IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 12591 of 2026

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1. The Union of India through the General Manager, East Central Railway, Hajipur, District - Vaishali (Bihar), Pin - 844101.
2. The Divisional Railway Manager (DRM), E.C. Railway, Danapur, District- Patna, Pin- 801503.
3. The Senior Divisional Personnel Officer (Sr.D.P.O), East Central Railway, Danapur, District- Patna, Pin-801503.
4. The Senior Divisional Finance Manager (Sr. D.F.M.), East Central Railway, Danapur, District- Patna, Pin- 801503.
5. The Assistant Personnel Officer, East Central Railway, Danapur, District- Patna, Pin- 801503.

... ... Petitioner/s

Versus

Arun Kumar Dwivedi S/o Shri Suresh Dwivedi, presently posted as Train Manager (M/Exp.) at Patna Junction under East Central Railway, Danapur, District Patna. Permanent Add.- Madanji ka Hata, Pakari, Ara, Pin- 802301.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Vishwajeet Kumar Mishra, Sr. Panel Counsel
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 08-09-2026

The present writ petition has been filed against the order dated 02.04.2026 passed by the Ld. Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as the 'Ld. CAT') in O.A. No. 050/00755/2024, whereby and whereunder

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the Original Application has been allowed and the impugned order dated 04.09.2023 has been quashed, upon it being held that the action of the respondents in effecting recovery of Rs. 4,87,348/- from the salary of the applicant is arbitrary, unjust and unsustainable in the eyes of law.

2. The brief facts of the case are that the sole respondent herein became Guard in the year 2002 after he had passed the departmental exam, whereafter he got the benefit of MACP scheme in the year 2013, however by an office order dated 04.09.2023 (wrongly typed as 04.09.2022), the Senior Divisional Personnel Officer (Sr.D.P.O.), East Central Railway, Danapur, Patna had informed the sole respondent that he has been granted financial upgradation under MACP in Grade Pay of Rs. 4200/- inadvertently with effect from 01.09.2008 in place of 12.10.2012 i.e. the date of completion of 10 years in the existing scale of Grade Pay 2800/- resulting in recast of pay leading to excess payment of Rs. 4,87,348/-, which is liable to be recovered in equal monthly installments from the salary of the sole respondent. The respondent had filed representation on 22.09.2024, whereafter some more representations were filed by the respondents, however to no avail.

3. The brief facts of the case as narrated by the Ld. Counsel

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for the petitioners by referring to the records are that the sole respondent herein joined the Indian Railways as Assistant Driver in the pay-scale of Rs. 950-1500/- with effect from 06.04.1989, whereafter he was posted as Assistant Weigh Clerk with effect from 18.10.1992 and then he was promoted to the post of Weigh Clerk in pay scale of Rs. 1200-2040/- with effect from 05.04.1996 in the Commercial Department as also subsequently he was promoted to the post of Goods Guard with effect from 12.10.2002, however, inadvertently he was granted financial upgradation of Grade Pay of Rs. 4200/- in the pay scale of Rs. 9300-34,800/- under MACP with effect from 01.09.2008 resulting in the pay scale of Rs. 1200-2040/- (in 4th CPC) being converted into pay scale of Rs. 4500-7000/- (5th CPC). It is submitted that as per the extant rules of MACP, the concerned staff is entitled to get third financial upgradation under MACP either on completion of 10 years of service in existing pay scale or on completion of 30 years of service from the date of taking independent charge as Assistant Driver after completion of the initial post of training, whichever is earlier. However, in the instant case the sole respondent had already been granted two promotional benefits, one with effect from 05.04.1995 and the other with effect from 12.10.2002, hence he

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was entitled to get 3rd financial upgradation after completion of 10 years i.e. with effect from 12.10.2012, nonetheless he was granted third financial upgradation with effect from 01.09.2008 by mistake on the part of the petitioners.

4. The Ld. Counsel for the petitioners has further stated that after the error of grant of premature financial upgradation was detected, the administration of the petitioners had taken corrective measures as per the extant rules and the erroneous pay fixation was rectified, whereafter order of recovery of excess payment made to the respondent was issued vide office letter dated 01.9.2023, as communicated to the respondent vide letter dated 04.09.2023. The Ld. Counsel for the petitioners has next submitted that since admittedly excess salary has been paid to the sole respondent on account of there being error in granting the benefit of financial upgradation with effect from 12.10.2012 instead of 01.09.2008, a sum of Rs. 4,87,348/-, being the amount of excess payment made, has been sought to be recovered by the petitioners in 19 equal monthly installments starting from the month of September, 2023 to the month of March, 2025, hence there is no ambiguity in the same. While assailing the impugned order dated 02.04.2006, the Ld. Counsel for the petitioners has contended that the judgment rendered by

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the Hon'ble Apex Court in the case of ***State of Punjab & Others vs. Rafiq Masih (White Washer) & Ors.***, reported in ***(2015) 4 SCC 334***, is not applicable in the present case inasmuch as in the present case recovery of the amount in question shall not cause any hardship to the employee, i.e the sole respondent.

5. We have heard the Ld. Counsel for the petitioners and perused the materials on record from which it is apparent that admittedly the petitioners had, on account of their mistake, granted financial upgradation to the sole respondent with effect from 01.09.2008 instead of 12.10.2012 and there was no misrepresentation on the part of the sole respondent.

6. It is a well settled law that no recovery can be affected from an employee, if there has neither been any misrepresentation on his part nor any fraud has been committed by such an employee leading to payment of excess amount of salary. The law regarding recovery is no longer res integra and has been well settled in a catena of judgments rendered by the Hon’ble Apex Court. 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 ***Shyam Babu Verma vs. Union of India***, reported in ***(1994) 2 SCC 52***;

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

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

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

(v). Judgment rendered in the case of ***Punjab National Bank v. Manjeet Singh***, reported in ***(2006) 8 SCC 647;***

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

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

(viii). Judgment rendered in the case of ***Syed Abdul Qadir vs. State of Bihar***, reported in ***(2009) 3 SCC 475***;

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

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

7. In a judgment rendered by a Three Judges' Bench of Hon'ble Apex Court in the case of ***Syed Abdul Qadir & Others vs. The State of Bihar & Others***, reported in ***(2009) 3 SCC 475***, it has been held that in cases where excess amount has been paid to the incumbents not because of any misrepresentation or fraud on their part but on account of bona fide mistake on the part of the Department, the incumbents cannot be held responsible, hence no recovery of the amount paid in excess to the said incumbents can be made. In this regard, it would be relevant to

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reproduce paragraphs no. 57 to 59 of the judgment rendered in the case of ***Syed Abdul Qadir*** (supra) herein below:-

> *"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.*
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> *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*

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Government of Bihar. 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."

8. It would be apposite to refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Thomas Daniel Vs. State of Kerala & Ors.***, reported in ***(2022) SCC Online SCC 536***, para nos.9, 11 and 14 to 16 whereof, are reproduced herein below:-

"9. This Court in a catena of decisions has consistently held that if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if 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, such excess payment of emoluments or allowances are not recoverable. This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This Court has further held that if in a given case, it is proved that an employee had knowledge that the payment received was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the matter being in the realm of judicial discretion, the courts may on the facts and circumstances of any particular case order for recovery of amount paid in excess.

11. In Col. B.J. Akkara (Retd.) v. Government of India this Court considered an identical question as under:

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"27. The last question to be considered is whether relief should be granted against the recovery of the excess payments made on account of the wrong interpretation/understanding of the circular dated 7-6-1999. This Court has consistently granted relief against recovery of excess wrong payment of emoluments/ allowances from an employee, if the following conditions are fulfilled:

(a) The excess payment was not made on account of any misrepresentation or fraud on the part of the employee.

(b) 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.

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.

29. On the same principle, pensioners can also seek a

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direction that wrong payments should not be recovered, as pensioners are in a more disadvantageous position when compared to inservice employees. Any attempt to recover excess wrong payment would cause undue hardship to them. The petitioners are not guilty of any misrepresentation or fraud in regard to the excess payment. NPA was added to minimum pay, for purposes of stepping up, due to a wrong understanding by the implementing departments. We are therefore of the view that the respondents shall not recover any excess payments made towards pension in pursuance of the circular dated 7-6-1999 till the issue of the clarificatory circular dated 11-9-2001. Insofar as any excess payment made after the circular dated 11-9-2001, obviously the Union of India will be entitled to recover the excess as the validity of the said circular has been upheld and as pensioners have been put on notice in regard to the wrong calculations earlier made."

14. Coming to the facts of the present case, it is not contended before us that on account of the misrepresentation or fraud played by the appellant, the excess amounts have been paid. The appellant has retired on 31.03.1999. In fact, the case of the respondents is that excess payment was made due to a mistake in interpreting Kerala Service Rules which was subsequently pointed out by the Accountant General.

15. Having regard to the above, we are of the view that an attempt to recover the said increments after passage of ten years of his retirement is unjustified.

16. In the result, the appeal succeeds and is accordingly allowed. The Judgment and order of the Division Bench dated 02.03.2009 and also of the learned Single Judge of the High Court dated 05.01.2006 impugned herein, and the order dated 26.06.2000 passed by the Public Redressal Complaint Cell of the Chief Minister of Kerala and the recovery Notice dated 09.10.1997 are hereby set

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aside. There shall be no order as to costs."

9. We may also refer to the judgment rendered in the case of ***Rafiq Masih*** (supra), paragraph no. 18 whereof is reproduced herein below:-

> *"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 & 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."*

10. Having regard to the facts and circumstances of the case, we are of the considered opinion that in view of the law laid

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down by the Hon'ble Apex Court in a catena of judgments referred to hereinabove in the preceding paragraphs, no recovery of the amount paid in excess to the respondent can be made from him, more so in view of the fact that excess amount has been paid him not because of any misrepresentation or fraud on his part but on account of bona fide mistake on the part of the department in granting financial upgradation prematurely to the respondent.

11. Consequently, we do not find any infirmity in the impugned order dated 02.04.2026 passed by the Ld. CAT, Patna Bench, Patna in O.A. No. 050/00755/2024, hence the present writ petition stands dismissed being bereft of any merit.

(Mohit Kumar Shah, J)

(Sourendra Pandey, J)

S.Sb/-

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