

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 1523 OF 2013**

Pachu Gopal 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
21 01.08.2019	<p>For the Applicant : Mrs. S. Mitra, Learned Advocate.</p> <p>For the Respondent : Mr. M.N. Roy, Learned Advocate.</p> <p>For A.G. (A &amp; E), W.B. : Mr. B. Mitra, Departmental Representative.</p> <p>The applicant has prayed for direction upon the respondents for re-fixation of pay of the applicant after quashing of order of fixation of pay dated April 4, 2008 by the Block Development Officer (BDO), English Bazar, Malda.</p> <p>The applicant retired from service on December 31, 2009 from the establishment of BDO, English Bazar, Malda. The pay of the applicant was re-fixed by the BDO, English Bazar, Malda by issuing order on April 4, 2008. The applicant was directed to refund an amount of Rs.3,95,371/- drawn by him in excess of salary by order dated November 25, 2008 issued by the BDO, English Bazar, Malda. The applicant approached this Tribunal by filing OA 580 of 2010, praying for refund of Rs.3,95,371/-, which was deducted from the retiring gratuity and other</p>	

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Pachu Gopal Das

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

.....

Case No. **OA 1523 OF 2013**

retirement benefits on the ground of excess payment of salary. On May 10, 2011, the Tribunal disposed of OA 580 of 2010 by directing the State respondents to refund Rs.3,95,371/- to the applicant without quashing the order of re-fixation of pay. The subsequent order dated August 6, 2013 was issued by the Secretary to the Government of West Bengal, Department of Water Resources Investigation and Development for refund of Rs.3,95,371/- to the applicant.

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 the order of re-fixation of pay of the applicant by the BDO, English Bazar, Malda on April 4, 2008 has attained finality as the said order was not specifically challenged by the applicant in OA 580 of 2010 when he prayed for refund of Rs.3,95,371/- deducted from gratuity and other retirement benefits on the ground of excess payment due to mistake in fixation of pay on earlier occasion. The prayer of the applicant in the present application for setting aside the order of re-fixation of pay by the BDO, English Bazar, Malda on April 4, 2008 is barred by the principle of constructive res-judicata. Since the applicant has received Rs.3,95,371/- in spite of excess payment of the said amount due to mistake in fixation of pay on earlier occasion without challenging specifically the order of re-fixation of pay made by the BDO, English Bazar, Malda on April 4, 2008 in OA

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Form No.

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.....

Case No. **OA 1523 OF 2013**

580 of 2010, we are of the view that the applicant is not entitled to get any relief in the present application.

As a result, the present application is dismissed.

**( S.K. DAS )  
MEMBER(A)**

**( R. K. BAG )  
MEMBER (J)**

Rajib

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