

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 19257 of 2025

1. The Union of India through the Secretary, Ministry of Railways, Government of India, Rail Bhawan, New Delhi- 110001.
2. The General Manager, East Central Railway, Hajipur P.O.- Digghi Kalan, P.S.- Hajipur (Sadar), District- Vaishali, Pin Code- 844101 (Bihar).
3. The General Manager (Personnel), East Central Railway, Hajipur P.O.- Digghi Kalan, P.S.-Hajipur (Sadar), Dist.-Vaishali, Pin -844101 (Bihar).
4. The Divisional Railway Manager, East Central Railway, Danapur, District- Patna, Pin Code- 801105 (Bihar).
5. The Senior Divisional Personnel Officer, East Central Railway, Danapur, District- Patna, Pin Code 801105 (Bihar).
6. The Senior Divisional Financial Manager, East Central Railway, Danapur, District- Patna, Pin Code 801105 (Bihar).

... .. Petitioner/s

Versus

Anil Kumar Sinha Son of Late Sheo Nandan Prasad, resident of Ram Nagar Bengali Tola, P.S.- Jakkanpur, District- Patna - 800001 (Bihar).

... .. Respondent/s

Appearance:

For the Petitioner/s : Mr. Rajen Sahay, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 22-01-2026

The present writ petition has been filed against the order dated 31.01.2025, passed by the Ld. Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Ld.



CAT') in O.A. No. 050/00764/2023, whereby and whereunder while disposing off the original application filed by the respondent herein, the order of recovery dated 18.02.2022 along with the order dated 23.09.2021 read with the order dated 30.11.2018 have been quashed and the petitioners have been directed to forthwith refund the amount already recovered. The Ld. CAT, while setting aside the aforesaid orders dated 30.11.2018, 23.9.2021 and 18.2.2022, whereby the pay-scale of the respondent has been re-fixed, has also directed the petitioners to pass a reasoned and a speaking order regarding re-fixation of pay of the respondent within three months in view of the precedents as also considering the Railway Rules.

2. The brief facts of the case as averred in the original application filed by the respondent herein is that while he was working as Loco Pilot (Goods) in the pay-scale of Rs. 5500 - Rs. 9000/-, he was promoted to the post of Chief Loco Inspector-cum-Safety Counsellor in the pay-scale of Rs. 6500-Rs.10,500/- with effect from 01.04.2004, after being found suitable in the selection test conducted by the petitioner no. 5, whereafter he was posted under Senior Divisional Safety Officer, East Central Railway, Danapur vide order dated 22.06.2004 as also his pay was fixed on promotion with effect



from 01.04.2004. The respondent had then drawn annual increments and all other benefits since 01.04.2004 till the month of September, 2020 and his basic pay had reached a sum of Rs. 99,800/- which also included the effect of revision of pay-scale from time to time on account of implementation of the various recommendations of the Central Pay Commission, after due vetting by the Accounts Department. However, it is the case of the respondent that when he received the pay slip for the month of October, 2020, he found that his basic pay had been revised from a sum of Rs. 99,800/- to Rs. 86,100/- without the petitioners having passed any adverse order regarding reduction of pay-scale of the respondent. The respondent had then submitted a representation dated 24.11.2020 against the said reduction of pay, however neither any order was passed on the same nor he was communicated about the reasons for reducing his pay after 16 years, leading to the respondent filing an original application bearing O.A. No. 325 of 2021, which was dismissed as not pressed by an order dt. 09.07.2021, passed by the Ld. CAT, while recording the submission of the respondent that he wants to file a fresh representation.

3. The respondent had again submitted a representation on 22.07.2021, however he received a show cause dated 23.9.2021



along with an order dated 30.11.2018, re-fixing the pay scale of the respondent with effect from 01.04.2004, wherein it had been stated that since his pay has wrongly been fixed with effect from the year 2004, the department has assessed that a sum of Rs. 17,65,430/- is required to be recovered from him on account of over payment made to him, hence he may submit his show cause reply within 15 days. The respondent had then filed his reply to the aforesaid show cause notice on 06.10.2021, inter-alia stating therein that his pay has been correctly fixed as on 01.04.2004 and the pay scale of similarly situated employees has not been reduced, apart from reference having been made to the Circular of the Railway Board dated 22.06.2016 issued in light of DoPT's OM dated 02.03.2016, based on the judgment of the Hon'ble Apex Court rendered in the case of *Rafiq Masih* which restrains recovery of any over payment made beyond five years of the date of alleged wrong fixation of pay. Nonetheless, without passing any order upon the reply submitted by the respondent on 6.10.2021, the petitioners started making recovery @ of Rs. 15000/- per month leading to the respondent having filed yet another Original Application bearing O.A. No. 608 of 2021, which was disposed off by the learned CAT by an order dated 15.11.2021 directing the petitioners to take a



decision on the representation of the respondent at the earliest and till then the recovery was stayed.

4. It is the further case of the respondent herein that despite the order of the Ld. CAT dt. 15.11.2021, the petitioners neither stopped recovery being made from the salary of the respondent nor disposed off the representation filed by the respondent leading to the respondent filing a contempt petition bearing CCPA No. 02 of 2023, alleging therein non-compliance of the orders of Ld. CAT dated 15.11.2021, as corrected vide order dated 30.05.2022. In the show cause filed by the petitioners before the Ld. CAT a communication dt. 21.2.2022 containing speaking order dated 18.02.2022, passed by the petitioner no. 5 was brought on record, whereby and whereunder the representation of the respondent had been rejected holding that the decision to re-fix the pay of the respondent and make recovery of the excess amount paid is correct and justified. The respondent had challenged the aforesaid orders dated 18.2.2022 read with order dated 23.09.2021 and 30.11.2018, whereby and whereunder the basic pay of the respondent has been reduced and a sum of Rs. 17,65,430/- has been sought to be recovered from the monthly salary of the respondent by filing O.A. No. 050/00764/2023. The respondent had also prayed before the Ld.



CAT to restore his basic pay to the tune of Rs. 99,800/- with effect from the month of October, 2020, which has been reduced to Rs. 86,100/- and refund the amount already deducted from his monthly salary.

5. The petitioners had filed written statement before the learned CAT wherein it has been stated that the respondent is working as CLI/Safety Counselor at Danapur and earlier his pay fixation was done upon promotion as follows- “current Basic pay + 30% of Current Basic Pay + DA + Promotion increment” while it should have been computed as follows – “current Basic pay + 30% of Current Basic pay + Promotion increment, as per the existing rule. Subsequently, it was detected that DA was not admissible, hence it ought not to have been added while fixing pay upon promotion earlier, hence pay fixation was corrected and the respondent was advised accordingly. It is further stated that upon examination, it was found that the pay of the respondent had been wrongly fixed w.e.f. 01.04.2004 itself. Thus, corrective measures were taken and fresh pay fixation was done on 30.11.2018 which is correct and in conformity of the rules. Accordingly, the respondent was informed about deduction vide office letter no. Estt./Pay fixation/Supervisor/20-21, Danapur dated 23.09.2021. The petitioners have also stated



in the written statement that the representation of the respondent was disposed off by a speaking order dated 18.02.2022 and the Circular of the Railway Board dated 22.06.2016, being relied upon by the respondent, is not relevant in the present case since the respondent will retire in the year 2026.

6. We find from the records that it had been submitted on behalf of the respondent before the learned CAT that the orders dated 18.02.2022, 23.09.2021 and 30.11.2018. pertaining to the reduction of basic pay and recovery of the over payment made are illegal and unjust as also against the law laid down by the Hon'ble Apex Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih***, reported in ***(2015) 4 SCC 334***. It was further argued on behalf of the respondent before the learned CAT that the pay scale of similarly placed employees, promoted either before 01.04.2004 or even thereafter but before the year 2007, has neither been reduced nor any adverse order has been passed against such employees. In this connection, reliance was placed on a ***judgment dated 18.10.2022***, passed by this Court in ***LPA No. 431 of 2021 (Surendra Mandal & Ors. vs. The State of Bihar & Ors.)*** as also upon the judgment rendered by the Hon'ble Apex Court in the case of ***Thomas Daniel vs. State of Kerala and Others***, reported in ***(2022) SCC online SC 536***.



7. The learned counsel for the petitioners herein has raised a challenge to the impugned order dated 31.01.2025 to the extent the Ld. CAT has quashed the order of recovery sought to be made from the monthly salary of the respondent, though the issue regarding re-fixation of pay has been remanded back to the petitioners'-authorities, who have been directed to pass a reasoned and a speaking order within three months. As far as the order of recovery is concerned, the learned counsel for the petitioners submits that firstly there is no infirmity in the assessment of the amount to be recovered from the respondent to the tune of Rs. 17,65,430/- and moreover, the petitioners are well within their right to make recovery as per the provisions contained in Rule 15 (1) (2) & 4 (i) (b) of the Railway Services (Pension) Rules, 1993 pertaining to recovery and adjustment of government or railway dues such as over payment, from pensionary benefits.

8. The learned counsel for the petitioners has also referred to the following judgments:-

*(i) Judgment rendered by the Hon'ble Apex Court in the case of **Raj Kumar Batra vs. The State of Haryana**, reported in (1992) 1 SCT 129;*

*(ii) Judgment rendered by the Hon'ble Apex Court in the case of **G. Srinivas vs. Govt. of Andhra Pradesh & Ors**,*



reported in (2005) 13 SCC 712;

(iii) Order dated 17.08.2012 passed by the Hon'ble Apex Court in Civil Appeal No. 5899 of 2012, arising out of SLP(c) No. 30858 of 2011 (Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors.), reported in (2012) 8 SCC 417 and,

(iv) Judgment rendered by the Hon'ble Apex Court in the case of High Court of Punjab & Haryana vs. Jagdev Singh, reported in (2016) 14 SCC 267.

9. The Ld. counsel for the petitioners has also submitted that recovery of monetary benefits wrongly extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship, however in the present case more than five years of service was remaining at the time of assessment of the amount to be recovered from the respondent, hence the action of recovery would have caused no hardship to the respondent, thus the law laid down by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra) is not applicable in the facts and circumstances of the present case.

10. Having heard the learned counsel for the parties and having gone through the pleadings on record, we find that the issue regarding re-fixation of pay scale of the respondent with effect from the year 2004, leading to reduction of his pay scale from Rs. 99800/- to Rs. 86100/- with effect from the month of



October, 2020 has been remanded back to the petitioners for reconsideration in light of the Railway Rules and in view of the precedents, by way of re-fixation of the pay scale of other similarly situated employees, hence this aspect of the matter has not been seriously questioned, obviously for the reason that the said observation/direction of the Ld. CAT is not against the petitioners, however the setting aside of the order of recovery by the Ld. CAT has been vehemently contested, as aforesaid. Thus, the only issue to be adjudicated in the present writ petition is as to whether recovery of the excess amount paid to the respondent on account of wrong fixation of his pay scale is permissible or not. We find that the issue of entitlement of the employer to recover the amount paid in excess to the employee without any fault of the employee has been settled in a host of decisions by the Hon'ble Apex Court. The law in this regard is no longer *res integra* and we would gainfully refer to a catena of judgments rendered by the Hon'ble Apex Court on the issue that recovery of the amount paid in excess to the employee by the employers, even in a case like the present one, is impermissible under the law. For ready reference we deem it fit and proper to refer to the following Judgments rendered by the Hon'ble Apex Court:-

(i). *Judgment rendered in the case of Syed Abdul Qadir*



vs. State of Bihar, reported in (2009) 3 SCC 475;

(ii). Judgment rendered in the case of Shyam Babu Verma vs. Union of India, reported in (1994)2 SCC 52;

(iii). Judgment rendered in the case of Sahib Ram vs. State of Haryana, reported in (1995) Suppl.1 SCC 80;

(iv). Judgment rendered in the case of B.Ganga Ram vs. Regional Joint Director, reported in (1997) 6 SCC 139;

(v). Judgment rendered in the case of Purshottam Lal Das vs. State of Bihar, reported in (2006) 11 SCC 492;

(vi). Judgment rendered in the case of Bihar State Electricity Board vs. Bijay Bhadur, reported in (2000) 10 SCC 99;

(vii). Judgment rendered in the case of B.J. Akkara vs. Govt. of India University, reported in (2006) 11SCC 709;

(viii). Judgment rendered in the case of State of Punjab vs. Rafique Masih, reported in (2015) 4 SCC 334;

(ix). Judgment rendered in the case of Thomas Daniel vs. State of Kerala and Others, reported in (2022) SCC Online SCC 536;

11. At this juncture, it would be relevant to reproduce paragraphs no. 3 to 18 of the judgment rendered by the Hon'ble Apex Court in the case of ***Rafiq Masih*** (supra) herein below:-

“3. The issue that we have been required to adjudicate is, whether all the private respondents, against whom an order of recovery (of the excess amount) has been made, should be exempted in law, from the reimbursement of the same to the employer. For the applicability of the instant



order, and the conclusions recorded by us hereinafter, the ingredients depicted in the foregoing two paragraphs are essentially indispensable.

4. Merely on account of the fact that the release of these monetary benefits was based on a mistaken belief at the hands of the employer, and further, because the employees had no role in the determination of the employer, could it be legally feasible, for the private respondents to assert that they should be exempted from refunding the excess amount received by them? Insofar as the above issue is concerned, it is necessary to keep in mind, that the following reference was made by a Division Bench [Rakesh Kumar v. State of Haryana, (2014) 8 SCC 892] of two Judges of this Court, for consideration by a larger Bench:

“2. In view of an apparent difference of views expressed on the one hand in Shyam Babu Verma v. Union of India [(1994) 2 SCC 521] and Sahib Ram v. State of Haryana [1995 Supp (1) SCC 18]; and on the other hand in Chandi Prasad Uniyal v. State of Uttarakhand [(2012) 8 SCC 417], we are of the view that the remaining special leave petitions should be placed before a Bench of three Judges. The Registry is accordingly directed to place the file of the remaining special leave petitions before the Hon'ble the Chief Justice of India for taking instructions for the constitution of a Bench of three Judges, to adjudicate upon the present controversy.”

5. The aforesaid reference was answered by a Division Bench of three Judges on 8-7-2014. While disposing of the reference, the three-Judge [State of Punjab v. Rafiq Masih, (2014) 8 SCC 883] Division Bench, recorded the following observations in para 6:

“6. In our considered view, the observations made by the Court not to recover the excess amount paid to the appellant therein were in exercise of its extraordinary powers under Article 142 of the Constitution of India



which vest the power in this Court to pass equitable orders in the ends of justice.”

Having recorded the above observations, the reference was answered as under:

“13. Therefore, in our opinion, the decisions of the Court based on different scales of Article 136 and Article 142 of the Constitution of India cannot be best weighed on the same grounds of reasoning and thus in view of the aforesaid discussion, there is no conflict in the views expressed in the first two judgments [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521], [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18] and the latter judgment [Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417].

14. In that view of the above, we are of the considered opinion that reference was unnecessary. Therefore, without answering the reference, we send back the matters to the Division Bench for their appropriate disposal.”

6. In view of the conclusions extracted hereinabove, it will be our endeavour, to lay down the parameters of fact situations, wherein employees, who are beneficiaries of wrongful monetary gains at the hands of the employer, may not be compelled to refund the same. In our considered view, the instant benefit cannot extend to an employee merely on account of the fact, that he was not an accessory to the mistake committed by the employer; or merely because the employee did not furnish any factually incorrect information, on the basis whereof the employer committed the mistake of paying the employee more than what was rightfully due to him; or for that matter, merely because the excessive payment was made to the employee, in absence of any fraud or misrepresentation at the behest of the employee.

7. Having examined a number of judgments rendered by this Court, we are of the view, that orders passed by the employer seeking recovery of monetary benefits wrongly



extended to the employees, can only be interfered with, in cases where such recovery would result in a hardship of a nature, which would far outweigh, the equitable balance of the employer's right to recover. In other words, interference would be called for, only in such cases where, it would be iniquitous to recover the payment made. In order to ascertain the parameters of the above consideration, and the test to be applied, reference needs to be made to situations when this Court exempted employees from such recovery, even in exercise of its jurisdiction under Article 142 of the Constitution of India. Repeated exercise of such power, "for doing complete justice in any cause" would establish that the recovery being effected was iniquitous, & therefore, arbitrary. And accordingly, the interference at the hands of this Court.

8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

9. The doctrine of equality is a dynamic and evolving concept having many dimensions. The embodiment of the doctrine of equality can be found in Articles 14 to 18 contained in Part III of the Constitution of India, dealing with "fundamental rights". These articles of the Constitution, besides assuring equality before the law and equal protection of the laws, also disallow discrimination



with the object of achieving equality, in matters of employment; abolish untouchability, to upgrade the social status of an ostracised section of the society; and extinguish titles, to scale down the status of a section of the society, with such appellations. The embodiment of the doctrine of equality, can also be found in Articles 38, 39, 39-A, 43 and 46 contained in Part IV of the Constitution of India, dealing with the “directive principles of State policy”. These articles of the Constitution of India contain a mandate to the State requiring it to assure a social order providing justice—social, economic and political, by inter alia minimising monetary inequalities, & by securing the right to adequate means of livelihood, and by providing for adequate wages so as to ensure, an appropriate standard of life, and by promoting economic interests of the weaker sections.

10. In view of the aforestated constitutional mandate, equity and good conscience in the matter of livelihood of the people of this country has to be the basis of all governmental actions. An action of the State, ordering a recovery from an employee, would be in order, so long as it is not rendered iniquitous to the extent that the action of recovery would be more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer, to recover the amount. Or in other words, till such time as the recovery would have a harsh and arbitrary effect on the employee, it would be permissible in law. Orders passed in given situations repeatedly, even in exercise of the power vested in this Court under Article 142 of the Constitution of India, will disclose the parameters of the realm of an action of recovery (of an excess amount paid to an employee) which would breach the obligations of the State, to citizens of this country, and render the action arbitrary, and therefore, violative of the mandate contained in Article 14 of the Constitution of India.

11. For the above determination, we shall refer to some precedents of this Court wherein the question of recovery



of the excess amount paid to the employees, came up for consideration, and this Court disallowed the same. These are situations, in which High Courts all over the country, repeatedly and regularly set aside orders of recovery made on the expressed parameters.

12. Reference may first of all be made to the decision in Syed Abdul Qadir v. State of Bihar [(2009) 3 SCC 475], wherein this Court recorded the following observation in para 58:

“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], Shyam Babu Verma v. Union of India [(1994) 2 SCC 521], Union of India v. M. Bhaskar [(1996) 4 SCC 416], V. Gangaram v. Director [(1997) 6 SCC 139], B.J. Akkara v. Govt. of India [(2006) 11 SCC 709], Purshottam Lal Das v. State of Bihar [(2006) 11 SCC 492], Punjab National Bank v. Manjeet Singh [(2006) 8 SCC 647] and Bihar SEB v. Bijay Bhadur [(2000) 10 SCC 99].”

13. First and foremost, it is pertinent to note, that this Court in its judgment in Syed Abdul Qadir case [(2009) 3 SCC 475] recognised, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded, that when the excess unauthorised payment is detected within a short period of time, it would be open



for the employer to recover the same. Conversely, if the payment had been made for a long duration of time, it would be iniquitous to make any recovery. Interference because an action is iniquitous, must really be perceived as, interference because the action is arbitrary. All arbitrary actions are truly, actions in violation of Article 14 of the Constitution of India. The logic of the action in the instant situation, is iniquitous, or arbitrary, or violative of Article 14 of the Constitution of India, because it would be almost impossible for an employee to bear the financial burden, of a refund of payment received wrongfully for a long span of time. It is apparent, that a government employee is primarily dependent on his wages, and if a deduction is to be made from his/her wages, it should not be a deduction which would make it difficult for the employee to provide for the needs of his family. Besides food, clothing and shelter, an employee has to cater, not only to the education needs of those dependent upon him, but also their medical requirements, and a variety of sundry expenses. Based on the above consideration, we are of the view, that if the mistake of making a wrongful payment is detected within five years, it would be open to the employer to recover the same. However, if the payment is made for a period in excess of five years, even though it would be open to the employer to correct the mistake, it would be extremely iniquitous and arbitrary to seek a refund of the payments mistakenly made to the employee.

14. In this context, reference may also be made to the decision rendered by this Court in Shyam Babu Verma v. Union of India [(1994) 2 SCC 521], wherein this Court observed as under:

“11. Although we have held that the petitioners were entitled only to the pay scale of Rs 330-480 in terms of the recommendations of the Third Pay Commission w.e.f. 1-1-1973 and only after the period of 10 years, they became entitled to the pay scale of Rs 330-560 but as they have received the scale of Rs 330-560 since



1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from 1-1-1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or to adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same.”

15. *Examining a similar proposition, this Court in B.J. Akkara v. Govt. of India [(2006) 11 SCC 709] observed as under:*

“28. Such relief, restraining back recovery of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion to relieve the employees from the hardship that will be caused if recovery is implemented. A government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it, genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery.”

A perusal of the aforesaid observations made by this Court in B.J. Akkara case [(2006) 11 SCC 709] reveals a reiteration of the legal position recorded in the earlier judgments rendered by this Court, inasmuch as, it was again affirmed, that the right to recover would be sustainable so long as the same was not iniquitous or



arbitrary. In the observation extracted above, this Court also recorded, that recovery from the employees in lower rung of service, would result in extreme hardship to them. The apparent explanation for the aforesaid conclusion is, that the employees in lower rung of service would spend their entire earnings in the upkeep and welfare of their family, and if such excess payment is allowed to be recovered from them, it would cause them far more hardship, than the reciprocal gains to the employer. We are therefore satisfied in concluding, that such recovery from employees belonging to the lower rungs (i.e. Class III and Class IV—sometimes denoted as Group C and Group D) of service, should not be subjected to the ordeal of any recovery, even though they were beneficiaries of receiving higher emoluments, than were due to them. Such recovery would be iniquitous and arbitrary and therefore would also breach the mandate contained in Article 14 of the Constitution of India.

16. *This Court in Syed Abdul Qadir v. State of Bihar [(2009) 3 SCC 475] held as follows:*

“59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. The learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand



and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made.”

Premised on the legal proposition considered above, namely, whether on the touchstone of equity and arbitrariness, the extract of the judgment reproduced above, culls out yet another consideration, which would make the process of recovery iniquitous and arbitrary. It is apparent from the conclusions drawn in Syed Abdul Qadir case [(2009) 3 SCC 475], that recovery of excess payments, made from the employees who have retired from service, or are close to their retirement, would entail extremely harsh consequences outweighing the monetary gains by the employer. It cannot be forgotten, that a retired employee or an employee about to retire, is a class apart from those who have sufficient service to their credit, before their retirement. Needless to mention, that at retirement, an employee is past his youth, his needs are far in excess of what they were when he was younger. Despite that, his earnings have substantially dwindled (or would substantially be reduced on his retirement). Keeping the aforesaid circumstances in mind, we are satisfied that recovery would be iniquitous and arbitrary, if it is sought to be made after the date of retirement, or soon before retirement. A period within one year from the date of superannuation, in our considered view, should be accepted as the period during which the recovery should be treated as iniquitous. Therefore, it would be justified to treat an order of recovery, on account of wrongful payment made to an employee, as arbitrary, if the recovery is sought to be made after the employee's retirement, or within one year from the date of his retirement on superannuation.

17. Last of all, reference may be made to the decision in Sahib Ram v. Union of India [1995 Supp (1) SCC 18] wherein it was concluded as under:



“4. Mr Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class MA, MSc, MCom plus a first or second class BLib Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs.”

(emphasis supplied)

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale



of Rs 700-1600. The above pay parity would extend to Librarians, subject to the condition that they possessed the prescribed minimum educational qualification (first or second class MA, MSc, MCom plus a first or second class BLib Science or a diploma in Library Science, the degree of MLib Science being a preferential qualification). For those Librarians appointed prior to 3-12-1972, the educational qualifications were relaxed. In Sahib Ram case [1995 Supp (1) SCC 18], a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the appellants concerned were ineligible for the same. The appellants concerned were held not eligible for the higher scale, by applying the principle of “equal pay for equal work”. This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

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 & 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.”

12. A bare perusal of the aforesaid judgment rendered in the case of **Rafiq Masih** (supra) would show that the judgment rendered in the case of Chandi Prasad Uniyal has though been considered but has been departed from in view of the law laid down in a catena of judgments rendered by the Hon'ble Apex Court in the case of **Shyam Babu Verma** (supra), **Sahib Ram** (supra), **M. Bhaskar** (supra), **B. Ganga Ram** (supra), **Bijay Bhadur** (supra), **Purshottam Lal Das** (supra), **B.J. Akkara** (supra) and **Syed Abdul Qadir** (supra) and accordingly based on the said decisions five situations have been summarized where though payments have been made mistakenly to the employees by the employers, in excess of their entitlement but recovery by the employers would be impermissible in law and one of such



situation envisaged therein is “*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*”. In fact, the Hon’ble Apex Court in the case of ***Rafiq Masih*** (supra) has also held that recovery would be impermissible in law 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.

13. Now, coming back to the present case we find from the records that recovery has been sought to be made from the respondent, pertaining to excess payment made to him, for a period in excess of five years, before the order of recovery dated 23.09.2021 was issued by the Divisional Personnel Officer, East Central Railway, Danapur, wherein it has been stated that as per the RBE No. 67/2007 and re-fixation V.O.O No. EL/Pay fixation/ Supervisor/ II dated 05.12.2014, the respondent’s pay fixation was done in excess since the year 2004, hence the same has been rectified and re-fixation of pay has been done, resulting in the amount of deduction (recovery) totaling to a sum of Rs. 17,65,430/-, hence if the respondent has got any objection, he can file his written representation within 15 days.



In fact, by an internal communication dt. 30.11.2018, a detailed calculation chart was prepared and circulated with regard to re-fixation of the pay of the respondent with effect from 01.04.2004. Subsequently, the petitioner no. 5 had passed an order dt. 18.02.2022 on the representation of the respondent, holding that recovery of excess amount paid to the respondent is justified inasmuch as the same is not harsh, since the pay of the respondent was rectified in the year 2018 whereas he will superannuate on 31.01.2026, thus it is clear that more than five years before the retirement of the respondent, pay has been re-fixed, therefore neither the judgment rendered by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra) nor RBE No. 72/2016 shall be applicable to the case of the respondent.

14. We further find that paragraph No. 18 of the judgment rendered by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra) has been accepted by the Government of India and accordingly Office Memorandum dated 02.03.2016 has been issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India, paragraph no. 5 whereof is reproduced herein below:-

“5. The matter has, consequently, been examined in consultation with the Department of Expenditure and the



Department of Legal Affairs. The Ministries / Departments are advised to deal with the issue of wrongful / excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc. vs Rafiq Masih (White Washer) etc. However, wherever the waiver of recovery in the above-mentioned situations is considered, the same may be allowed with the express approval of Department of Expenditure in terms of this Department's OM No.18/26/2011-Estt (Pay-I) dated 6th February, 2014.”

15. The aforesaid Office Memorandum dated 02.03.2016 has been adopted *mutatis mutandis* and made applicable to the Railway employees vide RBE No. 72/2016 dated 22.06.2016 issued by the Railway Board, Ministry of Railways.

16. As far as the present case is concerned, the same is squarely covered by paragraph no. 18 (iii) of the judgment rendered by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra), since in the present case recovery has been sought to be made pertaining to excess payment made to the respondent for a period in excess of five years, before issuance of the order of recovery dated 23.09.2021 by the Divisional Personnel Officer, East Central Railway, Danapur, whereby the amount of recovery has been quantified to be a sum of Rs. 17,65,430/-. Admittedly,



the excess payment has been assessed to have been made in the present case for a period in excess of five years i.e. with effect from the year 2004 till the month of September, 2020 which totals up to about 17 years. Thus, we find that the contention of the petitioners to the effect that the judgment rendered in the case of **Rafiq Masih** (supra) is not applicable in the facts and circumstances of the present case, since more than five years of service was remaining at the time the assessment of the amount to be recovered was made, leading to the respondent having not suffered any hardship, is fallacious. In the present case admittedly, the excess payment has been made to the respondent for a period in excess of five years, before the order of recovery was issued, as is apparent from the table/ chart reproduced in the aforesaid letter dated 30.11.2018, re-fixing and reducing the pay of the respondent with effect from the year 2004 up to 01.07.2017. Consequently, we find that the case of the respondent is not only covered by the law laid down by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra) but also by the Office Memorandum dated 02.03.2016, issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India and RBE No. 72/2016 dated 22.06.2016, issued by the Railway



Board, Ministry of Railways.

17. Now coming to the judgments referred to by the learned counsel for the petitioners, we are of the view that none of them would be applicable in the present case, since the law laid down in the judgment rendered by the Hon'ble Apex Court in the case of **Rafiq Masih** (supra) has been adopted by the petitioners vide RBE No. 72/2016 dated 22.06.2016, issued by the Railway Board, Ministry of Railways. Nonetheless, as far as the judgments rendered in the case of **Raj Kumar Batra** (supra) and **G. Srinivas** (supra) are concerned, they merely postulate that in case mistake is detected, the same can be rectified by the authority. As regards the judgment rendered in the case of **Chandi Prasad Uniyal** (supra), we find that the judgment rendered in the case of **Rafiq Masih** (supra) has already dealt with the same and only thereafter, the Hon'ble Apex Court has summarized the situations where recoveries by the employers is impermissible in law. Now, coming to the case of **Jagdev Singh** (supra), the same is distinguishable in the facts and circumstances of the present case inasmuch as in the said case the Hon'ble Apex Court has held that since the officer to whom the payment was made in excess was clearly placed on notice that any payment found to have been made in excess would be



required to be refunded, the officer is bound by his undertaking, hence the recovery is permissible, however the same is not the case in the present matter. Nevertheless, we find that in a catena of judgments referred to hereinabove in the preceding paragraphs, the Hon'ble Apex Court has categorically held that in case there is no misrepresentation on the part of the employee leading to excess payment being made to him on the head of salary, no recovery is permissible.

18. Having regard to the facts and circumstances of the present case and for the foregoing reasons, we find that the present case is squarely covered by the Office Memorandum dated 02.03.2016, issued by the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, Government of India as also by the RBE No. 72/2016 dated 22.06.2016, issued by the Railway Board, Ministry of Railways, whereby the petitioners have accepted the decision rendered by the Hon'ble Apex Court in the case of *Rafiq Masih* (supra), hence no recovery is permissible as far as the case of the respondent herein is concerned, even if the petitioners pass an adverse order regarding re-fixation of pay of the respondent, in pursuance of the directions issued to the petitioners by the Ld. CAT by the impugned Order dated 31.01.2025 to pass a



reasoned and a speaking order regarding re-fixation of pay of the respondent within three months in view of the precedents as also considering the Railway Rules. Thus, we do not find any infirmity much less any perversity in the impugned order dated 31.01.2025 passed by the learned CAT in O.A. No. 050/00764/2023, hence the present writ petition is dismissed being bereft of any merit.

(Mohit Kumar Shah, J)

(Shailendra Singh, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.01.2026
Transmission Date	N/A

