

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA**

O.A. No. 210 of 06

Date of order : 12.9.2007

CORAM

Hon'ble Ms. Sadhna Srivastava, Member (J)

S.K. Sheetal, S/o Late Santosh Kumar Sheetal, r/o Sheetal Kunj, Haru Ganj, Hazaribagh, ex- Asstt. Commercial Manager, E.C. Railway, Danapur, P.O. Khagaul, Patna.

Applicant

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India through the Secretary, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, East Central Railway, Hajipur.
3. The General Manager [P], East Central Railway, Hajipur
4. The Chief Commercial Manager, East Central Railway, Hajipur.
5. The FA & CAO, E.C. Railway, Hajipur.
6. The Divisional Railway Manager, East Central Railway, Danapur.
7. The Sr DPO, East Central Railway, Danapur.
8. The Sr. D.F.M., East Central Railway, Danapur.

Respondents

By Advocate : Shri N.K. Sinha.

ORDER

Sadhna Srivastava, M [J] :- The applicant seeks quashing of the order of recovery of excess payment of salary as contained in Annexure A/1 and the actual recovery of Rs. 37,919/- from the gratuity amount due to him

after retirement. He seeks refund of Rs. 37,919/- with interest thereon.

2. The facts are that the applicant was initially appointed in Railway on 1.11.1972 and in due course promoted to Group 'B' service with effect from 22.11.1996. He finally retired while posted as Assistant Commercial Manager, East Central Railway [E.C. Railway], on 31.1.2006. On the eve of retirement by letter dated 20.12.2005 it was pointed out to him that on promotion to Group 'B' , his salary was wrongly fixed with effect from 22.11.1996. By this very letter as contained in Annexure A/1, recovery was ordered, which was started soon thereafter. The applicant alleges that the wrong fixation , if any was the result of mistake of the administration. There was no mistake or misrepresentation on his part. The respondents have supported their action. However, there is no mention or whisper as to how the wrong fixation was made? Who was responsible? Whether the applicant made any misrepresentation?

3. The law is well settled that if the excess payment had been made without there being any misrepresentation on the part of employee, it is not open to the employer to recover the same. In the case of Sahib Ram Vs. State of Haryana, 1995, Suppl. [1] SCC 18, the upgraded pay scale was given due to wrong construction of relevant order by the authority concerned without any misrepresentation on the part of employee. The Apex Court held that the excess payment made to the employee cannot be



recovered. Relying on the law laid down by the Hon'ble Supreme Court, the Hon'ble Patna High Court in the cases [a] Raghubir Prasad Singh Vs. Bihar S.E.B, 1996 BBCJ 15 [b] Gupteshwar Prasad vs. State of Bihar, 1999 [3] PLJR and [c] Mahendra Prasad vs. State of Bihar 2006 [1] PLJR 139 have also held that if the excess payments have been made without their being any misrepresentation on the part of the employee, it is not open for employer to recover the same. Consequently, the recovery made by the respondents from the gratuity payable to the applicant has to be refunded. Resultantly, the respondents are directed to refund the amount of Rs. 37,919/- to the applicant forthwith withⁱⁿ interest payable at the rate of 9 % per annum with effect from 1.2.2006 to the date of actual payment. The OA stands disposed of, accordingly, without any order as to the costs.


[Sadhna Srivastava] M [J]

/cbs/