipur.
4. The Divisional Railway Manager(Operating), E.C. Railway, Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Barnwal, Advocate
		Mr. Tarique Yazdani, Advocate
For the Railway	:	Mr. Dr. Anand Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-04-2019

Heard learned counsel for the petitioner and learned counsel for the respondents-Railways.

The relief prayed for is that the respondent-Railways be directed to refund the amount as per the judgment of the Tribunal dated 09th September 2015 and there is a further challenge raised for quashing of the order dated 26th May, 2009 whereby such recovery had been ordered.

A third relief has been claimed for revoking the punishment order dated 05th October, 2009 whereby the petitioner had been awarded a punishment of reduction to lower stage in time scale of



pay for a period of three months with cumulative effect.

The background in which the aforesaid reliefs have been claimed appears to be that the petitioner was working as an Office Superintendent in the Transport Department. A disciplinary proceeding was set in motion against him on certain charges including resulting financial loss to the Railways and during the pendency of these proceedings it appears that the petitioner was absorbed in the Mechanical Department where he came to be promoted as a Chief Office Superintendent.

The Respondent-Railways state that they came to know that the promotion was an outcome of the suppression of the fact of the pendency of the disciplinary proceedings against the petitioner and, therefore, it attracted paragraph 228 of the Railways Establishment Manual whereunder if any such fact is discovered after the promotion, the authority had the power to revoke the promotion order and accordingly, it was revoked on 26th of May, 2009.

In the meantime, on account of such a revocation since the petitioner had worked for more than four years on the said promoted post and under the order he was required to refund the excess salary that was paid to him on the promotional post, proceedings were set in motion that were challenged by the petitioner before the Tribunal in an Original Application which has given rise to the present controversy. The Original Application of the petitioner has been partly allowed and the amount which was sought to be recovered



from the petitioner has been directed to be refunded.

There is one more important development in between, namely, that the disciplinary proceedings which were pending against the petitioner culminated in the award of a major punishment on 05th October, 2009 itself before the petitioner retired from service. The punishment awarded was of reduction to lower stage in time scale of pay by one stage for a period of three months with cumulative effect.

The said order records a noting to the effect that such a punishment could not have been awarded in view of some rule referred to in the said noting according to which that the punishment affecting pensionary benefits cannot be awarded at the verge of retirement within ten months.

However, what we find is that the Original Application filed by the petitioner before the Tribunal does not contain any such relief for quashing of the punishment order dated 05th October, 2009, but this relief has now been claimed for the first time before this Court in the present writ petition on the strength of the aforesaid noting. It is in this background that the learned counsel for the petitioner makes two fold prayers. Firstly, that the Railway should be directed to at least refund the amount that has been awarded to the petitioner in terms of the judgment of the Tribunal dated 09th of September, 2015 and secondly, that the order of punishment dated 05th of October, 2009 should be quashed in view of the noting contained at the bottom of the said order.



We have considered the submissions raised and having heard learned counsel for the Respondent-Railways, we are satisfied that the petitioner failed to challenge the order of the punishment dated 05th of October, 2009 either before any higher authority or before the Tribunal itself. The order dated 05th of October, 2009, therefore, was allowed to become final and it is for the first time that after ten years, the same is sought to be annulled in the year 2019. This relief, therefore, having not been availed of either departmentally or before the Tribunal cannot be permitted to be raised now after ten years as it is not only barred by laches, but also on account of a voluntary inaction on the part of the petitioner to avail of any such remedy against the said order.

Coming to the issue relating to the payment of refund under the order of the Tribunal dated 09th of September, 2015, we find that it was open to the petitioner to have moved an application for contempt in case the order of the Tribunal had not been complied with. However, we find that the same is a recurring cause of action in the event the said payment have not yet been refunded. We have inquired from the learned counsel for the Railways and we are informed that the Railways have not challenged the order of the Tribunal dated 09th of September, 2015.

In the above circumstances, it will be open to the petitioner to move an appropriate application before the competent authority of the Railways seeking refund of the amount under the order of the



Tribunal which shall be considered and appropriate order shall be passed expeditiously, preferably within three months.

The writ petition stands disposed of.

(Amreshwar Pratap Sahi, CJ)

(Partha Sarthy, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.04.2019
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