IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6865 of 2020

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Md. Aslam Son of Late Md. Akhtar, Resident of House No. 72, Near-Pond, Bishanpur, Hakimabad, P.S.-Mofassil, P.O.-Bishanpur and District-Samastipur.

... ... Petitioner/s

Versus

1. **Bank of India through its Chief Managing Director, Bank of India, Star House, C-5, G-Block, Bandra Kola Complex, Mumbai-400005.**
2. **The Manager, Bank of India Centralized Pension Proceeding Centre, 2nd Floor, Bank of India Building Kings Way, Nagpur-440001.**
3. **Branch Manager Bank of India, Main Branch, Samastipur, Bihar.**
4. **Zonal Railway Manager (Appointment), East Central Railway, Samastipur, Bihar.**
5. **Financial Advisor and Chief Account Officer, East Central Railway, Hajipur, Vaishali, Bihar.**
6. **Account Officer, Railway Unit, East Central Railway, Samastipur, Bihar.**

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr.Mohammed Abu Haidar
For the Respondent/ s : Mr.Ramadhar Shekhar (Addl. Standing Counsel Railway)
For the Bank : Mr. Ajay Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

Date : 23-12-2020

I have heard Md. Abu Haidar, learned counsel appearing on behalf of the petitioner, Mr. Ajay Kumar Sinha, learned counsel, representing the Bank of India and Mr. Ramadhar Shekhar, learned Additional Standing Counsel for the Indian Railway.

2. The writ application has been filed seeking an order restraining the respondent from deducting/reducing

the petitioner's pension. It is his case that his pension was fixed at Rs. 30,874/- but the Bank has arbitrarily reduced the amount from 30,874/- to 14,936/- from the month of August, 2019 without any valid reason. Facts pleaded in the writ petition are that the petitioner was appointed against a Class-IV post by the Railway and in course of time, he was promoted to the rank of Supervisor Grade-II and subsequently to the post of Junior Engineer Grade-II (Electrical). After attaining the age of superannuation he retired with effect from 30.04.2005, while working at Railway Unit (Electric), East Central Railway, Samastipur. The petitioner's pension was fixed at Rs. 10065/- and a pension payment order in this respect was issued on 11.07.2005. He was given benefit of pay revision; the petitioner's last pay was fixed at Rs. 6800/- in the pay scale of Rs.5000-50-8000; on the basis of 6^{th} Pay Commission his pay was fixed at Rs. 16,850/- + dearness allowance in the pay scale of Rs. 9300-34800 + D.A, Grade Pay of Rs. 4200 + D.A; and thirdly the petitioner's total pay of Rs. 43600 + D.A. on the basis of 7^{th} Pay Commission. Accordingly, his pension was fixed at Rs. 21,800 + D.A. and basic pension was Rs. 29363 and commuted amount of

Rs.2013/-. His pension was enhanced from time to time and he was getting pension at the rate of Rs. 30,874/- per month till July, 2019 when suddenly the Bank reduced crediting the aforesaid amount of monthly pension and reduced the same to Rs. 14,936/- with effect from 31.08.2019 without any information to the petitioner and without issuance of any notice to the petitioner. It is petitioner's further case that the Bank did not respond to the request made by the petitioner to disclose the reason why the amount of pension was suddenly reduced.

3. A counter affidavit has been filed on behalf of the Bank, wherein it has been stated that the petitioner's average emolument for determining pension was calculated as Rs. 10,065/- and accordingly, he was entitled for pension at the rate of Rs. 5,033/- per month. He had commuted some portion of pension (Rs, 2013). Accordingly, he was entitled for reduced basic pension at the rate of Rs. 3,020/- per month. Subsequently, in the light of revision in view of 6th Central Pay Commission recommendations the petitioner's pay was revised as Rs.7583/- with effect from 01.01.2016. The petitioner was accordingly to be paid pension at the rate of Rs. 5,570/- per

month after deducting commuted value of pension at the rate of Rs. 2,013/-.

4. It is the case of the Bank that the factor of 6th Central Pay Commission was erroneously fed into the system as Rs. 11,425/- in place of Rs. 7,483/- with effect from 01.01.2006 and the petitioner’s arrears consequent upon revision was erroneously calculated and paid with effect from 27.11.2008. The said erroneous component of pension was considered even for further enhancement consequent upon 7th Central Pay Commission recommendations by applying multiplication formula of factor 2.59 times. Accordingly, Rs. 11,425/- was multiplied with factor 2.59, as a result, the petitioner’s pension was fixed at Rs. 29,363/-. The bank could notice this flaw only when the revised pension as per new pension scheme was fixed at Rs. 21,800/- and reduced basic pay after deduction of commuted value as Rs. 19,787/- till Apri, 2020. The Centralized Pension Processing Centre, Nagpur calculated the petitioner’s pension since November, 2008, which was conveyed to him vide letter dated 27.11.2019. It is the case of the Bank that to adjust excess payment paid to the petitioner recovery of Rs. 7467/- has been decided by the Bank, which is being done. The calculation of petitioner’s entitlement and the

recovery, which is being made has been given in paragraph 6 of the counter affidavit, which reads thus:-

"Basic Pay	-Rs. 21,800/-
D.A.	- Rs. 3706/-
Recovery	-Rs. 7467/-
Total	-Rs. 18,039/- PM"

5. In the counter affidavit filed on behalf of the Railway Administration, it has been averred that the petitioner's pension was fixed at Rs. 5,033/- per month in the year 2005 and after 6^{th} Pay Commission recommendation the petition was revised to Rs. 7,583/- and after 7^{th} Pay Commi9ssion, the same was revised to Rs. 21,800/- with effect from 01.01.2016.

6. The facts averred in the counter affidavit filed on behalf of the Bank have not been disputed by the petitioner. No reply to the counter affidavit has been filed. The averments made in the counter affidavit thus, stand admitted on the doctrine of *non traverse.*

7. Learned counsel appearing on behalf of the petitioner has, however, argued that there was no misrepresentation on his part and recovery of amount at this stage will cause great hardship to the petitioner as the amount has since been spent by him and it will be difficult from him to survive on the amount of pension, which is being paid after

making recovery in the name of adjustment against excess payment paid to the petitioner. He has further argued unilateral that the decision of the Bank to recover the amount from the petitioner's entitlement has evil consequence, which could not have been done without giving the petitioner an opportunity of hearing. He has relied on a Supreme Court's decision in case of **State of Punjab Vs. Rafique Masih** reported in **(2015) 4 SCC 334** in support of his contention.

8. It is noteworthy that the petitioner has himself admitted the fact that the amount of pension, which was credited in his account was more than what he was entitled to and more than what was authorized under Pension Payment Order issued by the employer. The Bank has admitted its mistake and it has been said in no uncertain terms that it was because of erroneous feeding of the amount "Rs. 11425" in place of "Rs. 7483" in the system with effect from 01.01.2006 that the discrepancies occurred and continued for a considerable period. The petitioner kept on receiving more amount more than what was he was entitled to with effect from 07.04.2008. He did not bring this fact to the notice of the Bank or Railway administration who were unaware about the mistake.

9. Mr. Ajay Kumar Sinha, learned counsel appearing

on behalf of the Bank has argued that if the Court interferes with the decision of the Bank, the same shall result into unjust enrichment of the petitioner. He has submitted that in order to balance the petitioner’s convenience and hardship, which he may suffer, a decision has been taken to recover only Rs. 7467/- per month from the petitioner’s pension.

10. It is not in dispute thus that the petitioner received higher amount than he was actually entitled to without any misrepresentation on his part. He received the said amount admittedly out of an error committed by the Bank personnel at the time of feeding of the amount.

11. It has been stated at the bar that the petitioner has received altogether a sum of Rs.9,38,000/- (Approx.) over and above the amount of pension, which he was legally entitled to.

12. Learned counsel for the petitioner has agreed that the petitioner shall not resist if 1/3rd of the said amount is allowed to be recovered by the Bank instead of the entire amount.

13. Since there is admitted mistake on the part of the Bank, in the peculiar facts and circumstances of the case as noted above, it is directed that the Bank shall recover only 1/3rd of the amount said to have been credited in the petitioner’s

account erroneously, out of mistake. For its own fault, the Bank will have to bear their loss.

14. In order to bring finality to the present dispute, it is directed that no party including the Railway Administration shall raise any further dispute with the Bank, in this regard. The Bank shall revise the rate of recovery from the petitioner's pension, accordingly, in terms of the present order.

15. This application stands disposed of.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	**NAFR**
CAV DATE	**09.12.2020**
Uploading Date	**25.12.2020**
Transmission Date	