

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 148 OF 2016

Monoj Kumar Roy 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
13 12.09.2018	<p>For the Applicant : Mr. S. Dutta, Learned Advocate.</p> <p>For the Respondents : Mr. A.L. Basu, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents for refund of an amount of Rs.51,351/- which was recovered from the retiring Gratuity of the applicant on the ground of excess payment due to wrong fixation of pay.</p> <p>The applicant retired from the post of Additional Tahashildar on October 31, 2006 when he was working in the establishment of the respondent no. 4, Revenue Officer, Damodar Irrigation Revenue Division No. II, Durgapur, District – Burdwan. It appears from the Gratuity Payment Order dated November 1, 2006 that the applicant was entitled to receive Rs.1,43,478/- as retiring Gratuity. It also appears from the said Gratuity Payment Order that an amount of Rs.47,007/- was deducted from the amount of Gratuity on the ground of excess payment of salary due to wrong fixation of pay. It also appears from order dated September 5, 2007 issued by the respondent no. 4 and the copy of Challan dated September 11, 2007 that the applicant had to deposit an amount of Rs.4,344/- in the Government Exchequer on the ground of overdrawal of salary due to wrong fixation of pay. Accordingly, the applicant was</p>	

ORDER SHEET

Monoj Kumar Roy

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 148 OF 2016**

deprived of the benefit of Rs.51,351/-, which he would have drawn on account of retiring Gratuity, had the said amount not been deducted by the order of the respondent no. 4.

Having heard Learned Counsel representing both parties and by following the judgment of the Hon'ble Supreme Court in the case of "State of Punjab v Rafiq Masih" reported in (2015) 4 SCC 334, we would like to hold that the applicant is entitled to get the amount of Rs.51,351/- which was deducted from his retiring Gratuity. The Hon'ble Supreme Court has summarised the following situations in paragraph 18 of the judgment of "State of Punjab v Rafiq Masih" (Supra), 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

ORDER SHEET

Monoj Kumar Roy

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 148 OF 2016**

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 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.51,351/- to the applicant along with interest . On consideration of the materials on record, we find

ORDER SHEET

Monoj Kumar Roy

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 148 OF 2016**

that the applicant has received the amount of Gratuity on February 19, 2008. Had this amount of Rs.51,351/- not been deducted from the retiring Gratuity of the applicant, the applicant would have received the said amount on February 19, 2008. Accordingly, the state respondents are duty bound to pay interest to the applicant from March 1, 2008 till the last date of the month preceding the month in which this amount will be refunded to the applicant. On consideration of the rate of interest paid for GPF or PPF and the rate of interest paid by the nationalised bank for long term fixed deposit, the applicant is entitled to get interest @ 8% per annum.

In view of our above findings, the respondent no. 4, Revenue Officer, Damodar Irrigation Revenue Division No. II, Durgapur, District – Burdwan is directed to refund Rs.51,351/- to the applicant along with interest @ 8% per annum on the said amount of money during the period from March 1, 2008 till the last date of the month preceding the month in which the payment will be actually made 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.**

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib