

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 741 OF 2013**

Ramendra Nath Dutta 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
19 12.09.2018	<p>For the Applicant : None.</p> <p>For the Respondents : None.</p> <p>The applicant has prayed for direction upon the respondents to grant financial benefit in terms of Career Advancement Scheme applicable to the applicant and also prayed for quashing of order dated November 18, 2010 and order dated January 18, 2011 issued by the Chief Medical Officer of Health (in short CMOH), Burdwan.</p> <p>None appears on call either on behalf of the applicant or on behalf of the respondents. The hearing of this case was adjourned on two consecutive previous dates on prayer of Learned Counsel for the applicant. Accordingly, we have decided to dispose of the instant application on merit.</p> <p>The applicant retired from the post of Biologist on October 31, 2010 from the establishment of the Chief Medical Officer of Health, Midnapore. The contention of the applicant is that he is entitled to get higher pay scale in terms of Career Advancement Scheme applicable to the applicant. There is nothing on record to indicate that the applicant is entitled to get benefit of Career Advancement Scheme and as such, we are of the view that the applicant is not entitled to get the benefit of Career Advancement Scheme.</p>	

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It appears from order dated November 18, 2010 issued by the CMOH, Burdwan (Annexure-A1 to the original application) that the applicant has overdrawn an amount of Rs.91,679/-. The CMOH, Burdwan has passed the impugned order dated November 18, 2010 for recovery of the said amount of Rs.91,679/- from the amount of Gratuity of the applicant after his retirement. The CMOH, Burdwan has intimated the Principal Accountant General (A&E), West Bengal on January 18, 2011 (Annexure-A2 to the original application) for recovery of Rs.91,679/- from the Gratuity of the applicant as the said amount of money was overdrawn by the applicant while he was in service during the period from July 1, 2003 to July 1, 2010. The overdrawn amount of Rs.91,679/- cannot be recovered from the Gratuity of the applicant after his retirement as laid down by the Hon'ble Supreme Court in the case of "State of Punjab v Rafiq Masih" reported in (2015) 4 SCC 334.

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 employer 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;*

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*(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 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."*

The above judgment of the Hon'ble Supreme Court was considered by us in the case of "Bireswar Dey v State of West Bengal & Others" (OA-1045 of 2014 decided on August 20, 2018), wherein we have decided that the 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 employees for the following reasons :

"(i) Over payment was received by the petitioners with the authority of law and without having any role of the petitioners in receiving the amount in excess of their pay

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and allowances,

(ii) The Appointing Authority/Controlling Officer of the petitioners did not refix the pay to which the petitioners were entitled on the basis of G.O. dated February 12, 1999 during long nine to ten years of service before their superannuation,

(iii) The recovery of over payment from retiring gratuity after almost nine to ten years from the date on which the said recovery would have been effected will definitely cause hardship to the petitioners to such an extent, which will outweigh equitable balance of the right of the Government to recover the same.”

In view of our above observation, we would like to hold that the state respondents have no authority under the law to recover an amount of Rs.91,679/- from the Gratuity of the applicant as decided in the order dated November 18, 2010 and order dated January 18, 2011 (Annexure A1 and Annexure-A2 to the original application).

Accordingly, the order passed by the CMOH, Burdwan on November 18, 2010 and order dated January 18, 2011 passed by the CMOH, Burdwan are quashed. The CMOH, Purba Bardhaman is directed to refund Rs.91,679/- to the applicant within a period of 12 (twelve) weeks from the date of

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Sanjib	communication of the order, if the said amount was deducted from the retiring Gratuity of the applicant. The original application, thus, stands <b>disposed of</b> .  ( S.K. DAS ) MEMBER(A)	( R. K. BAG ) MEMBER (J)
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