

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 5150 of 2020**

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Madhav Mishra, Son of late Pandit Yasod Anand Mishra, Resident of Village  
and Post Office Kherajpur, P.S. Bahadurpur, District- Darbhanga.

... .. Petitioner/s

Versus

1. General Manager E.C. Railway P.O. Hazipur, District- Vaishali at Hazipur.
2. Divisional Railway Manager E.C. Railway, Samastipur, P.O. and District- Samastipur.
3. Divisional Railway Manager (Personnel), E.C. Railway, Samastipur.
4. Divisional Commercial Manager, E.C. Railway, Samastipur, District- Samastipur.
5. Divisional Accounts Officer, E.C. Railway, Samastipur, District- Samastipur.
6. Senior Traffic Inspecting /Accounts, E.C. Railway, Samastipur, District- Samastipur.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Amarendra Narayan, Advocate

For the Respondent/s : Mr. Naresh Dikshit, Sr. Panel Counsel Railways

Mr. Ramadhar Shekhar (Addl. S.C. Railway)

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**  
**and**  
**HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)**

**Date : 22-02-2023**

Despite our order dated 08.02.2023, Respondent-  
Railways could not produce the relevant records in order to  
appreciate how the alleged charge of misappropriation was

proved in the Departmental Enquiry. Mr. Ratan Rakesh Lakra, Divisional Personnel Officer, Samastipur Railway Division, who has filed counter-affidavit is present in the Court. He fairly submitted that before filing counter-affidavit, he has been authorized and when he approached the concerned Section/Department in seeking records at that relevant point of time itself, the concerned Section/Department have expressed that records are not available. At this juncture, learned counsel for the respondent seeks time. Relist this matter after two weeks for production of original records insofar as Departmental Enquiry initiated and completed against the petitioner, subject to payment of cost of Rs. 10,000/-cost shall be remitted in the High Court Legal Services Authority within a period of two weeks, for the reasons that petitioner is aged about 75 years and writ petition is of the year 2020.

2. At this stage, learned counsel for the Respondent-Railways submitted that the matter may be heard and decided on merits.

3. Petitioner is a retired Station Master. He has attained age of superannuation and retired from service on 31.08.1995. Due to non-settlement of D.C.R.G. he was compelled to approach Central Administrative Tribunal, Patna Bench, Patna

(for short 'CAT') in filing O.A. No. 124 of 2009. In the Original

Application he has sought for the following reliefs:-

*“Applicant is entitled for the following relief after taking into accounts the facts and circumstances stated above the applicant entitled for.*

*(A) That the order dated 16-07-2008 respondent authority so far it relates to withholding the D.C.R.G. of the applicant may be quashed being arbitrary and which is against the service, jurisprudence, and against the natural justice.*

*(B) That the respondent authority may be directed to pay D.C.R.G. Amount Rs.- 91711.00 by this applicant without any further delay.*

*(C) The applicant is fully entitled to receive the D.C.R.G With the penal interest under the provision of Rule 87 of Railway service and pension rule 1993.*

*(D) That the applicant is fully entitled to previous suit cost and present suit cost, harassment and mental torture etc.*

*(E) That the any other relief and relief's may be granted to this applicant which Hon'ble Tribunal deems to fit.”*

4. The petitioner has assailed the order of the CAT dated 26.02.2014 passed in M.A. No. 460 of 2013 arising out of O.A. No. 124 of 2009 and M.A. 453 of 2013.

5. The petitioner's O.A. No. 124 of 2009 was dismissed for non-prosecution on 27.03.2009, consequently M.A. No. 460 of 2013 was filed for restoration. So also M.A. No. 453 of

2013 was filed for condonation of delay for filing restoration petition. In the delay application it is stated that petitioner has engaged a lawyer from Darbangha Bar, but he did not appear on the date of hearing, in the result O.A. was dismissed. In this backdrop the petitioner was not aware of dismissal of O.A. Thereafter, he contacted Advocate on Record and came to know about dismissal of O.A. for non-prosecution. CAT did not find the explanation of delay in filing the restoration petition to be satisfactory further as none appeared even on 12.11.2013 and 26.02.2014, accordingly both the Misc. Application were dismissed for default.

6. The matter could have been remanded to the CAT on the score that for no default on the part of the petitioner, his M.A. No. 460 of 2013 and M.A. No. 453 of 2013 were dismissed.

7. Perusal of the records, it is evident that petitioner is aged about 77 years when the present writ-petition was filed, therefore, we are of the view that it is not a case for remanding the matter to the CAT.

8. In order to resolve the issue and non-cooperation of the respondent in apprising this Court about imposition of penalty and not providing material relating to Departmental Enquiry

which was stated to be hurdle in disbursement of D.C.R.G. amount which was due to the petitioner, in the absence of any records, one cannot come to the conclusion that withholding of D.C.R.G of the petitioner indefinitely is correct. Therefore, the concerned respondent is hereby directed to settle the petitioner's D.C.R.G. amount along with the interest at the rate of 8 % and settle the matter within a period of three months from the date of receipt of this order.

9. The petitioner is entitled to interest on belated settlement of D.C.R.G, in the light of the Apex Court in the case of ***Vijay L. Mehrotra Vs. State of U.P. and Ors.*** reported in ***(2001) 9 SCC 687***.

10. In the event of non-settlement of D.C.R.G. which is due to the petitioner along with interest within the time limit stipulated, the petitioner is entitled to litigation cost and it is quantified at Rs. 50,000/-, for the reasons that he had attained age of superannuation and retired from service on 31.08.1995. He has approached CAT in the year 2009, thereafter, the present writ-petition is filed in the year 2020. It is made clear that petitioner is not entitled to interest prior to three years from the date of filing original application before CAT, he is entitled to interest on D.C.R.G. amount from

15.01.2006 till payment is made. In this regard necessary calculation shall be made and disbursed.

11. Accordingly writ-petition stands disposed of.

**(P. B. Bajanthri, J)**

**( Arun Kumar Jha, J)**

Himanshu/  
Daya/-

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| AFR/NAFR          | NAFR       |
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