

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – **OA 431 OF 2017**

Golam Mostafa 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
14 06.03.2020	<p>For the Applicant : Mr. S.K. Ghosh, Learned Advocate.</p> <p>For the Respondent : Mr. M.N. Roy, Mr. G. Halder, 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 an amount of Rs.3,84,837/- which was recovered from the retiring gratuity and commuted value of pension 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 Operator on February 28, 2010 when he was working in the establishment of Block Development Officer, Khargram in the district of Murshidabad. It appears from the Gratuity Payment Order dated January 20, 2017 and the order for payment of commuted value of pension dated January 20, 2017 that a sum of Rs.2,00,000/- was deducted from the retiring gratuity of the applicant and a sum of Rs.1,84,837/- was deducted from the commuted value of pension of the applicant on the ground of excess payment of salary due to wrong fixation of pay. The contention of the applicant is that excess payment of salary of the applicant was detected after his</p>	

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retirement from service and the order of refixation was done long after retirement of the applicant from service.

Having heard Learned Counsel for the applicant, Learned Counsel for the state respondents and the Departmental Representative of the respondent AG, West Bengal 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 find that the recovery of excess payment of salary of the applicant cannot be done after his retirement 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" (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

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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

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to refund an amount of Rs.3,84,837/- to the applicant. On consideration of the materials on record, we find that the applicant enjoyed a sum of Rs. 3,84,837/- while he was in service in spite of the fact that the applicant was not entitled to the said amount of money and as such, we would like to hold that the applicant is not entitled to get any interest on the said amount of money.

In view of our above findings, the respondent no. 3, Block Development Officer, Khargram, Dist. Murshidabad is directed to refund a sum of Rs.3,84,837/- 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 all the parties.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib