

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (S) No.2839 of 2026

1. The Union of India through the General Manager, South Eastern Railway, At P.O & PS-Garden Reach, District-Kolkata-700043 (West Bengal)
2. The Divisional Railway Manager, South Eastern Railway, Ranchi Division, At P.O & PS-Hatia, District-Ranchi, Pin-834003 (Jharkhand)
3. The Senior Divisional Commercial Manager, Ranchi Division, At P.O & P.S-Hatia, District-Ranchi, Pin-834003 (Jharkhand).
4. The Senior Divisional Personnel Officer, South Eastern Railway, Ranchi Division, At P.O & PS-Hatia, District-Ranchi, Pin-834003 (Jharkhand)
5. The Senior Divisional Financial Manager, South Eastern Railway, Ranchi Division, At P.O & PS- Hatia, District-Ranchi, Pin-834003 (Jharkhand)

..... ... **Petitioners**

Versus

Firoz Khan, son of late Sarfuddin Khan, Ex. Chief Commercial Supervisor, South Eastern Railway, Tatisilwai, Resident of House No.6, Road No.5, Arvind Nagar (Near Nepal House), P.O & PS-Doranda, District-Ranchi, Pin-834002 (Jharkhand) **Respondent**

**CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD**

For the Petitioners : Mr. Vaibhav Kumar, Advocate
For the Respondents :

Order No.02/Dated:27th April, 2026

Per Sujit Narayan Prasad, J.

1. The instant writ petition under Article 226 of the Constitution of India is directed against the order dated 09.10.2025 passed in O.A No. OA/051/00956/2024 by the learned Central Administrative Tribunal, Patna Bench, Circuit Sitting Ranchi whereby and whereunder the relief which has been sought for pertaining to quashing and setting aside the order dated 23.07.2024 whereby the amount of Rs.2,23,819/- which has been recovered from the DCRG of the applicant-employee has been directed to be refund back to the employee concerned forthwith.

2. The brief facts of the case as per the impugned order and the pleadings made in the writ petition which require to be enumerated reads as under:

- (i) The grievance of the applicant (respondent herein) is that he was initially appointed in the Railway on 26.08.1987 and while working as Chief Commercial Clerk in the pay band of Rs.9300-34800 GP 4200 he was promoted to the post of Chief Commercial Supervisor in the pay band of Rs.9300-34800 GP 4600 on 18.09.2017 which was given effect to by order dated 13.10.2007 vide Sr. DPO Ranchi's office order No.: PERS/RNC/482/17 dated 13.10.2017.
- (ii) The case of the respondent-applicant is that on attaining 30 years of service, his service was reviewed by the Divisional Review Committee, which recommended the respondent-applicant to be unfit to continue in further service due to seventeen punishments both Vigilance and Non- Vigilance as well as doubtful integrity.
- (iii) Accordingly, the respondent-applicant was compulsorily retired w.e.f. 04.12.2017 vide Sr. DPO/ Ranchi's office order No. PERS/ RNC/ Bill/ FK/ 269/ 17 dated 04/21.12.2017.
- (iv) The said compulsory retirement was challenged by the respondent-applicant before the learned Central Administrative Tribunal, Circuit Bench at Ranchi by filing OA No. 051/00274/2019, which was dismissed vide order dated 22.01.2025.

- (v) The respondent-applicant had been inflicted with a punishment of "reduction to a lower stage in the time scale of pay for a period of 02 (two) years with C.E.". After completion of punishment period, Respondent's pay was restored on 06.11.2010, he was erroneously given a pay of Rs. 15,210/- instead of Rs. 14,330/- resulting in Rs. 880/- excess pay drawn by the respondent from that time to 31.12.2015 resulting in erroneous fixation of the respondent's pay fixed under the 7th Pay Commission at Rs. 46,200/- instead of Rs. 41,100/-w.e.f. 01.01.2016.
- (vi) The date of birth of respondent is 09.04.1968 and date of appointment is 26.08.1987. If he retires on superannuation on attaining the age of 60 yrs, his normal date of retirement will fall on 30.04.2028. But the respondent has been retired compulsory w.e.f. 04.12.2017 on recommendation of Divisional Review Committee due to seventeen punishments both from Vigilance and Non-Vigilance cases as well as doubtful integrity as per Rule FR 56(J). Hence, overpayment done due to wrong pay restoration after completion of punishment could not be adjusted from his salary.
- (vii) A letter dated 09.01.2018 addressed to the respondent was sent to him by registered post to his last known address / permanent address informing him about the excess pay given to him and further informing him that the excess

pay of Rs. 2,23,818.60/- will be adjusted from his settlement dues.

- (viii) Thereafter a letter dated 04.09.2020 was issued to the respondent concerning the payment of his settlement/retiral dues.
- (ix) The respondent vide his letter dated 22.09.2020 had replied to the said letter dated 04.09.2020 stating that he is willing to proceed with the process of settlement during the pendency of his challenge of compulsory retirement which was pending before the Ld. CAT. The respondent also stated that he will return all the money which he will be getting from the railway against the settlement dues paid to him if the Ld. Central Administrative Tribunal rules in his favour.
- (x) Thereafter vide letter dated 23.07.2024, the respondent was again intimated about the excess payment made to him and the adjustment of the said excess payment to the tune of Rs. 2,23,819/-done from his gratuity amount.
- (xi) The Respondent challenged the said letter dated 23.07.2024 before the Ld. CAT/Patna, Circuit Bench at Ranchi by filing OA/051/00956/2024.
- (xii) The Railways had filed a written statement before the Ld. CAT in the aforesaid OA and the Respondent had filed a rejoinder to the said written statement.
- (xiii) The learned Tribunal vide order dated 09.10.2025 after hearing both the parties has partly allowed the said O.A.

and accordingly quashed the order dated 23.07.2024 against which the present petition has been filed.

(xiv) The respondent in his OA before the learned CAT placed reliance upon the Railway Board's letter dated 22.06.2016, Railway Board's OM dated 06.02.2014 and the DoPT's OM dated 02.03.2016.

(xv) The learned CAT vide its order dated 09.10.2025 was pleased to partly allow the OA preferred by the respondent and directed the writ petitioner herein to refund the recovered amount of Rs. 2,23,819/- to the respondent-applicant forthwith.

3. It is evident from the factual aspect that the applicant while in service working as Chief Commercial Clerk has been proceeded by initiating a departmental proceeding which finally culminating into the order of compulsory retirement vide order dated 04.12.2017. The order of compulsory retirement has been challenged by the applicant way back in the year 2019 by filing Original Application being O.A No.051/00274/2019 but was dismissed vide order dated 22.01.2025 by the learned Tribunal.

4. The Original Application which is the subject matter of the present writ petition has been filed subsequent to the order of compulsory retirement and at the stage where the salary which was to be paid in favour of the petitioner after the order of compulsory retirement has wrongly been assessed and fixed. The same has come to the notice of the authority, the writ petitioner herein and subsequent thereto the

amount of Rs.2,23,819/- has been decided to be recovered vide order dated 23.07.2024.

5. The learned Tribunal has partly allowed the Original Application being O.A No.051/00956/2024 by relying upon the judgment of the Hon'ble Apex Court rendered in the case of "***State of Punjab and Ors. V. Rafiq Masih (White Washer)***" reported in (2015) 4 SCC 334 which is the subject matter of the present writ petition.

Submission of the learned counsel for the writ-petitioners :

6. Mr. Vaibhav Kumar, the learned counsel appearing for the writ petitioner-authority who was the respondents before the learned Tribunal has submitted that the pay which was drawn by the writ petitioner was on the basis of the mistaken statement made by the authority that contrary to his entitlement. However, initially due to some mistake excess salary has been paid to the applicant-employee but subsequently when it came to the notice of the authority, for the purpose of adjustment of the said amount the decision to recover the said amount has been taken. Therefore, it is not a case where the judgment rendered by the Hon'ble Apex Court in the case of "***State of Punjab and Ors. V. Rafiq Masih***" (*Supra*) will be applicable, rather only to cure the error the decision, subsequent to the decision already taken on the mistaken fact, has been taken.

7. The learned counsel for the writ petitioner-authority, therefore, has submitted that the impugned order suffers from error since the learned Tribunal has not appreciated the applicability of the judgment passed in "***State of Punjab and Ors. v. Rafiq Masih***" (*Supra*) properly.

Analysis:

8. We have heard the learned counsel for the writ petitioner-authority and gone through the pleadings made in the instant writ petition as also the findings recorded by the learned Tribunal in the impugned order.

9. This Court now proceeding to examine the legality and propriety of the impugned order in the admitted premises of the fact that the respondent-applicant has been proceeded departmentally by initiating a departmental proceeding which culminating into the order of compulsory retirement as would be evident from the order passed by the authority in this regard.

10. The respondent-applicant at the outset has challenged the order of compulsory retirement from service by filing O.A No.051/00274/2019 which has been dismissed by the learned Tribunal vide order dated 22.01.2025.

11. But in the meanwhile, the respondent-authority has come out with an order on 23.07.2024 together with one another communication dated 09.01.2018 referring therein the order dated 23.07.2024 whereby the amount of Rs.2,23,819/- has been recovered from the DCRG of the applicant-employee against the excess payment and his basic pay has been reduced from Rs. 46200/- to Rs.41,100/-.

12. The aforesaid order has been challenged by the applicant-employee before the learned Tribunal. The learned Tribunal, however, has only interfered with the issue of recovery without intervening in the fixation of the pay scale by putting the reliance upon the judgment

rendered in the case of “*State of Punjab and Ors. v. Rafiq Masih*” (*Supra*) which is the subject matter of the present writ petition.

13. This Court, before appreciating the argument advanced on behalf of the writ petitioner-authority as also the legality and propriety of the impugned order, thinks it proper to first refer about the jurisdiction which is to be exercised under Article 226 of the Constitution of India as has been held by the Hon’ble Apex Court in its Constitution Bench judgment rendered in the case of “ *L. Chandra Kumar v. Union of India and Ors.*”, (1997) 3 SCC 261, relevant paragraph-99 thereof is quoted hereunder as:

"99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323- A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323- B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

14. It is evident from the ratio laid down therein that the power of judicial review has been deliberated by the Hon'ble Apex Court, which

is to be considered while exercising the said power only to the extent that if any order is being passed found to be having error on the face of the order or without jurisdiction or suffers from perversity. The error apparent on the face of the order means that if the order appears on its face having with error, then only the power of judicial review is to be exercised.

15. The Hon'ble Apex Court in the case of ***West Bengal Central School Service Commission vs. Abdul Halim, (2019) 18 SCC 39***, has held at paragraph-30 that the power of judicial review must be exercised by the Court after determining that the impugned is vitiated by an error apparent on the face of the record and not the same has been established by a process of reasoning. Paragraph-30 of the aforesaid judgment is being referred as under:

"30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137] . ---."

16. In the case of **T.C. Basappa vs. T. Nagappa and Anr., (1955) 1 SCR 250**, their Lordship have held that the patent error in a decision can be corrected by writ of certiorari, when it is manifested by the error apparent on the face of the proceedings. The relevant portion of the aforesaid judgment is quoted hereunder:

"11. ... An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error apparent on the face of the proceedings e.g. when it is based on

clear ignorance or disregard of the provisions of law. In other words, it is a patent error which can be corrected by certiorari but not a mere wrong decision."

17. This Court now is proceeding to examine as to whether the order passed by the learned Tribunal either suffers from the element of having error on the face of the order or without jurisdiction or suffers from perversity.

18. This Court has found from the impugned order that the issue of recovery has been dealt with by putting reliance upon the judgment rendered by the Hon'ble Apex Court in the case of ***"State of Punjab and Ors. v. Rafiq Masih" (Supra)***.

19. This Court in order to consider the applicability of the judgment rendered in the case of ***"State of Punjab and Ors v. Rafiq Masih & Ors." (Supra)*** needs to refer herein in the factual background on which the judgment has been passed by the Hon'ble Apex Court and has laid down guidelines about recovery in paragraph 18 thereof.

20. Initially, the Hon'ble Apex Court has considered the issue of recovery in the case of ***"Shyam Babu Verma and Ors vs. Union of India and Ors.", (1994) 2 SCC 521*** wherein the recovery has been said to be improper if the recovery is being made from the salary of the concerned employee on the basis of wrong fixation if there is no misrepresentation or fraud said to be committed on the part of the concerned public servant. For ready reference, relevant paragraph of the said judgment is being referred 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. January 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 January 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.”

21. Again, in ***Sahib Ram v. State of Haryana and Ors. [1995 Supp (1) SCC 18]***, the Hon'ble Apex Court held that although the appellant therein did not possess the required educational qualification, yet the Principal granting him the relaxation, had paid his salary on the revised pay scale and this was not on account of misrepresentation made by the appellant but by a mistake committed by the Principal and as such the amount already paid to the appellant need not be recovered. For ready reference the relevant paragraph is being quoted as under:

"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."

22. Subsequent to the aforesaid judgment, the Hon'ble Apex Court has considered the issue of recovery in the case of ***Chandi Prasad Uniyal and Ors vs. State of Uttarakhand and Ors, (2012) 8 SCC 417*** wherein by deferring with the view taken by the Hon'ble Apex Court in ***“Shyam Babu Verma vs. Union of India” (supra)*** has taken the contrary view by holding therein that if the amount has been paid, the same since is of a tax payers money, thence, the same is to be recovered

from the concerned employee. Relevant paragraph of the judgment rendered in “**Chandi Prasad Uniyal and Ors. vs. State of Uttarakhand and Ors.**” (*supra*) is being referred as under:

"14. We are concerned with the excess payment of public money which is often described as 'taxpayers' money" which belongs neither to the officers who have effected overpayment nor to the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in in such situations. The question to be asked is whether excess money has been paid or not, may be due to a bona fide mistake. Possibly, effecting excess payment of public money by the government officers may be due to various reasons like negligence, carelessness, collusion, favouritism, etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without the authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment."

23. The Hon'ble Apex Court in view of the conflicting judgment on the issue of recovery has referred the matter before the Larger Bench in the case of “**State of Punjab and Ors. vs. Rafiq Masih**” (*Supra*) but the Hon'ble Apex Court without answering the reference remitted the matter before the Division Bench for appropriate disposal.

24. Consequently, the Division Bench of the Hon'ble Apex Court in the case of “**State of Punjab and Ors. v. Rafiq Masih**” at paragraph-18, has laid down the guidelines which is required to be followed by the State in making recovery. For ready reference, paragraph-18 of the said judgment is being referred as under:

"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.”

25. It is evident from the aforesaid judgment that altogether five conditions have been stipulated by the Hon'ble Apex Court wherein Condition Nos.(i) to (iv) stipulate about the conditions of making no recovery, i.e., (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, (ii) 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, (iii) 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, and (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. Condition No.(v) speaks about by conferring power upon the court of law to adjudge the harshness of the iniquitous of the recovery if made by the employer. Condition No.(v) is, therefore, in addition to the condition Nos.(i) to (iv).

26. It requires to refer herein settled proposition of law that the applicability of the judgment depends upon the facts and circumstances of each and every case and there cannot be any universal application of the judgment rather each judgment is to be decided on the basis of fact of each case. Reference in this regard may be taken from the judgment as rendered by the Hon'ble Supreme Court in the case of “**Dr. Subramanian Swamy vs. State of Tamil Nadu & Ors.**” reported in (2014) 5 SCC 75 for ready reference the relevant paragraph is being quoted herein under :

"47. It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed."

27. The factual aspect which is available in the instant writ petition as has been taken into consideration by the learned Tribunal is that although the applicant has been punished with the compulsory retirement. The compulsory retirement and fixation of pay have got nothing to do there is no dispute on that.

28. It is the admitted case of the writ petitioner-authority that after compulsory retirement of the applicant-employee the exercise has been undertaken for fixation of the pay scale. But it is due to the mistake on the part of the writ petitioner-authority concerned that the excess pay scale has been fixed and has also been disbursed in favour of the applicant-employee concerned.

29. The aforesaid aspect of the matter came to the notice of the writ petitioner-authority and thereafter they become conscious of the fact and has come out with decision dated 27.03.2024 by taking decision to the

effect that whatever amount has been paid, i.e., to the tune of Rs.2,33,819/- decided to be recovered from the DCRG of the employee which is contrary to the guidelines as has been carved out by the Hon'ble Apex Court in the case of ***“State of Punjab and Ors. v. Rafiq Masih” (Supra)***.

30. The learned Tribunal by referring the relevant paragraph of the said judgment has come out with the conclusive finding as would be evident from the paragraph-7 (B) wherein it has been referred that the learned Tribunal has made fine distinction in between the effect of the compulsory retirement and pay fixation. Thereafter the learned Tribunal has proceeded to assess the factual aspect for the purpose of applicability of the judgment rendered in the case of ***“State of Punjab and Ors. v. Rafiq Masih” (Supra)*** which is evident from the paragraph-7(D) whereunder it has been referred that the applicant had already received all the retirement dues after his compulsory retirement, i.e., way back some time in the year 2015 and after his compulsory retirement except the recovered amount which was made from the DCRG on account of wrong fixation of pay after restoration of pay on completion of punishment with cumulative effect on 06.11.2010.

31. The aforesaid discussion has been made on the premise that sometime in the year 2008 a punishment was inflicted on the applicant by inflicting the punishment of withholding two annual increments with cumulative effect. The effect of the same has been considered by the writ petitioner-authority after compulsory retirement of the applicant and while assessing the same the wrong pay fixation has been made.

32. The learned counsel for the writ petitioner-authority, in all fairness, has not disputed the aforesaid fact, since, as that the order of punishment which was passed in the year 2008 withholding two annual increments or the order of compulsory retirement is no way having any correlation with the reduction of pay scale, rather it is the admitted case of the writ petitioner that due to wrong calculation the excess amount has been paid.

33. The learned Tribunal on the aforesaid premise has applied the judgment rendered by the Hon'ble Apex Court in the case of “*State of Punjab and Ors. v. Rafiq Masih*” (*Supra*).

34. The admitted fact is that the applicant-employee was coming under the Group “C” service and, as such, he is coming under the fold of the guideline of “*State of Punjab and Ors. v. Rafiq Masih*” (*Supra*) case under paragraph-18 (i).

35. The guideline as available paragraph-18(iii) of the judgment rendered by the Hon'ble Apex Court in the case of “*State of Punjab and Ors. V. Rafiq Masih*” (*Supra*) is attracted herein, since, the order of recovery has been passed after lapse of about 9 years.

36. This Court considering the aforesaid discussion as referred herein above, is of the view that the applicability of the judgment rendered by the Hon'ble Apex Court in the case of “*State of Punjab and Ors. V. Rafiq Masih*” (*Supra*) as has been applied by the learned Tribunal in the facts of the present case is well applicable.

37. This Court, in view of the aforesaid discussion, is of the view that we are not found any error apparent on the face of the order or even no element of perversity and, as such, we decline to interfere with the

order passed by the learned Tribunal and, accordingly, the present writ petition stands dismissed.

38. Pending I.As, if any, stands disposed of.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

Dated:27.04.2026
Sudhir
AFR