

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – O.A. 471 of 2015

MD. ANSARUL ALAM Vs **The State of West Bengal & Ors.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>20</p> <hr/> <p>08.07.2019</p>	<p>For the Applicant : Mr. A.K. Niyogi, Advocate</p> <p>For the State Respondent: Mr. G.P. Banerjee, Advocate</p> <p>For the Principal Accountant : Mr. B. Mitra, General(A&E), West Bengal : Departmental Representative</p> <p>In this application, the applicant has prayed for certain reliefs, the relevant portion of which is as under :</p> <p>“a) An order quashing and setting aside the impugned orders passed by the Principal Accountant General for deduction of Rs.3,89,051/- and the order passed by the Deputy Commissioner of Police, Special Branch, Kolkata Police deducting the amount of Rs.3,89,051/- and further directing the said respondents to return the said amount of Rs.3,89,051/- forthwith and also to refix and revise pension treating the increment that was allowed to 1982 to 1994 as legal and valid.”</p>	

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	<p>Directions were issued to file reply and rejoinder which have been filed and are on record.</p> <p>It appears that the applicant, a Sub-Inspector of Police of Kolkata Police, has superannuated on 31st December, 2012.</p> <p>It appears from the application that the applicant was suspended from service on 29th June, 1982. In compliance of the order passed by the Hon'ble High Court on 16th May, 1990, the applicant was allowed to resume duty on 10th June, 1990. After completion of disciplinary proceeding, final order was passed imposing punishment in the nature of deduction of pay of Rs. 300/- per month for a period of twelve months. After revocation of the order of suspension, the pay of the applicant was fixed allowing yearly increment from 1982 and the benefit in the calculation of the revision in the scale of pay as per ROPA-1990 with effect from 1st January, 1986. After the retirement of the applicant, the Principal Account General passed an order on 21st June, 2013 for payment of gratuity of Rs.12,454/- after deducting a sum of Rs.3,89,051/- from the total amount of gratuity of Rs.4,01,505/- . It appears that disciplinary proceeding No.62 dated 29th June, 1989 was drawn up against the applicant by the Deputy Commissioner of Police, 5th Battalion, Kolkata</p>	

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	<p>Armed Police and final order was passed vide divisional order no.59 dated 18th January, 1994 when it was mentioned that though the suspension order was revoked in the year 1990 the proceeding continued after 1994. The applicant was allowed yearly increment from 1982 to 1990 and thereafter from 1990 to 1994. According to the applicant since in the year 1994 proceedings were concluded and final order was passed and since reduction of pay and withholding of increment and/or stoppage of increment are specific punishments, withdrawing of increment is illegal. According to the applicant allowing yearly increment during the period of suspension and allowing the benefit of revision in the scale of pay as per ROPA-1990 cannot be treated to be as overdrawn. It is also submitted that the applicant was unaware of the fact regarding reduction of annual increment and it led to the recovery of the amount which is now under challenge. The learned advocate for the applicant has relied on the judgements of the Hon'ble Supreme Court and Hon'ble Karnataka High Court which will be dealt with appropriately.</p> <p>Mr. G.P. Banerjee, the learned advocate on behalf of the State respondent submits that the submission that the applicant was not aware of the reduction in the increment which led to the recovery of the amount, is incorrect as evident from the intimation dated 23rd November, 2012 issued by Accounts Officer / Pen VIII,</p>	

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	<p>being annexure 'A' to the Original Application. Since the applicant, if at all aggrieved, did not challenge the said intimation during his tenure in service, he is estopped from raising the said issue. Moreover, referring to the reply, particularly paragraph 6 thereof, it is submitted that since his pay was reduced by cancelling the increment and his last pay was fixed at Rs.17,040/- on which the pension and pensionary benefits were calculated and as a result a sum of Rs.3,89,051/- was calculated as overdrawn which was referred to the Accountant General for necessary sanction, which was duly obtained, the application is without merit. Submission is that the judgements cited on behalf of the applicant are not applicable to the facts of the case in hand as recovery was made after the applicant was found guilty in departmental proceedings which the applicant had accepted.</p> <p style="text-align: center;">Mr. B. Mitra, the Departmental Representative of the Principal Accountant General (A&E), West Bengal adopts the submission of Mr. Banerjee.</p> <p style="text-align: center;">Admittedly, the departmental proceedings were initiated in the year 1989 which culminated in punishment of the applicant and thereafter, as evident from the reply, the last pay of the applicant was fixed at Rs.17,040/- on which the pension and pensionary benefits were calculated and as a result Rs.3,89,051/- was calculated as overdrawn</p>	

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	<p>and after getting sanction from the Principal Accountant General (A&E), West Bengal, deduction was made. Submission on behalf of the applicant that the recovery of the amount is harsh as he was given no opportunity to defend cannot be accepted as it was in culmination of the departmental proceeding. The principles of law in the judgement of the Hon'ble Supreme Court in Civil Appeal No.11527 of 2014 arising out of SLP (C) No.11684 of 2012 delivered in State of Punjab versus Rafiq Masih is not applicable as the Court therein found that the applicant did not resort to any illegality. The judgement in State of Punjab versus K.R. Erry : AIR 1973 SCC 834, particularly the law laid down in paragraph 22 thereof, is not applicable as therein the Supreme Court was dealing with the question whether while imposing a cut in the pension, opportunity was to be given to the officers to defend whereas in the case in hand, as evident from the reply, the applicant was well aware of the consequences of the disciplinary proceeding and punishment imposed. The judgement of the Supreme Court in Paras Nath Singh versus State of Bihar and Others : (2009) 6 SCC 314, is not applicable as the pay cut was set aside as therein the applicant was allowed to function in the post and did not face disciplinary proceeding.</p> <p>The judgement of the Karnataka High Court, delivered on 20th March, 2000 in Writ Appeal No. 5826 of</p>	

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SCN.	<p>1999 : Andhra Bank versus M.L. Gopichander, is not applicable as it is evident from the report submitted by the Enquiry Officer that the respondent employee was not guilty of charges.</p> <p>Therefore, since the applicant without raising any question had accepted his fixation of last pay at Rs.17,040/- and did not challenge the order of punishment, no order can be passed on the application. The application is dismissed.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	