

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. 937 of 2016

NARUL HAQUE SAHANA 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>22</p> <hr/> <p>18.11.2019</p>	<p>For the Applicant : Shri Asim Hati Advocate</p> <p>For the State Respondent: Mr. S.K. Mandal Advocate</p> <p>For the Principal Accountant : Shri Biswanath Mitra General(A&E), West Bengal Departmental Representative</p> <p>In this application the applicant, who had superannuated on 31st July, 2008 from the post of Deputy Superintendent of Police, District Enforcement Branch, Birbhum, has challenged the deduction of pension and has prayed for certain reliefs the relevant portion of which is as under:</p> <p>“a) Direction be given upon the respondents to forthwith sanction and release the monthly pension to the applicant to the tune of Rs.37,229 (Rupees Thirty Seven Thousand Two Hundred Twenty Nine) as given to him as per Revised Pension Payment Order (ROPA – 2009)</p>	

ORDER SHEET

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>month by month in his bank account.</p> <p>b) Direction be given upon the respondents to calculated and pay the arrear differential pension amount to the applicant with effect from February, 2016 till date with interest @ 10% per amount over the accrued due amount.”</p> <p>After the matter was admitted directions were issued to file reply and rejoinder. Reply and rejoinder have been filed and are on record.</p> <p>Mr. A. Hati, learned advocate for the applicant submits that since the applicant was allowed to draw pension of Rs. 37,229/- under the Revised Pension Payment Order in terms of ROPA-2009, the deduction and recovery of a sum of Rs. 8,39,499/- on the ground of excess payment of pension is uncalled for and illegal. In view of the law laid down in the judgement passed in State of Punjab vs. Rafiq Masih (White Washer): (2015) 4 SCC 334, particularly in paragraph 18, sub-paragraph (ii), the entire action of the respondents is not maintainable in law. As recovery of amount from a retired employee is impermissible, the pension of Rs. 37,229/- may be directed to be restored and the amount deducted be</p>	

ORDER SHEET

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>refunded.</p> <p>Mr. S.K. Mandal, learned advocate appearing on behalf of the State respondents, relying on the reply, submits that the applicant in December, 2015, though entitled to a sum of Rs. 20,414/-, by mistake was paid Rs. 37,229. Similarly in January, 2016 the actual payment was Rs.50,111 instead of Rs.21,770/- which ultimately resulted in overpayment of total Rs.8,39,499/- from 1st August, 2008 to 31st January, 2016. Thus directions were issued upon the authority to recover the overpaid amount in monthly instalments. The judgement in State of Punjab vs. Rafiq Masih (supra) is not applicable as therein the Supreme Court was dealing with a case of higher payment of salary by mistake to an employee who was on the verge of retirement and not overpayment of pension. Since the statements made in paragraph 4 of the reply filed on behalf of the State have virtually gone unchallenged in the rejoinder filed by the applicant, no order may be passed.</p> <p>Heard learned advocates for the parties. We find that according to the State respondents while disbursing pension a sum of Rs.8,39,499/- was overpaid to the applicant from 1st August, 2008 to 31st January, 2016 as evident from paragraph 4 of the reply which has virtually not been disputed in the rejoinder. The judgement in State of Punjab vs. Rafiq Masih (supra) is not applicable as therein the Hon'ble Supreme Court was considering</p>	

ORDER SHEET

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
SCN.	<p>excess payment of salary wrongly paid virtually on the eve of retirement, whereas the case in hand is regarding excess payment of pension to a superannuated employee. Hence the law laid down in State of Punjab vs. Rafiq Masih (supra) is not applicable. Therefore, the application is dismissed.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	