

9th September, 2025
(D/L No.25)
Ct. No.4
(SKB)

W.P.C.T.64 of 2024

Union of India and others
Versus
Kishori Mohan Ghorai

Mr. Sukumar Bhattacharyya
... for the petitioners.

Mr. Sk. Siddique Rahaman,
Mr. S. C. Srivastava
... for the respondent.

1. Heard the learned advocate appearing for the writ petitioners, who was the respondents before the Central Administrative Tribunal, Kolkata Bench, Kolkata (in short 'Tribunal').
2. The respondent/applicant retired from a Group 'C' post as ex-Chief Commercial Clerk in the Shalimar Goods Office under South East Railway on 30.11.2020. About eight months after he had retired, a letter dated 15.07.2021 had been issued whereby and whereunder he had been informed that there was an over payment of Rs.1,59,470/- assessed by the authorities which is recoverable from his DCRG. The Tribunal has set aside the order and directed that no recovery be made from the DCRG based on the communication dated 15.07.2021.

3. The learned advocate appearing for the petitioners submits that the period of absence is during the Covid pandemic period. Since the various railways were taking decision in respect of such period, which was not uniform, the authorities came out with a letter issued by the Railway Board on 03.09.2020. According to the said letter, a uniform procedure has been laid down and measures have been specified for the various situations. He has referred to Situation No.7, which is specified in the letter dated 03.09.2020 issued by the Director, Establishment(G), Railway Board, which reads as follows:

“7.	An employee who was in HQ but did not turn up for duty on being called.	Absent, the period & pay may be decided as per normal rules.”
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4. He submits that in view of the decision of the Railway Board, the applicant/respondent's absence was considered under this Railway Board communication and after due consideration, the authorities found that absence for the period in between 23.03.2020 to 05.06.2020 was unjustified and, therefore, the recovery was directed.

5. The further submission of the learned counsel for the petitioners is that the Tribunal's reliance placed on the decision of the Apex Court in the

case of ***State of Punjab and others Vs. Rafiq Masih (White Washer)*** reported in **(2015)4 SCC 334** is unsustainable. The judgment is not applicable to the facts and circumstances of the present case, as it is not covered by any of the five hardships enumerated in the said judgment, which would disentitle the authority from making any recovery.

6. The learned advocate for the applicant/respondent, on the other hand, submits that the decision of the Tribunal does not require any interference.

7. We have considered the rival submissions. Insofar as the submission regarding the letter of the Railway Board dated 03.09.2020, relied upon by the learned advocate for the Railways, we find the same does not, in any way, allow or sustain such a recovery to be made from a retired employee merely by issuing a communication. The further submission regarding non-applicability of the case of ***Rafiq Masih(supra)***, we find that the five conditions enumerated therein, which may disentitle recovery, even if it does not extend to the writ petitioner, the recovery would be impermissible for the simple reason that the same is not preceded by compliance with the principles of

natural justice. No opportunity has been given to the respondent/applicant. The recovery is nearly by issuing the impugned letter, that also not substantiated with reference to any procedure in the service rules which may justify such recovery from a retired employee.

8. The letter dated 15.07.2021, therefore, is clearly unsustainable. The order of the Tribunal dated 11.08.2023, in view of the above consideration requires no interference.
9. Accordingly, the writ petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)