

17.
22.12.2022
S.D.

W.P.A. 19604 of 2022

**Shri Subhas Chandra Saha
Vs.
The Union of India & Ors.**

Mr. P.K. Das,
Mr. Subrata Mukherjee

...For the petitioners

Mr. Kumarjyoti Tewari
Mr. Ashok Prasad

...For the Respondents

The petitioner has challenged the Office Memorandum dated August 11, 2022 passed by the office of the Senior Commandant/Kolkata Airport/Ministry of Home affairs. By the said Office Memorandum a sum of Rs. 2,91,501/- was directed to be recovered from the petitioner on the ground of over-payment. It was directed that Rs. 58,300/- will be recovered from the salary for the months from August 2022 to November 2022. A sum of Rs. 58,301/- will be recovered from the salary payable for the month of December 2022. The basic pay of the petitioner was fixed at Rs. 82,400/-. The petitioner is due to retire on December 31, 2022. Despite directions given for filing a report, the employer/Central Industrial Security Force (in short, "CISF") chose not to file

the same. The petitioner works as an Assistant Commandant, Junior Administrative Officer in "CISF".

When the matter came up for hearing, a copy of the written instructions issued by the Deputy Commandant Legal FHQ Force Head Quarter, New Delhi was handed over in Court. A copy of the written instructions dated December 20, 2022 is retained with the records. As per the said written instructions, the petitioner is fully covered under para 4(ii) and (iii) of the department's Office Memorandum dated March 2, 2016. Para 4(ii) and (iii) of the Department's Office Memorandum dated March 2, 2016 is set out hereinbelow whereby recovery is made impermissible:-

"(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued."

Learned counsel appearing on behalf of the petitioner submits that the representation of the petitioner should be considered prior to the fixation of pay to be granted to the petitioner.

This court directs that if any representation is made before the authority concerned for fixation of pay of the petitioner within four weeks from date, the same shall be

considered by the authorities within a period of six weeks from the date of making such representation. The reasoned order will be communicated to the petitioner within two weeks of passing thereof.

In view of the fact that respondents themselves have held that no amount is recoverable from the petitioner since the petitioner is due to retire within one year from the date of the order of recovery and also in view of the fact that excess payment has been made for a period in excess of five years, the impugned Office Memorandum dated August 11, 2022 is set side and/or quashed.

With the directions aforesaid, **WPA 19604 of 2022** is **disposed** of.

All parties shall act on the server copy of this order duly downloaded from the **website** of this Court.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all the formalities.

(Lapita Banerji, J.)

