

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 1212 OF 2016

Smt. Babli Balmiki 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
09 28.11.2018	<p>For the Applicant : Mr. D. Dutta, Learned Advocate.</p> <p>For the Respondents : Mrs. S. Agarwal, Learned Advocate.</p> <p>For the AG (A&E),WB : Mr. B. Mitra, Departmental Representative.</p> <p>The applicant has prayed for direction upon the respondents for refund of Rs.17,942/- which was deducted from the death gratuity of the deceased husband of the applicant.</p> <p>The contention of the applicant is that her husband Dal Chandra Balmiki, ASI attached to the office of Superintendent of Police, Malda died on January 5, 1998. The death gratuity of Rs. 39,716/- was released on February 19, 1999 on the ground that excess payment of Rs.17,942/- was made to the deceased employee due to wrong fixation of pay. The balance amount of death gratuity to the tune of Rs.39,716/- was distributed among the legal heirs of the deceased employee namely the applicant Babli Balmiki and four other legal heirs namely Bharat Balmiki, Chandan Balmiki, Kumkum Balmiki and Rohit Balmiki. The applicant was aware of the fact that a sum of Rs.17,942/- was deducted from the death gratuity of the husband of the applicant on the ground of excess payment due to wrong fixation of pay by order of Superintendent of Police, Malda dated February 19,</p>	

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1999 (Annexure-R6 to the reply submitted by the state respondents).

On mathematical calculation, we find that the applicant has approached this Tribunal by filing present OA-1212 of 2016 after lapse of more than 15 years. Naturally, the present application is clearly barred under section 21 of the Administrative Tribunals Act, 1985. The issue of limitation is clearly raised by the state respondents in paragraph 6 of the reply which is on record. Learned Counsel for the applicant submits that once the application is admitted by the Tribunal, the Tribunal cannot dismiss the said application on the ground of violation of provision of section 21 of the Administrative Tribunals Act, 1985. Mrs. Agarwal, Learned Counsel representing the state respondents, categorically submits that she raised the issue of limitation at the time of admission of the present application, but the then Hon'ble Members presiding over the Bench admitted the application by giving liberty to the state respondents to raise the issue of limitation in the reply. In view of such submission, we are unable to accept the contention made on behalf of the applicant that the Tribunal cannot consider the issue of limitation at the time of final hearing of the application. No explanation is forthcoming before the Tribunal as to why the applicant waited for more than 15 years for claiming amount of Rs.17,942/- which was deducted from the death gratuity of the deceased employee on the ground of

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excess payment of salary due to wrong fixation of pay. Since the applicant was aware of the fact of deduction of part of the gratuity 15 years ago and since the applicant has not explained this delay of 15 years for approaching the Tribunal, we are constrained to hold that the present application is hopelessly barred under section 21 of the Administrative Tribunals Act, 1985.

As a result, the present application is **dismissed**.

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

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib