IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10401 of 2026

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Jhapas Hajara Son of Late Shakal Hazara, Retired Mate Under SSE (P. Way) E.C. Railway, Raxaul, Resident of Village- Bharatmahi, P.O.- Singhpur Haraiya, P.S.- Raxaul, District- East Champaran, PIN Code- 845305.

... ... Petitioner/s

Versus

1. The Union of India through General Manager, East Central Railway, Hajipur Vaishali PIN- 844101.
2. The Divisional Railway Manager, East Central Railway, Samastipur, PIN- 848211.
3. The D.R.M. (P), East Central Railway, Samastipur, PIN- 848211.
4. The Divisional Finance Manager, E.C. Railway, Samastipur, PIN- 848211.
5. The Divisional Railway Manager (Engg.), E.C. Railway Samastipur, PIN- 848211.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Uma Kant Mishra, Advocate
For the Respondent/s	:	Mr. Awadhesh Kumar Pandey, Sr. CGC Mr. Ram Tujabh Singh, CGC

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 09-09-2026

The present writ petition has been filed against the order dated 12.05.2026, passed by the learned Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as "the Ld. CAT") in O.A. No.050/00089/2019 whereby and whereunder the original application filed by the petitioner herein has been dismissed upon the Ld. CAT having come to a finding that the action of the respondents was corrective in nature & not punitive as also no fresh penalty has been imposed upon the petitioner.

2026:PATHC:87388-DB

2. The brief facts of the case, according to the petitioner are that he was appointed in Railway on 01.01.1984 as a regular Gang Man/Track Man and was subsequently promoted as Senior Track Man/Head Track Man and as Gang Mate with effect from 18.07.2011, whereupon he superannuated on 30.04.2018 with unblemished and satisfactory qualifying service of 25 years and 5 months. On 01.05.2018, the petitioner was called upon to attend the meeting of retired employees at DRM, Samastipur Meeting Hall to receive the retiral benefits, service certificate, etc. and was served with a statement of retiral benefits which had stood paid to him vide RTGS totaling to a sum of Rs.9,70,359/-, whereafter he came to know that a sum of Rs.30,000/- has been charged on the head of Retired Employees' Liberalized Health Scheme (hereinafter referred to as "RELHS") as also a sum of Rs.2,39,001/- has been adjusted from the amount of Death-cum-Retiral Gratuity (hereinafter referred to as "DCRG") on account of over payment made to the petitioner. The petitioner had then made a protest before the Divisional Railway Manager, Samastipur in the Meeting Hall itself and had requested to make the balance payment, whereupon he had filed various representations, however to no avail. The petitioner had then filed one Original Application bearing O.A. No.050/666/

2018, which was disposed of by the Ld. CAT by an order dated 13.08.2018 with a direction to the respondents to dispose of the representation of the petitioner within three weeks.

3. The petitioner had then filed a detailed representation vide registered post on 23.08.2018 along with a copy of the order dated 13.08.2018, leading to passing of a speaking order dated 26.10.2018 by the Office of the Divisional Railway Manager (Personal), Samastipur, relevant portion whereof is reproduced herein below:-

> "आप रेल सेवा से अधिवर्षिता पर दि0 30.04.18 को सेवा निवृत हुए थे। सेवा पुस्तिका के आधार पर आपने अपने सेवा काल के दौरान कुल 1727 दिन अर्थात 4 वर्ष 8 माह 27 दिन अवैतनिक अवकाश (Leave Without pay) का उपभोग किया है। अवैतनिक अवकाश के कारण समई/नरक0 के ज्ञापण सं0– का/पीसी/श्री झापस हाजरा/अभि0/नरक0 दि0 03.04.18 के द्वारा अवैतनिक अवकाश का प्रभाव डालते हुए वेतन संशोधन किया गया था, जिसकी प्रति आपको भी मार्क है। इसी ज्ञापण के आधार पर सीसेई (रेप)/पूमरे/रक्सौल ने अपने बिल अदेयता दि0 18.04.18 के द्वारा देय समापक भुगतान से रू0 239001/ अस्थाई रूप से रोके जाने हेतु आदेशित किया गया था। अब कटौति विवरण भी दि0 18.09.18 को लेखा विभाग से विधिक्षित कराते हुए पर्यवेक्षक द्वारा कटौति हेतु जमा किया जा चुका है। अतएव सेवा उपदान से रू0 239001/ की कटौति आपके द्वारा सेवा काल के दौरान 1727 दिन अवैतनिक अवकाश उपभोग करने के कारण वेतन को प्रभावित करते हुए निर्गत वेतन संशोधन ज्ञापण के आधार पर की गयी है, जो नियमानुकुल है। जहॉ तक सेवा उपदान से RELHS के मद में काटी गयी रू0 30000/ का प्रशन है, सेवा निवृति के समय ''चिकित्सा हेतु घोषणा पत्र'' से संबंधित फार्म में RELHS में मेडिकल कार्ड बनवाने हेतु विकल्प दिया था, जिसके आधार पर RELHS के मद

में 30000/ (रेलवे बोर्ड के पत्रांक 2017/ एच/28/I/ आरईएलएचएस दि0 23.02.2017) कटौति की गयी है। ”

4. The petitioner had then filed the connected O.A. No.050/00089/2019 inter alia praying therein to quash the aforesaid speaking order dated 26.10.2018 as also the one dated 01.05.2018 and direct the respondents to make payment of medical allowance as also remit back a sum of Rs.2,69,001/- along with 12% compound interest. The respondents had filed a written statement to the said original application, wherein it was firstly stated that the original application has been filed after inordinate delay. It was also contended that the petitioner was working as Track Maintainer under SSE (P. Way), Raxaul, whereupon he had superannuated on 30.04.2018 and during his service period he had availed 1727 days, i.e. 4 years, 8 months and 27 days as leave without pay as such a sum of Rs.2,39,001 was lying due for payment at the end of the petitioner. Reference has been made to Rule 15 of the Railway Services (Pension) Rules, 1993, which is reproduced hereinbelow:-

> *“**15. Recovery and adjustment of Government or railway dues from pensionary benefits.-** (1) It shall be the duty of the Head of Office to ascertain and assess Government or railway dues payable by a railway servant due for retirement.*
>
> *(2) The railway or Government dues as ascertained and assessed, which remain outstanding till the date of retirement or death of the railway servant, shall be adjusted against the*

amount of the retirement gratuity or death gratuity or terminal gratuity & recovery of the dues against the retiring railway servant shall be regulated in accordance with the provisions of sub-rule (4).

(3) For the purposes of this rule, the expression railway or Government dues" includes-

(a) dues pertaining to railway or Government accommodation including arrears of licence fee, if any;

(b) dues other than those pertaining to railway Government accommodation, namely balance of house-building or conveyance or any other advance, over payment of pay and allowances, leave salary or other dues such as Post Office or Life Insurance premia, lossees (including short collection in freight charge shortage in stores) caused to the Government or the railway as a result if negligence or fraud on the part of the railway servant while he was in service.

(4) (i) A claim against the railway servant may be on account of all or any of the following.-

(a) losses (including short collection in freight charges, shortage in stores) caused to the Government or the railway as a result of negligence or fraud on the part of the railway servant while he was in service;

(b) other Government dues such as over-payment on account of pay and allowances or other dues such as house rent, Post Office or Life Insurance Premia, or outstanding advance,

(c) non-Government dues."

5. Thus, it is submitted that by virtue of Rule 15 of the Railway Services (Pension) Rules, 1993 excess payment can be recovered from the employees, hence a sum of Rs.2,39,001/- has been deducted from DCRG of the petitioner. It has also been submitted that at the time of retirement, the petitioner had given option for RELHS, hence in the light of letter dated 23.02.2017,

a sum of Rs.30,000/- was deducted from the amount of petitioner's DCRG, thus there is no infirmity in action taken by the railway administration. It is further stated in paragraph no.12 of the written statement filed before the Ld. CAT that on account of availing leave without pay, the pay of the petitioner was revised by the office vide Memorandum dated 03.04.2018, which was duly communicated to the petitioner.

6. The learned counsel for the petitioner has submitted that it has been merely mentioned in the aforesaid speaking order dated 26.10.2018, passed by the Office of the Divisional Railway Manager (Personal), Samastipur that the petitioner was on leave without pay for 1727 days, i.e. 4 years, 8 months and 27 days, however date wise details have not been disclosed and without issuing show-cause and giving any opportunity of hearing, the said recovery has been sought to be made. The Ld. counsel for the petitioner has further submitted by referring to a judgment rendered by the Hon'ble Apex Court in the case of ***State of Punjab & Ors. vs. Rafiq Masih & Ors.,*** reported in ***(2015) 4 SCC 334*** that no recovery is permissible when payments have been made mistakenly by the employer in excess of the entitlement of the employee belonging to Class-III and Class-IV service (or Group C and Group D service), thus it is stated that

2026:PATHC:87388-DB

respondents have illegally deducted the aforesaid sum of Rs.2,69,0001/- from the amount of DCRG of the petitioner.

7. *Per contra*, the learned counsel for the respondents has submitted by referring to the order dated 26.10.2018, passed by the Office of the Divisional Railway Manager (Personal), Samastipur that the same would bear it out that on the basis of the service book of the petitioner, it was found that during his entire service period, he had taken leave without pay for 1727 days, leading to his pay being amended vide Memorandum dated 03.04.2018 and on the basis of the same, the officials at Raxaul, vide the no dues certificate dated 18.04.2018 had directed for stopping payment to the extent of a sum of Rs.2,39,001/- from the final payment to be made to the petitioner, whereafter a sum of Rs.2,39,001/- was deducted from the DCRG of the petitioner on account of him having availed 1727 days of leave without pay. It has further been submitted that a sum of Rs.30,000/- has been deducted from the amount of gratuity payable to the petitioner, inasmuch as at the time of retirement, the petitioner had opted for preparation of medical cards under RELHS in the form pertaining to declaration letter for medical facility. Thus, it is submitted that direction for stoppage of payment to the tune of Rs.2,39,001/- was issued on

18.04.2018, i.e. prior to the retirement of the petitioner on 30.04.2018, hence the case of the petitioner would not stand covered by the ratio laid down by the Hon'ble Apex Court in the case of ***Rafiq Masih*** (supra).

8. The learned counsel for the respondents has referred to a judgment rendered by the Hon'ble Apex Court in the case of ***Registrar, Cooperative Societies Haryana & Ors. vs. Israil Khan & Ors.***, reported in ***(2010) 1 SCC 440***, paragraph nos.7 to 10 whereof are reproduced herein below:-

> ***"7.** There is no "principle" that any excess payment to employees should not be recovered back by the employer. This Court, in certain cases has merely used its judicial discretion to refuse recovery of excess wrong payments of emoluments/allowances from employees on the ground of hardship, where the following conditions were 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."* *[**Ed.**: As observed in Col. B.J. Akkara (Retd.) v. Govt. of India, (2006) 11 SCC 709]*
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> ***8.** In Col. B.J. Akkara (Retd.) v. Govt. of India [(2006) 11 SCC 709] this Court explained the reason for extending such concession thus: (SCC pp. 728-29, para 28)*
>
> > *"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."

(emphasis supplied)

9. *What is important is, recovery of excess payments from employees is refused only where the excess payment is made by the employer by applying a wrong method or principle for calculating the pay/allowance, or on a particular interpretation of the applicable rules which is subsequently found to be erroneous. But where the excess payment is made as a result of any misrepresentation, fraud or collusion, courts will not use their discretion to deny the right to recover the excess payment.*

10. *In these cases, the Rules specifically provided that the employees should be paid a consolidated salary. Therefore, without amendment of the Rules, the Managing Committees could not have passed a resolution for giving the benefit of regular pay scales that too with retrospective effect to the employees. Further, the Societies did not have the funds to make such payments and illegally diverted the funds made available for disbursal of loans to farmers, for the purpose of making such excess payment to the employees. When the resolution extending such benefit was passed and the amounts earmarked for loans for farmers were diverted for making payment to the employees, the Managing Committees as well as the employees were aware that the resolution and consequential payment was contrary to the Rules. There was no question of any wrong calculation or erroneous understanding of the legal position. Most of the employees*

> *who received similar relief have refunded or have agreed to refund the excess payment. Making any exception in the case of the respondents would also lead to discrimination."*

9. The learned counsel for the respondents has next submitted that by the impugned order dated 12.05.2026, the Ld. CAT has rightly held that from the pleadings it is evident that before superannuation of the petitioner on 30.04.2018, his entire service record was scrutinized and it was detected that he had availed 1727 days of leave without pay, hence admittedly the petitioner had drawn a sum of Rs.2,39,001/- in excess of what was legitimately due to him, thus as per Rule 15 of the Railway Services (Pension) Rules, 1993, the said sum of Rs.2,39,001/- has rightly been deducted from DCRG of the petitioner and as far as deduction of Rs.30,000/- is concerned, the same has been made in light of the medical facility to be provided to the petitioner, hence the original application filed by the petitioner was dismissed, moreso since the case of the petitioner is not covered by the ratio laid down by the Hon'ble Apex Court in the case of ***Rafiq Masih*** (supra). Therefore, it is submitted that the impugned order does not require any interference by this Court.

10. We have heard the learned counsel for the parties and perused the materials on record from which it is apparent that admittedly the petitioner had taken leave without pay for 1727

days, leading to his pay being amended vide Memorandum dated 03.04.2018 and on the basis of the same, the officials at Raxaul, vide the no dues certificate dated 18.04.2018 had directed for stopping payment to the extent of a sum of Rs.2,39,001/-, whereafter a sum of Rs.2,39,001/- was deducted from the DCRG of the petitioner on account of him having availed 1727 days of leave without pay. Thus, we find that the present case is not a case where the petitioner did not have the knowledge that the sums which have been received by him in excess was not due to him and that the same had been wrongly paid to him, however rectification was made by the respondents prior to his retirement on 18.04.2018 itself. In fact, the petitioner had failed to voluntarily refund the amount wrongly paid in excess to him. Thus, we find that the ratio laid down by the Hon'ble Apex Court in the case of ***Rafiq Masih*** (supra) shall not be applicable in the facts and circumstances of the present case, especially in view of Rule 15 of the Railway Services (Pension) Rules, 1993 which categorically stipulates that the government dues as ascertained and assessed, which remain outstanding till the date of retirement of the Railway employee shall be adjusted against the amount of retiral gratuity and as far as the government dues are concerned, the same have also been defined to include over payment of pay and allowances. In this connection, we may refer to a judgment rendered by the Hon'ble Apex Court in the case of ***Chandi Prasad Uniyal & Ors. vs. State of Uttarakhand & Ors.***, reported in ***(2012) 8 SCC 417*** as also to the one rendered by the Hon'ble Apex Court in the case of ***High Court of Punjab & Haryana & Ors. vs. Jagdev Singh***, reported in ***(2016) 14 SCC 267***.

11. Having regard to the facts and circumstances of the case and for the foregoing reasons, we do not find any infirmity in the impugned order dated 12.05.2026, passed by the learned CAT in O.A. No.050/00089/2019, hence the present writ petition stands dismissed.

(Mohit Kumar Shah, J)

(Sourendra Pandey, J)

Kanchan.

AFR/NAFR	AFR
CAV DATE	28.07.2026
Uploading Date	09.09.2026
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