

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

**Present :-
The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

**J U D G M E N T
-of-**

Case No. O.A. - 137 of 2021

Babul Saha Applicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mr. Soumendra Narayan Ray,
Advocate.**

**For the State Respondent:- Mrs. Sunita Agarwal,
Advocate.**

Judgment delivered on : 29th March, 2022

**The Judgment of the Tribunal was delivered by:-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed basically praying for refund of the amount to the tune of Rs. 2, 80,718/- as deducted from the gratuity of the applicant as overdrawal payment. As per the applicant, he joined in the service of Directorate of Sericulture in Malda as an Assistant Inspector and was subsequently promoted to the post of Assistant Director. In the mean time, he was also promoted to the post of Extension Officer, Raiganj on 29.06.1984 vide G.O. dated 05.05.1984. As he was due to retire on superannuation on and from 31.12.2011, Senior Accounts Officer/Pen.X vide his Memo dated 08.11.2011 to the Joint Director of Textiles (Sericulture), Kolkata asked to revise his fixation of pay for the post of Extension Officer. However, neither any opportunity was granted to the applicant to make any representation against such observation of the Accountant General nor any intimation was made to him. However, his pay was re-fixed in a lower scale and pensionary benefit was paid on the said lower scale vide P.P.O. dated 06.07.2012, further an amount of Rs. 2, 80, 718/- has been recovered from his gratuity without granting any opportunity to the applicant. Subsequently, the applicant made representation to the Department. Even vide letter dated 17.01.2017, the Senior Accounts Officer, Office of the A.G. had requested the Joint Director of Textile (Sericulture) to look into the matter and take necessary action. Even then the respondents sat tight over the matter and did not communicate anything nor refunded back the said amount. Being aggrieved with, he has filed the instant application.
2. During the course of the hearing, the counsel for the applicant has submitted that there is no misrepresentation on his part for wrong

fixation of pay, if any. Further, at the time of payment of the retiral benefit, the respondents not only revised the pensionary benefit in a lower scale of pay but also deducted the amount of Rs. 2, 80, 718/- from his gratuity without granting him any opportunity to place his case.

In this regard, the counsel for the applicant has referred the case of State of Punjab and Others –Vs- Rafiq Masih and Others - reported in (2015) 4 SCC 334 and has submitted that his case squarely covered by the sub paras (ii) and (iii) of para 18 of the said judgement. Therefore, he has prayed for direction upon the respondent to refund back the deducted amount as it has created financial hardship to the applicant at the time of retirement.

3. No reply has been filed. However, the counsel for the respondent has accepted the contention of the applicant that no opportunity was granted to the applicant before deducting the said amount from the gratuity and also the fact that they have re-fixed his pay for the mistake occurred in 1984.
4. I have heard the parties and perused the records. It is noted that the applicant initially appointed to the post of Assistant Inspector and was subsequently promoted to the post of Extension Officer on 29.06.1984. Subsequently, he was also granted promotion to the post of Development Officer with effect from 13.08.1996 and lastly was promoted to the post of Assistant Director of Textile (Sericulture). It is also fact that the respondent never denied that there is no misrepresentation on the part of the applicant for such wrong fixation, if any. In the mean time, the applicant has been promoted twice before retirement. Even no opportunity was granted to the applicant before such re-fixation, specially before any deduction from the gratuity amount. It is further noted that

there was some internal communication between the Senior Accounts Officer / Pension, Indian Audit and Accounts Department, office of the A.G. (A & E), West Bengal and the Joint Director of Textile (Sericulture). However, there is no reference to the applicant in the said letter even the respondents not in a position to establish that any opportunity was granted to the applicant in this regard. Even the said letter was issued one month prior to the date of retirement whereas wrong fixation was occurred in the year 1984. The Hon'ble Apex Court in the case of Rafiq Masih in para 18 has observed, inter alia,

“It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible 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 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 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."

From the above, it is observed that the case of the applicant is squarely covered by the sub para (ii) and (iii) of para 18 of the aforesaid judgement as the internal communication between A.G. office and Joint Director of Textile (Sericulture) was made one month prior to the date of retirement of the applicant and wrong fixation occurred for the period beyond five years.

5. In view of the above, in my considered opinion, such recovery would be iniquitous and will cause hardship to the employee as the wrong payment, if any, were made for a long duration of time. Therefore, I direct the respondent authorities to refund back the amount of Rs. 2, 80, 718/-, which has been deducted as overdrawal pay and allowances if any from the DCRG and make payment of the aforesaid amount within a period of two months from the date of receipt of the order. Accordingly, the O.A. is disposed of with no order as to costs.

**URMITA DATTA (SEN)
MEMBER (J)**

A.K.P.