IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18313 of 2018

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Sushil Kumar son of Late Laxmi Narayan Singh resident of Village Bhawanichak, P.S. - Saksohra, District - Patna, Presently posted as Chief General Manager, Metro Rail Corporation, Karmayogi Bhawan, Gandhi Nagar Gujarat.

... ... Petitioner/s

Versus

1. The Union Of India and Ors
2. The F.A. and C.A.O, East Central Railway at Hajipur.
3. The Senior Accounts Officer, Construction, Asansol Division, East Central Railway, Hajipur.
4. The Senior Divisional Finance Manager, Dhanbad Division, East Central Railway.
5. The F.A. and C.A.O. Construction Egmore/Chennai, Southern Railway, Tamil Nadu.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Murari Nayain Chaudhary, Advocate Mr. Vijay Kumar, Advocate
For the Respondent/s	:	Mr. Praveen Kumar Sinha, Advocate Mr. Rakesh Kumar Sinha, Advocate

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

Date : 20-07-2022

Heard learned counsels for the parties.

2. In the instant petition, petitioner has assailed the order of the Tribunal dated 11.08.2016 passed in O.A. No. 756 of 2012 *vide* Annexure - 6 to this petition. The petitioner while working with the respondents as a Deputy Chief Engineer at Hazaribagh during the period from September 2002 to March 2006, there was

a double salary paid to the petitioner for the aforesaid period. In this regard, the respondents have opened their eyes in the year 2012 and proceeded to withhold a of sum of Rs. 2,10,982/- from the gratuity of the petitioner. Petitioner had taken voluntary retirement on 25.03.2012. The petitioner disputed that he is not in receipt of double payment of salary for the period from September 2002 to May 2003 for about nine months which has been calculated at the rate of Rs. 2,10,982/-. Remittance of certain salary amount was in Account No. 15029920 in Bank of India. In this regard R.T.I. information has been obtained. R.T.I. information forwarded by the Bank to the railway authorities reads as under:

> "To,
> Deputy FA & CAO
> E.C. Railway
> Distt – Hajipur
>
> Sir,
>
> Information sought under provisions of RTI Act, 2005
>
> Please take the reference of your letter dated 16.01.2013 received by us on 20th May, 2013, we are giving you the parawise reply of your RTI application.
>
> 1. The account no. 15029920 is not appearing in our data base. it seems the account no.15029920 is not related to our Bank.

2. With regard to the reply of queries no. 2 & 3, the records are of more than 10 year old and therefore, we need you co-operation in this regard. Provide us the copy of the List attached to Cheque no. 095108 dated 29.04.2003 and cheque no. 040907 dated 27.05.2003, as stated in payee to enable us to know the A/c details if any of account holders.

In case you do not feel satisfied by our reply, you may prefer an appeal within 30 days before the Appellate Authority on the address given below:

Dr. M.N.A. Ansari
Zonal Manager & Appellate Authority
Bank of India, Zonal Office
1st Floor, Chankya Tower
R-Block, BCP Marg
Patna – 800001"

3. In the light of the aforesaid disputed factual aspects of the matter to the extent that whether double payment as salary for the aforesaid period has been made by the respondents to the petitioner is under cloud. In such a event, in all fairness respondents should have resorted for disciplinary proceedings so as to ascertain whether double payment of salary was made to the petitioner or not? In other words adducing necessary evidence relating to transaction of amount on behalf of Union of India to

the petitioner's Bank account. Further it is to be noted that Tribunal has failed to take note of the aforesaid disputed issue and so also delay in withholding of sum of Rs. 2,10,982/- after lapse of nearly one decade from the year 2002 to the year 2012. Moreover the petitioner has taken voluntary retirement on 25.03.2012. Assuming that it is an excess payment made to the petitioner still the same cannot be recovered in the absence of holding of inquiry and determination of excess payment made in the inquiry and further such a recovery after a lapse of more than a decade is impermissible as held by the Apex Court in the case of ***Thomas Daniel vs. State of Kerala,*** **2022 Live Law SC 438**. All these counts would assist the petitioner, however, the Tribunal has erred in not appreciating the factual aspects of the matter that too remittance of salary on two occasions is under cloud in the light of R.T.I information cited *supra*.

4. In the light of these facts and circumstances, the petitioner has made out a *prima facie* case. Accordingly, order of the Tribunal dated 11.08.2016 passed in O.A. No. 756 of 2012 stands set aside and further order dated 02.02.2012 of the respondent in respect of withholding of sum of Rs. 2,10,982/- from his gratuity stands set aside.

5. The concerned respondent is hereby directed to release the withhold amount of Rs. 2,10,982/- in favour of the petitioner within a period of three months along with interest @ of 6 per cent *per annum*. If the aforesaid amount along with interest is not paid to the petitioner timely, in that event the petitioner is entitled to litigation cost and it is quantified at Rs. 25,000/- (Rupees Twenty Five Thousand). Cost has been ordered for the reasons that respondents without resorting to inquiry withheld amount of Rs. 2,10,982/- from his gratuity with effect from March, 2012.

6. Writ petition stands allowed.

(P. B. Bajanthri, J)

(Rajiv Roy, J)

GAURAV S./-

AFR/NAFR	
CAV DATE	
Uploading Date	27.07.2022
Transmission Date	