

20.11.2023
Court No. 13
Item No. 1
AP

**WPA 10331 of 2021
With
IA NO: CAN 1 of 2021
With
CAN 3 of 2022**

**Sudip Ghosh and Ors.
Vs.
Union of India and Ors.**

Mr. Debjyoti Basu
Mr. Biswadev Ghosh
Mr. Chandan Kumar Lal

.... For the Petitioners.

Mr. Shiv Chandra Prasad

.... For the Respondents.

1. The issue has been listed for extension of interim order dated 31st May, 2021. By consent of the parties, the main writ petition itself is taken up for hearing.

2. The brief facts of the case are that the writ petitioners were all engaged and recruited by the Ministry of Defence under various services. Upon completion of their term with the defence authorities, the writ petitioners were absorbed in the Indian Railways, particularly in the Eastern Railway and were given various posts. Some of them have superannuated from the railways as well and some are working.

3. Upon being absorbed in the railways, they were given a particular scale of pay.

4. The Railway Ministry however some time on 30th March, 2021 found that certain alleged excess payments were made to the writ petitioners in view of an alleged

incorrect calculation of pay scales and emoluments. A notice dated 30th March, 2021 was issued to the writ petitioners seeking recovery of the excess payments received.

5. Admittedly, the excess payments made to the writ petitioners were neither to the knowledge of the writ petitioners nor at their instance. The excess payments resulted from an alleged incorrect calculation on the part of the employer, the Indian Railways.

6. It is now well-settled, inter alia, on the decision of ***State of Punjab and Ors. Vs. Rafiq Mashhi (White Washer) and Ors.*** reported in ***(2015) 4 SCC 334*** and in the case of ***Thomas Daniel Vs. State of Kerala and Ors.*** reported in ***2022 SCC Online SC 536*** that any excess payment made to an employee, not to his knowledge or not on account of his own commission and omission, cannot be recovered from him three years before or after superannuation and/or retirement.

7. In those circumstances, this Court is of the clear and unequivocal view that no excess payments to any of the writ petitioners can be recovered by the railways.

8. There shall be writ of mandamus restraining the railways from recovering any amounts from any of the writ petitioners on account of excess payments, which is subject matter of the writ petition.

9. In so far as re-fixation of pay scales of the writ petitioners is concerned, which the railways propose, the same cannot be subject matter of the instant writ petition.

10. In the event of any re-fixation, contrary to any rights of the writ petitioners, they may agitate the same in accordance with law in an independent proceeding.

11. In so far as the writ petitioners, who have already retired, it is ordered that the terminal benefits be released by the railways as expeditiously as possible, within a period of one month from date. The retiral benefits shall be calculated on the basis of the existing pay scales without any correction, recovery or refund being demanded.

12. With the aforesaid directions, the writ petition is disposed of.

13. In view of the disposal of the main writ petition, connected applications, if any, shall also stand disposed of.

14. There shall be no order as to costs.

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

(Rajasekhar Mantha, J.)