

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 20 OF 2013

Sailendra Kumar Biswas 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
23 29.08.2018	<p>For the Applicants : Mr. S.N. Biswas, Learned Advocate.</p> <p>For the Respondents : Mr. A.L. Basu, Mr. S. Bhattacharjee, Learned Advocates.</p> <p>Liberty is given to the applicant to amend the Cause Title for incorporation of correct designation of respondent no. 4 in course of this day.</p> <p>The present application was filed by two applicants – out of which applicant no. 1, Sushil Kumar Biswas died during the pendency of the original application and his name was abated from record by order dated April 2, 2018. The applicant no. 2 – Sailendra Kumar Biswas (hereinafter referred to as the applicant) has prayed for direction upon the respondents for refund of the amount of money deducted from Gratuity along with interest @ 12% per annum from the date of retirement till the date of disbursement of the said amount of money.</p> <p>The applicant retired from the post of OCM under Block Development Officer, Tehatta-II, District – Nadia on April 30, 2008. It appears from the entries made in the service book of the applicant that he had overdrawn an amount of Rs.34,892/-</p>	

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for the period from April 1, 1997 to April 30, 2008 due to wrong fixation of pay. The said amount was recovered from the Gratuity of the applicant after retirement as the said amount was overdrawn by the applicant during the period of his service.

The issue which calls for determination is whether the applicant is entitled to get refund of the said amount of Rs.34,892/- along with interest when the said amount was overdrawn by the applicant during the period of his service. On perusal of Rule 140(2) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (in short, DCRB Rules of 1971), we find that overpayment of pay and allowances may be recovered from the retiring Gratuity of the Government employee.

Mr. Basu, Learned Counsel representing the state respondents, has relied on Memo. No. 30-F (Pen) dated January 8, 1999 issued by the Joint Secretary to the Government of West Bengal, Department of Finance, Pension Branch and submitted that excess payment of salary can be deduced from Death Gratuity of the applicant. The provisions of Rule 140(2) of the DCRB Rules of 1971 and G.O. issued by the Government of West Bengal for recovery of overpayment of pay and allowances from retiring Gratuity of the Government employee must be construed and interpreted in the light of the principle of law laid down by the Hon'ble Supreme Court in the case of "State of

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Punjab and Others v. Rafiq Masih” reported in (2015) 4 SCC 334, wherein Two Judge Bench of the Hon’ble Supreme Court was called upon to decide whether all the employees against whom order of recovery is made for excess payment should be exempted from disbursement of the same to the employer. It is held by the Hon’ble Supreme Court that recovery of monetary benefits wrongly extended to the employees can be interfered with, where such recovery would result in a hardship of a nature, which would far outweigh the equitable balance of the employer’s right to recover. The Apex Court has summarised the following situations in paragraph 18 of the judgment, where recovery of excess payment by the employer would not be permissible in law :

“18.

(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 five 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

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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."

In view of the above proposition of law laid down by the Apex Court we would like to hold that the state respondents cannot invoke the provisions of Rule 140(2) of the DCRB Rules of 1971 for recovery of excess payment or overdrawn amount from retiring Gratuity of the applicant. By following the decision of the Hon'ble Supreme Court in "State of Punjab and Others v. Rafiq Masih" (supra), we are constrained to hold that the state respondents must refund the amount of Rs.34,892/- to the applicant along with interest for the period during which the said amount of money was illegally withheld. By taking into consideration the interest paid on the amount of GPF and PPF and interest paid on long term fixed deposit by the nationalised bank, we would like to hold that the rate of interest should be fixed @ 8% per annum. On consideration of the date of retirement of the applicant on April 30, 2008 and the date of issuance of order for deduction of overdrawn amount from the Gratuity on March 27, 2009, we are of the view that the period

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for calculation of interest will be from April 1, 2009 till the last date of the month preceding the month on which the said amount will be actually refunded to the applicant.

In view of our above findings, the respondent no. 4, Block Development Officer, Tehatta-II is directed to refund the amount of Rs.34,892/- to the applicant along with interest on the said amount of money @ 8% per annum during the period from April 1, 2009 till the month preceding the month on which 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 is **disposed of.**

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

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib