

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das**

Case No – OA 1112 OF 2017

Jayanta Kumar Das 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
6 07.01.2020	<p>For the Applicant : Mr. I. Biswas Learned Advocate.</p> <p>For the Respondents : Mr. S. Ghosh, Learned Advocate.</p> <p>For A.G. (A & E), W.B. : Mr. B. Mitra, Departmental Representative.</p> <p>The applicant has prayed for direction upon the respondents for refund of an amount of Rs.1,32,617/- along with interest and other consequential reliefs mentioned in paragraph 8(b), 8(c) and 8(d). Learned Counsel for the applicant has not pressed for hearing of prayer 8(b), 8(c), and 8(d) and as such those prayers are rejected.</p> <p>The applicant retired from the post of Work Assistant, Alipurduar Highway Division, Public Works (Roads) Directorate on March 31, 2015. The PPO was issued in favour of the applicant on January 11, 2016. However, on April 4, 2016, the respondent No. 3, Executive Engineer, Alipurduar Highway Division, Alipurduar had sent one letter to the respondent No. 4, Treasury Officer, Jalpaiguri Treasury-II, Jalpaiguri asking him to deduct an amount of Rs.1,32,617/- and an amount of Rs.36,111/- from the retiring gratuity of the applicant to the tune of Rs.4,12,467/-. An amount of Rs.36,111/- was deducted from retiring gratuity of the applicant as the applicant did not pray outstanding interest on house building advance till the date of his</p>	

ORDER SHEET

Jayanta Kumar Das

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA 1112 OF 2017**

.....

retirement from service. An amount of Rs.1,32,617/- was deducted from the retiring gratuity of the applicant due to wrong fixation of pay while the applicant was in service. The applicant is not aggrieved for deduction of Rs.36,111/- which was outstanding interest on house building advance, but he was aggrieved for deduction of Rs.1,32,617/- which was deducted from retiring gratuity long after retirement of the applicant from service.

Having heard Learned Counsel for the applicant, Learned Counsel for the State respondents and the Departmental Representative of the Respondent A.G., West Bengal, we find that there was excess payment of Rs.1,32,617/- to the applicant due to wrong fixation of pay while he was in service. Admittedly, this wrong fixation of pay was detected after retirement of the applicant and order for recovery of the said amount from retiring gratuity was passed long after retirement of the applicant from service. The Hon'ble Supreme Court has summarised the following situations in paragraph 18 of the judgment of "State of Punjab v Rafiq Masih" reported in (2015) 4 SCC 334, when recovery of excess payment by the state respondents would not be permissible in law :

".... (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service);

ORDER SHEET

Jayanta Kumar Das

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 1112 OF 2017**

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

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of 5 years, before the order of recovery is issued;

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post;

(v) In any other case, where the Court arrives at the conclusion that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent as would far outweigh the equitable balance of the employer's right to recover."

We have laid down in the case of "Bireswar Dey v State of West Bengal & Ors." (OA-1045 of 2014 decided on August 20, 2018), that state respondents cannot invoke the provisions of Rule 140(2) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 for recovery of excess payment of pay and allowances from the retiring Gratuity of the Government employee, particularly when the recovery of over

ORDER SHEET

Jayanta Kumar Das

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA 1112 OF 2017**

.....

payment from retiring gratuity is done after prolonged period from the date on which the said recovery would have been effected and thereby causing hardship to the applicant to such an extent, which will outweigh equitable balance of the right of the Government to recover the same.

By following the decision of the Hon'ble Supreme Court in the case of "State of Punjab v Rafiq Masih" (Supra) and the decision of "Bireswar Dey v State of West Bengal & Ors." (Supra), we are of the view that the state respondents are bound to refund an amount of Rs.1,32,617/- to the applicant. Since the applicant has enjoyed excess payment during the period of service, we are not inclined to grant any interest on the amount of Rs.1,32,617/- as claimed by the applicant.

In view of our above findings, the respondent no. 3, the Executive Engineer, Alipurduar Highway Division, PW (Roads) Directorate, New Town, Durgabari, Alipurduar is directed to refund Rs.1,32,617/- to the applicant within a period of 12 (twelve) weeks from the date of communication of the order.

With the above direction, the original application stands **disposed of.**

Let a plain copy of the order be supplied to both the parties.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Rajib

ORDER SHEET

Jayanta Kumar Das

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 1112 OF 2017**