

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 1295 OF 2011

Ratan Kumar Halder 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
35 06.02.2020	<p>For the Applicant : Mrs. S. Mitra, Ld. Advocate.</p> <p>For the Respondent : Mr. S.K. Pal, Mrs. S. Agarwal, Learned Advocates.</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.2,46,719/- which was deducted partly from his retiring gratuity and partly from his salary by way of instalments, after cancellation of the order no. 2370 dated March 22, 2006 issued by the Superintendent of Police, South 24-Parganas, whereby pay protection granted in favour of the applicant under Rule 55 (4) of West Bengal Service Rules, Part-I (in short, WBSR, Part-I) was withdrawn and pay of the applicant was refixed.</p> <p>It appears from the materials on record that the applicant joined in Government service as Constable of Police on October 6, 1971 and retired as Inspector of Police on February 28, 2009. 102 Head Constables of police including the applicant filed one writ petition (Civil Rule No. 10813[W] of 1983) before the Hon'ble High Court at Calcutta, praying for pay protection in terms of Rule 55 (4) of WBSR, Part-I on the ground that the writ</p>	

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petitioners were receiving lesser pay being seniors to one Kalipada Saha, the private respondent no. 4 of the writ petition. On September 19, 1986, the said writ petition was disposed of by the Learned Single Judge of the Hon'ble High Court by giving specific direction which is reproduced hereinbelow :

“The respondents are directed to revise or refix the pay of the petitioners in terms of Rule 55 (4) of West Bengal Service Rules, Part-I w.e.f. 1st April, 1981, provided the pay of the juniors in the same cadre with identical revised pay scale has been fixed at a higher stage than the seniors. The respondents are also directed to pay arrears on the basis of such revision or refixation within eight weeks from the date of communication of this order”.

The above order passed by the Learned Single Judge of the Hon'ble High Court was affirmed by the Division Bench of the Hon'ble High Court on December 21, 1988. It is contended on behalf of the applicant that the applicant was granted pay protection in terms of Rule 55 (4) of WBSR, Part-I along with other writ petitioners by issuance of appropriate order by the Department in compliance with the direction given by the Hon'ble High Court. It is further contended on behalf of the applicant that on March 22, 2006, the respondent no. 5 issued an order by way of withdrawal of pay protection of the applicant on the ground that the applicant was not senior to Head Constable Kalipada Saha and thereby pay of the applicant was

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refixed. Consequently, the order was passed for recovery of Rs.2,46,719/- which was drawn by the applicant in excess of his salary. Admittedly, a sum of Rs.96,000/- was deducted from the salary of the applicant during a period of about three years before his retirement from service on the basis of refixation of pay done on March 22, 2006 and the balance amount of Rs.1,50,719/- was recovered from the retiring gratuity of the applicant.

With the above factual matrix, Mrs. Mitra, Learned Counsel for the applicant, contends that the order of refixation of pay of the applicant by way of withdrawal of the benefit of pay protection granted in favour of the applicant in terms of Rule 55 (4) of WBSR, Part-I was illegal and not justified under the law. Mrs. Mitra further submits that the applicant is entitled to refund of the entire amount of Rs.2,46,719/- and the pay of the applicant should be refixed by giving benefit of pay protection under Rule 55 (4) of WBSR, Part-I. On the other hand, Learned Counsel for the state respondents has specifically pointed out from the reply that the Head Constable Kalipada Saha who is alleged to be the junior of the applicant for pay protection, was appointed in the post of Constable of Police on June 28, 1962 and the present applicant joined in the service as Constable of Police on October 6, 1971. By referring to Annexure-H to the supplementary reply of the state respondents, Learned Counsel further submits that Kalipada Saha got selection grade as

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Constable of Police before promotion to the post of Head Constable and thereby Kalipada Saha being senior to the present applicant got higher basic pay than the applicant on 1st April, 1981. On consideration of the comparative pay statement of the applicant, Ratan Kumar Halder and the alleged junior Kalipada Saha as reflected in Annexure-H to the reply of the state respondents, we are unable to accept the contention of Mrs. Mitra that the applicant, Ratan Kumar Halder was senior to Kalipada Saha. Accordingly, we do not find any illegality in the impugned order dated March 22, 2006 (Annexure-P1 to the original application) passed by the Superintendent of Police, South 24-Parganas. The upshot of our above observation is that the refixation of pay of the applicant by withdrawal of benefit of pay protection wrongly granted in terms of provision of Rule 55 (4) of WBSR, Part-I by treating the applicant as senior to Head Constable Kalipada Saha is justified under the law. The natural corollary of our above findings is that recovery of a sum of Rs.96,000/- from the monthly salary of the applicant by way of instalments during the period of almost three years while the applicant was in service, is fully justified under the law.

The next issue for consideration of our Tribunal is whether the state respondents were justified in deducting a sum of Rs.1,50,719/- from the retiring gratuity of the applicant. We have already observed that the applicant retired from service on February 28, 2009 and the amount of Rs.1,50,719/- was

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deducted from the retiring gratuity of the applicant after retirement. 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);

(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

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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 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.1,50,719/-to the applicant. Since the applicant enjoyed a sum of Rs.1,50,719/- by way of excess payment of salary while he was in service, we are not inclined to grant any interest on the amount of refund of the said amount of money.

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Sanjib	<p>In view of our above findings, the respondent no. 7, the Commandant, 2nd Battalion, State Armed Police, Barrackpore is directed to refund Rs.1,50,719/- to the applicant within a period of 12 (twelve) weeks from the date of communication of the order.</p> <p>With the above direction, the original application stands disposed of.</p> <p>Let a plain copy of this order be supplied to all the parties.</p> <p>(S.K. DAS) MEMBER(A)</p> <p>(R. K. BAG) MEMBER (J)</p>	
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