

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2850 of 2021

Ram Lakhan Singh, Son of Late Mukti Nath Singh, resident of Mukti Niwas,
New Colony Pakri, Ward No. 15, Ara, Post Office-Pakri, Police Station-Ara
Nawada, District- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The Union of India through the Chief Security Commissioner, Railway Protection Force, Eastern Central Railway Hazipur, Bihar.
2. The Senior Commandant, Railway Protection Force, EC Railway, Danapur.
3. The Senior Divisional Finance Manager, EC Railway, Danapur.
4. The Senior Divisional Personnel Officer, EC Railway, Danapur.
5. The Assistant Security Commissioner, EC Railway, Danapur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ramchandra Singh with Mr. Jitendra Kumar Singh, Mr. Shankar Kumar, Mr. Surajbans Rai, Advocates
For the Respondent/s	:	Mr. Maurya Vijay Chandra, Sr.CGC Dr. Priya Gupta, CGC

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 23-09-2024

Heard Mr. Ram Chandra Singh, learned Advocate for the petitioner and Mr. Maurya Vijay Chandra, learned Sr. CGC along with Dr. Priya Gupta, learned Advocates for the Union of India.

2. The petitioner superannuated on 30.11.2018 from the post of Sub-Inspector, Security Control, Railway Protection, Danapur, Eastern Central Railway has invoked the prerogative writ jurisdiction of this Court under Article 226 of the Constitution of India seeking following reliefs:

(1) This Hon'ble High Court may



be graciously pleased to direct the respondents - authority to make payment of entire retrial benefits with consequential effects ta the petitioner immediately after superannuation date 30. 11. 2018 on the last basic pay Rs. 50500/=, whenever by virtue of Annexure -P/5 dated 06.12.2018 passed by Senior Divisional Finance Manager, East Central Railway, Danapur, the basic pension of the petitioner has been illegally fixed of Rs. 24500 /= on the last 17th month back of superannuation i.e. 01.07.2017 of basic Pay of Rs. 4900/= resultantly, Petitioner is suffering from recurring financial loss and injuries. Therefore the impugned Annexure - P / 4 passed by the concerned respondent may be also set aside in the interest of Justice.

(II) This Hon'ble High Court may further be pleased to direct the respondents - authorities to pay full Leave Encashment of total 300/= days, whenever by virtue of Annexure - P/ 5 dated 06.12.2018, only leave Encashment for 266/= days and Half Leave Encashment for 34 days have paid to the Petitioner.

(III) This Hon'ble High Court may be pleased to issue direction to the respondents- authorities to pay entire retrial benefit with appropriate interest with the date of after immediate superannuation.

(IV) Any other reliefs may be allowed for which petitioner may duly entitled



i accordance with law.

3. The issue raised before this Court lies in a narrow compass, based upon the relevant/necessary facts, which are reproduced hereunder:

4. The petitioner on being found eligible for the post of constable, having gone through the due process of selection, appointed as a constable in Railway Protection Force on 06.03.1978. After serving so may places, the petitioner was promoted from Constable to Head Constable on his due admitted pay scale and transferred on 28.08.1995 from Carshed RPF, Sonarpur under Sealdah Division to Asansol Division (Eastern Railway). Serving on different places, on the aforementioned post, he was again promoted to the Rank of Assistant Sub Inspector on 08.01.2005 and posted to Quarter Master Cell, Head Quarter Hajipur with effect from 08.01.2005. Again he was transferred from R.P.F. post, Patna to C & T Company, Danapur on 20.04.2014 and further promoted to the rank of Sub Inspector on 01.04.2017. While working on the aforementioned post, he was further transferred to Security Control, RPF, Danapur on 26.03.2018 and finally superannuated on 30.11.2018.

5. Learned Advocate for the petitioner contended that on the date of superannuation, the petitioner had been drawing his basic salary amounting to Rs.50,500/-. The pension



paper and the necessary documents have been submitted, but surprisingly the pension of the petitioner has been fixed on the basic pay of Rs.49,000/-, which he was getting 17 months prior to the date of his superannuation i.e. on 01.07.2017, causing serious financial loss and prejudice. During the service period and even before the date of his superannuation, at no point of time, the petitioner was served with any notice to show-cause that he has ever been allowed higher salary than admissible to him, but all of a sudden, after superannuation, the last pay drawn by the petitioner to the tune of Rs.50,500/- has been reduced to Rs.49,000/- and, accordingly, fixed the basic pension of the petitioner at Rs.24,500/-. The petitioner has also been denied the full amount of leave encashment for total 300 days and in fact, the petitioner has been paid the amount of leave encashment for 266 days and half leave encashment for 34 days. Thus, all the retiral benefits of the petitioner has been fixed on a reduced rate. The petitioner has also been served with the Office D.O. No. 307/2018 dated 28.11.2018 whereby his further basic pay was revised and re-fixed as on 01.07.2018 to the tune of Rs.49,000/-. In view of the above re-fixation of his basic pay, an amount of Rs. 94,416/- was recovered on account of over payment, which order is also under challenge before this Court.

6. Learned Advocate for the petitioner while



assailing the order of re-fixation and recovery has vehemently contended that the action of the respondent authorities are apart from arbitrary and unreasonable is in the teeth of the mandate of the Hon'ble Supreme Court in the case of **State of Punjab and Others Vs. Rafiq Masih (White Washer) and Others**, reported in **(2015) 4 SCC 334** wherein the Hon'ble Supreme Court ruled that recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued would be impermissible in law. Reliance has also been placed on a decision rendered by the Hon'ble Supreme Court in the case of **Thomas Danial Vs. State of Kerala and Others**, reported in **2022 SCC OnLine SC 536** where the Hon'ble Court held that the State cannot recover excess amount paid to the ex-employee, even on account of granting excess increment to the admissibility of the employee, after a delay of ten years.

7. Learned Advocate for the petitioner further contended that the reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences, inasmuch as, the impugned order is in complete violation of the principles of natural justice and hence the same is not sustainable. In this regard strong reliance has been placed on a



decision of Hon'ble Supreme Court in the case of **Jagdish Prasad Singh Vs. State of Bihar and Others [2024 SCC OnLine SC 1909]** wherein the order of recovery upheld by the order of learned Single Judge and further confirmed by the Division Bench were quashed and set aside by the Hon'ble Supreme Court and directed that if any reduction in pension and consequential recovery was effected on account of the impugned orders, the appellant shall be entitled to the restoration/reimbursement thereof with interest as applicable.

8. With regard to entitlement of the fixation of pension on the basis of last pay drawn, learned Advocate further placed reliance on a decision of the learned Coordinate Bench of this Court in the case of **Akhilanand Upadhyay Vs. The State of Bihar & Ors.** reported in **2010(4) PLJR 854** and further in the case of **Dashrath Singh Vs. The Accountant General, Bihar & Ors.**, reported in **2016 (4) PLJR 497**, wherein the Court held that no reduction in pay scale or any action, which has adverse consequences, in respect of a person, can be taken without the person being heard and directed to restore the pay scale and the pensionary benefits of the petitioner on the last pay drawn and not on its revised pay scale.

9. Per contra, learned Advocate for the Union of India contended that on 01.12.2003, the basic pay of the



petitioner was fixed at the rate of Rs.4300/-, but erroneously he was again extended one extra increment on 01.12.2003 itself fixing the pay scale at the rate of Rs.4400/- and in this way he was granted double increments. On account of above wrong pay fixation, the error was carried further in subsequent years and his next basic pay scale was also raised erroneously. When the retirement of the petitioner was due on 30.11.2018, his service record was placed before the Senior Divisional Finance Manager, East Central Railway, Danapur on 01.11.2018 for verification of his last pay. After scrutiny of his service record, the accounting authority returned the service record with observation that the petitioner has been extended double increment on 01.12.2003, thus, the pay of the petitioner is required to be reviewed from 01.12.2003 till the date of his superannuation. Accordingly the benefit of 6th and 7th Pay Commission also required to be reverted, if pay changed.

10. In view thereof his basic pay fixed on 01.12.2003 was reviewed and re-fixed and his 6th Pay revision has been revised on the basis of the basic pay after reducing one increment. Similar re-fixation has also been done with the basic pay in the 7th Pay Commission fixation. Making all such revision, the basic of the petitioner was revised and re-fixed as on 01.07.2018 to the tune of Rs.49,000/-. In view of the re-



fixation of his basic pay, the competent authority directed for recovery of Rs.94,416/- on account of over payment.

11. So far the Leave encashment of the petitioner is concerned, as per update leave of the petitioner 266 days LAP (Leave Admissible Pay) and 460 days HLAP (Half Leave Admissible Pay) was found available till retirement of his service and out of above balance leave 266 days LAP and 34 days HLAP was accumulated/encashed for payment of 300 days leave salary and he was paid accordingly Rs.5,03,835/-.

12. Mr. Maurya Vijay Chandra, learned Advocate for the Union of India advertng to the aforesaid facts further contended that the petitioner was well aware of the fact that he has been accorded one extra increment in the year 2003, but he did not ask for necessary correction, resultantly he has been getting all along excess amount to his admissibility. Reliance has also been placed on a judgment rendered by the Hon'ble Supreme Court in the case of **Union of India & Others Vs. Bhanwar Lal Mundan**, reported in **(2013) 12 SCC 433**, wherein the Hon'ble Supreme Court held that the authorities were within their domain to rectify the error committed while fixation of pay and the Tribunal and the High Court have fallen into error by opining that the respondent would be entitled to get the pension on the basis of the pay drawn by him before his



retirement.

13. Learned Advocate for the Union of India has also highlighted the dictum of the Hon'ble Supreme Court in the case of **Syed Abdul Qadir & Ors. Vs. State of Bihar & Ors**, reported in **(2009) 3 SCC 475** only to the effect if "it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess."

14. While concluding his submission, further reliance has been placed on a judgment of the Co-ordinate Bench of this Court in the case of **Kailash Bhushan Tiwari Vs. The State of Bihar & Ors. (C.W.J.C. No. 7961 of 2020)** as well as judgment of the learned Division Bench in the case of **Uma Devi Vs. The State of Bihar & Ors. (L.P.A. No. 975 of 2019)** wherein the Court has not found any infirmity in the order of recovery where the petitioner has been paid amount in excess to his admissibility.

15. This Court has carefully heard the learned Advocate for the respective parties and also perused the materials available on record.



16. There is no dispute with regard to the facts of the case in hand. Admittedly, the petitioner was duly appointed on the post of Constable way back in the year 1978 and thereafter on being found eligible promoted to different higher post. The position is also admitted that in the year 2003 and to be more specific on 01.12.2003 he has been accorded one extra increment, due to which the petitioner has been all along getting excess amount to his entitlement, which came to the knowledge of the respondent authorities at the time of verification of pension papers, when the same was placed before the concerned authority for fixation of pension and other post retiral benefits. It is not the case of the respondent authorities that extra increment was accorded to the petitioner on account of any misrepresentation or fraud on the part of the petitioner. The record does not reveal that the petitioner had knowledge that the payment received was in excess or wrongly paid. The mistake, if any, was inadvertantly done in the year 2003 is directed to be rectified in the year 2018 i.e. after a lapse of 15 years.

17. The Apex Court in the case of **Syed Abdul Qadir** (supra) ruled that when the excess unauthorized payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment has been made for a long duration of time, it would be



iniquitous to make any recovery. While holding so, the Hon'ble Supreme Court held as follows:

“57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee, and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

*58. The relief against recovery is granted by courts not because of any right in the employees, but in equity, exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. But, if in a given case, it is proved that the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, courts may, on the facts and circumstances of any particular case, order for recovery of the amount paid in excess. See *Sahib Ram v. State of Haryana* [1995 Supp (1) SCC 18 : 1995 SCC (L&S) 248], *Shyam Babu Verma v. Union of India* [(1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] , *Union of India v. M. Bhaskar* [(1996) 4 SCC 416 : 1996 SCC (L&S) 967], *V. Gangaram v. Director* [(1997) 6 SCC 139 : 1997 SCC (L&S) 1652], *Col. B.J. Akkara (Retd.) v. Govt.**



of India [(2006) 11 SCC 709 : (2007) 1 SCC (L&S) 529], Purshottam Lal Das v. State of Bihar [(2006) 11 SCC 492 : (2007) 1 SCC (L&S) 508], Punjab National Bank v. Manjeet Singh [(2006) 8 SCC 647 : (2007) 1 SCC (L&S) 16] and Bihar SEB v. Bijay Bhadur [(2000) 10 SCC 99 : 2000 SCC (L&S) 394].”

18. When the issue of recovery from the Class-III and Class-IV employees were wreck up in various cases, in order to put a quitous, the Hon’ble Supreme Court in the case of **State of Punjab & Ors Vs. Rafiq Masih** (supra) has been painstakingly postulated some of the situations of the hardship wherein recovery by the employee would be found impermissible in law.

18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).

(ii) Recovery from the retired employees,



or the employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.”

19. The Hon'ble Supreme Court in no uncertain term held that no recovery can be made from the retired employees, or employees who are due to retire within one year, of the order of recovery and when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

20. In the case of **Thomas Daniel** (supra) the Hon'ble Supreme Court also held that in a case where an employee has been accorded extra increment and the same has



been paid for a period of more than ten years or more, the State cannot recover the excess amount paid to the employee.

21. The present is also not a case where the petitioner has been placed on notice at the first instance or at any point of time during service that in case any excess amount is found to be paid, the same shall be recovered or the petitioner has tendered any undertaking in this regard. Admittedly, the mistake was done way back in the year 2003 and it continued for about 15 years, thus in the opinion of this Court the order directing reduction in pay scale and recovery from the petitioner would be quite iniquitous, arbitrary and harsh; thus impermissible in law.

22. Now coming to the conclusion as to whether at this stage, the pension of the petitioner can be subjected to re-fixation on the basis of admissible pay after making correction in the pay scale. The Hon'ble Supreme Court in a catena of decisions held and highlighted the power of the employer to rectify the mistake by re-fixation of pension after retirement if the employee was getting higher pay scale in excess to his entitlement, subject to the procedure prescribed under the law after adherence to the principle of natural justice.

23. In the case in hand, no cause is to be shown or any show-cause notice has been issued upon the petitioner.



Reliance of the petitioner on the decision of the learned Coordinate Bench of this Court is well founded that no order can be passed in respect of a person without the person being heard. The action taken to the prejudice of a person without hearing him would be void, ab initio.

24. Reliance of the petitioner on the judgment of the Hon'ble Supreme Court in the case of **Jagdish Prasad Singh** (supra) also safeguard the case of the petitioner. In the said case where the appellant was appointed to the post of Supply Inspector in the Government of Bihar in the year 1966 and after serving for 15 years of service, he received his first time bound promotion as Marketing Officer and further he was put in Junior Selection Grade w.e.f. 01.04.1981. Upon completing 25 years of service, the appellant was further granted promotion to the post of Senior Selection Grade, (Marketing Officer-cum-Assistant District Supply Officer) w.e.f. 10.03.1991 in the higher pay scale. The Government of Bihar issued a Resolution revising the pay scale of Marketing Officer to that of Assistant District Supply Officer (hereinafter referred to as 'the ADSO'). The appellant had been promoted as ADSO and later on superannuated on the said post; however, on account of objection raised by the Accountant General, his pension has been revised and reduced to match that of the lower



post of Marketing Officer. Being aggrieved, the appellant preferred C.W.J.C. No. 6714 of 2009, which was disposed off with liberty to the petitioner to file a detailed representation to the Government of Bihar, however, the same came to be rejected, whereupon the appellant preferred C.W.J.C. No. 18542 of 2009 assailing the order of rejection, but the writ petition came to be dismissed. Thereafter, the appellant filed review, which also rejected. Being aggrieved, the appellant filed Letters Patent Appeal, which also met to the same fate. The matter finally came up before the Hon'ble Supreme Court in Civil Appeal No(s). 1653 of 2013. The Hon'ble Supreme Court reiterating the earlier decision rendered in the case of **Syed Abdul Qadir** (supra), **ITC Limited vs State Of U.P. & Ors**, reported in **2011 (7) SCC 493**, **Rafiq Masih** (supra) and **Thomas Daniel** (supra) while allowing the appeal held the order of recovery of excess amount from the appellant is grossly illegal and arbitrary and directed the appellant shall continue to receive the pension in the earlier pay scale. It would be relevant to extract paragraph 26 of the judgment of **Jagdish Prasad Singh** (supra) hereinbelow:

“26. The learned Single Judge as well as the Division Bench of the High Court of Patna also seem to have fallen in the same error. In addition thereto, we are of the view that any step of



reduction in the pay scale and recovery from a Government employee would tantamount to a punitive action because the same has drastic civil as well as evil consequences. Thus, no such action could have been taken against the appellant, more particularly, because he had been promoted as an ADSO, while drawing the pay scale of Rs.6500-10500 applicable to the post, way back on 10th March, 1991 and had also superannuated eight years ago before the recovery notice dated 15th April, 2009 was issued. The impugned action directing reduction of pay scale and recovery of the excess amount is grossly arbitrary and illegal and also suffers from the vice of non-adherence to the principles of natural justice and hence, the same cannot be sustained.”

25. The decisions cited by the learned Advocate for the Union of India where recovery has not been interfered, were based upon different facts. In those case, employees were either placed on notice or he was apparently aware of the fact that more amount being accorded in his pension amount, than that was sanctioned by him. The Court also found that the recovery from an employee would be in order so long as is not iniquitous to the same that the action of the recovery would be more unfair, more wrongful, more improper and more unwarranted than the corresponding right of the employer, to recover the amount. The learned Single Judge in C.W.J.C. No. 7961 of 2020 has observed that the facts of receiving excess pension amount



ought to have brought to the notice of the employer or the banker, but he cleverly and silently kept on receiving the amount knowing well that the same was more than his actual entitlement and accordingly, the Court did not interfere in the recovery.

26. The order/judgment passed by the Division Bench of this Court in **L.P.A. No. 975 of 2019** is also a case where the learned Division Bench did not interfere in the decision of the learned Single Judge taking note of the fact that the husband of the appellant had given undertaking that in case excess payment was made to the appellant, the Bank has legal right to recover the money.

27. In view of the aforesaid facts, this Court finds substance in the writ petition and, accordingly, the impugned order revising the pay scale of the petitioner and directing for recovery, as contained in Annexure-4 to the writ petition, stands quashed. The authorities are directed to restore the pay, which the petitioner was getting at the time of his retirement and refund the alleged excess amount of Rs.94,416/- preferably within a period of eight weeks from the date of receipt/production of a copy of this order.

28. So far the claim of Leave Encashment of the petitioner is concerned, the issue is not required to be answered



in view of the submission of the learned Advocate for the petitioner that during the pendency of this application said grievance has already been redressed.

29. The writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.09.2024
Transmission Date	NA

