

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16186 of 2018

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Sanjay Kumar Shrivastava, S/o Late Gauri Shankar Prasad, Resident of Village and P.O.-Barajairam, P.S.-Chiraiya, District-East Champaran.

... .. Petitioner/s

Versus

1. The Union Of India through the Chief Postmaster General, Bihar Circle, Patna.
2. The Director Accounts Postal, Patna G.P.O. Campus, Patna.
3. The Sr. Accounts Officer, Postal Accounts, Patna.
4. The Postmaster General, Northern Region, Muzaffarpur.
5. The Superintendent of Post Offices, Champaran Division, Motihari
6. The Postmaster, Motihari Head Post Office, Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jayant Kumar Karn, Adv. Mr. Sujeet Kumar, Adv.
For the Respondent/s	:	Mr. Rakesh Kumar Sinha, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJIV ROY)

Date : 22-06-2022

Heard learned counsel for the parties.

2. The petitioner, an Ex-Serviceman (released from Air Force on 30.11.2002 as Junior Warrant Officer) was appointed as Postal Assistant on 10.10.2006. At the relevant period he was employed as an Office Assistant in the Office of the Superintendent of Post Offices, Motihari. On 10.10.2014, he made a representation before the Postmaster, Motihari to



fix his pay with reference to the fitment table of defence service rank from which post he retired. Accordingly, he wanted to fix his basic pay after taking into account the notional last basic pay drawn by him before his retirement in the Air force Service.

3. The Postmaster, Motihari thereafter taking into account the last basic pay drawn by the petitioner while in the Air Force revised his pay and paid the arrears of Rs.12,30,773/- on 13.03.2015 after obtaining an undertaking dated 05.03.2015 from the petitioner that if it is found that the wrong payment has been made, the same shall be liable to be recovered.

4. During the audit check within a period of six months, the Senior Accounts Officer observed that the re-fixation of pay of the petitioner has been made irregularly and accordingly steps were taken for re-fixation of pay and order of recovery of the arrears paid to him amounting to Rs.12,30,773/-. The petitioner made representation on 24.09.2015 followed by OA/050/00005/ 2016 preferred before the Central Administrative Tribunal, Patna Bench, Patna (henceforth for short 'the Tribunal').



5. The respondents appeared in the case and filed their written statement supporting the order of recovery, relying on the circular of the Department of Post and Telegraph (henceforth for short 'the DoP&T'). As per the respondents, in case of an Ex-Servicemen, who held the post below commission rank officer in the defence service and in case of civilian staff below Group 'A' post, if they retired before 55 years of age, the entire pensionary benefits has to be ignored.

6. Admittedly, the petitioner retired as Junior Warrant Officer on 30.11.2002 and joined as Postal Assistant on 10.10.2006. In the Defence Service, he was below the commissioned rank officer and retired before attaining the age of 55 years. As such, his pay fixation was to be ignored under the relevant provisions of the DoP&T OM No.3/19/2009-Estt. (pay-II) dated 05.04.2010. The petitioner too had relied on the same circular to claim re-fixation of his pay scale. It was only due to the confusion in the minds of the concerned Postmaster, Motihari that he chose to re-fix the pay scale of the petitioner while protecting the pay scale of Armed Service but had taken



an undertaking from the petitioner on 05.03.2015 which is quoted below:

“I hereby undertake that any excess payment that may be found to have been made as a result of incorrect fixation of pay or any excess payment detected in the light of discrepancies noticed subsequently will be refunded by me to the Government either by adjustment against future payments due to me or otherwise.”

(Refer Annexure-P/12)

7. ‘The Tribunal’ after going through the facts of the case as also the written statement filed by the respondents vide an order dated 21.08.2017 in OA/050/00005/ 2016 came to definite conclusion that the DoP&T OM No.3/19/2009-Estt. (pay-II) dated 05.04.2010 which was cited by both the petitioner as well as respondents is crystal clear on the pay scale which the petitioner is/was entitled to. Thus, any re-fixation made by the Postmaster, Motihari on the basis of the representation/undertaking given by the petitioner was erroneous. It is further held that the respondents were fully justified in recovery of the excess amount for which the steps was/were taken within six months of the alleged payment of Rs.12,30,773/. The petitioner after submitting a clear undertaking before the respondents cannot turn around and



claim that the illegal excess amount paid to him should not be recovered. It is to be noted that undertaking furnished by the petitioner is binding on respective parties. In respect of recovery of excess payment, petitioner relied on **Mohd. Rafiq** case of the Apex Court. The aforesaid decision is not applicable, since petitioner in the present case had given the undertaking to the extent that if re-fixation of pay and payment of arrears, if it is not in accordance with law in that event arrears paid shall be recovered from the petitioner.

8. We have gone through the case in hand and do not find any merit in the writ application preferred by the petitioner. The order dated 21.08.2017 passed by 'the Tribunal' need no interference and the writ petition is accordingly dismissed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

Prakash Narayan /-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.07.2022
Transmission Date	

