

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 246 OF 2016

Sudhamoy Choudhuri 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
11 26.09.2018	<p>For the Applicant : Mr. D. Karan, Mr. D. Karan, Learned Advocates.</p> <p>For the Respondents : None.</p> <p>For A.G. (A & E), W.B. : Mr. B. Mitra, Departmental Representative.</p> <p>The applicant has prayed for direction upon the respondents for refund of an amount of Rs.1,03,847/- 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 Assistant Engineer on February 29, 2004 from the establishment of the Respondent No. 5. It appears from the Gratuity Payment Order dated August 5, 2004 that the applicant was entitled to receive Rs.2,21,850/- as retiring Gratuity. It further appears from the said Gratuity Payment Order that an amount of Rs.1,03,847/- was deducted from the amount of Gratuity on the ground of excess payment of salary due to wrong fixation of pay. The applicant received the balance amount of Gratuity to the tune of Rs.1,18,003/- on September 10, 2004 as reflected from the entries made in the pass book annexed to the supplementary application filed on behalf of the applicant today.</p> <p>Having heard Learned Counsel representing the</p>	

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applicant and the authorised representative of the Respondent A.G., West Bengal, we find that there was excess payment of Rs.1,03,847/- to the applicant due to wrong fixation of pay. However, this wrong fixation of pay was detected and order of recovery of excess payment from retiring gratuity was made after retirement of the applicant from service. 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

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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.1,03,847/- to the applicant along with interest . On consideration of the materials on record, we find

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that the applicant has received the amount of Gratuity on September 10, 2004. Had this amount of Rs.1,03,847/- not been deducted from the retiring Gratuity of the applicant, the applicant would have received the said amount on September 10, 2004. Accordingly, the state respondents are duty bound to pay interest to the applicant from October 1, 2004 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. 5, the Executive Engineer, PW (Construction Board) Department, Burdwan University Division is directed to refund Rs.1,03,847/- to the applicant along with interest @ 8% per annum on the said amount of money during the period from October 1, 2004 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)

Rajib

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