

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – **OA 978 OF 2013**

Smt. Luxmi Mukherjee 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
<p style="text-align: center;">26 <hr/>27.02.2019</p>	<p>For the Applicant : Mr. D.K. Mukherjee, Learned Advocate.</p> <p>For the Respondents : Mr. M.N. Roy, Learned Advocate.</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.1,36,264/- which was deducted from the retiring gratuity of the applicant, after cancellation of objection communicated to the respondent no. 2 by the Senior Accounts Officer of the respondent no. 3 on March 5, 2009 (Annexure-C to the original application).</p> <p>The contention of the applicant is that he was granted promotion to the post of SAE, Grade-I on February 1, 1994 after giving him benefit of Career Advancement Scheme for completion of 20 years of service in the same scale of pay of Rs.1500-3410/-. The Senior Accounts Officer of the respondent AG (A&E), West Bengal pointed out in the letter dated March 5, 2009 that the applicant is not entitled to the benefit of fixation in the promotional post of SAE, Grade-I after allowing him benefit of Career Advancement Scheme for completion of 20 years of service in the same scale of pay in terms of paragraph 2(ix) of Memorandum No. 6075-F dated June 21, 1990 issued by the</p>	

ORDER SHEET

Smt. Luxmi Mukherjee

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 978 OF 2013**

Finance Department, Audit Branch, Government of West Bengal.

Mr. Mukherjee, Learned Counsel representing the applicant, submits that the above observation of Senior Accounts Officer of the respondent AG (A&E), West Bengal in the letter dated March 5, 2009 is not justified under the law, as the applicant is entitled to get benefit of fixation in the promotional post of SAE, Grade-I after getting benefit of Career Advancement Scheme for completion of 20 years of satisfactory service in the same scale of pay. The further submission of Mr. Mukherjee is that the subsequent fixation of pay of Rs.8275/- in the corresponding scale of pay is wrongly done instead of Rs.9100/- and thereby the applicant is deprived of enhanced pension and other retirement benefits. He also submits that by interim order dated April 9, 2015, this Tribunal has already given direction to the respondent no. 4 for refund of an amount of Rs.1,36,264/- on the basis of the principle of law enunciated by the Hon'ble Supreme Court in the case of "State of Punjab v Rafiq Masih" reported in (2015) 4 SCC 334 and the said amount has already been received by the applicant during pendency of hearing of the present application.

Mr. M.N. Roy, Learned Counsel representing the state respondents, submits that the pay of the applicant has been rightly fixed at Rs.8275/- in the corresponding scale of pay

ORDER SHEET

Smt. Luxmi Mukherjee

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 978 OF 2013**

instead of Rs.9100/-, which was wrongly done and thereby overpayment was made to the applicant, though the amount of overpayment to the tune of Rs.1,36,264/- has already been refunded to the applicant in terms of interim order passed by the Tribunal.

We have heard Mr. B. Mitra, the Departmental Representative of the respondent AG (A&E), West Bengal.

On consideration of the impugned letter dated March 5, 2009 issued by the Senior Accounts Officer of the respondent AG (A&E), West Bengal, we find that the applicant was granted benefit of fixation of pay in the promotional post of SAE, Grade-I after giving him benefit of Career Advancement Scheme for completion of 20 years of service in the same scale of pay wrongly, as the applicant is not entitled to get the said benefit of fixation of pay in terms of paragraph 2 (ix) of Memorandum No. 6075-F dated June 21, 1990 issued by the Finance Department, Audit Branch, Government of West Bengal. The consequential overpayment made to the applicant to the tune of Rs.1,36,264/- was sought to be recovered from the retiring gratuity of the applicant. Since recovery of overpayment to the tune of Rs.1,36,264/- from the retiring gratuity of the applicant was done due to wrong fixation of pay and since the said amount has already been refunded to the applicant by virtue of the interim order passed by this Tribunal on April 9, 2015 on the basis of the

ORDER SHEET

Smt. Luxmi Mukherjee

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 978 OF 2013**

principle of law enunciated by the Apex Court in the judgment of “State of Punjab v Rafiq Masih” (supra) , we are of the view that the overpayment deducted from retiring gratuity and refunded to the applicant is justified under the law. However, the applicant is not entitled to get fixation of pay at Rs.9100/- instead of Rs.8275/- in the corresponding scale of pay, as the the benefit of fixation of pay in the promotional post of SAE, Grade-I was wrongly done after giving benefit of Career Advancement Scheme for completion of 20 years of service in the same scale of pay. The natural corollary of our above observation is that the applicant is not entitled to get benefit for refixation of pay as prayed for, though he has been rightly refunded the amount deducted from retiring gratuity due to wrong fixation of pay.

As a result, the original application is **dismissed**.

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

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib