

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. OA – 688 of 2022

Arghya Majumdar - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. M.N. Roy,
and Mr. G. Halder,
Date of order Advocates
3

13.12.2022

For the Respondent No. 1 : None
& 2

For the Respondent No. 3 : Mr. S. Konar,
Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638 – WBAT / 2J-15/2016 dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for a direction to the authority not to deduct the alleged overdrawn amount from his salary. As submitted by Mr. Roy, relying on papers at page 14 onwards, the applicant's promotion date was shifted from 01.09.2014 to 01.09.2015 and consequently his pay has also been revised. With the shifting of the promotion date, the designation has also been changed from Supervisor of Estates to U.D. Assistant with effect from 01.09.2015. As per this internal note submitted by Mr. Roy, the employee was directed to deposit the overdrawal amount. As a result of this order, as shown in the pay slip of the applicant's salary for the month of August, 2022, his basic has been brought down from Rs. 38,800/- to Rs. 37,700/-. The pay slip of August also shows amount overdrawn for D.A. of Rs. 4738/-, overdrawn H.R.A. Rs. 1176/- and Basic

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overdrawn as Rs. 7,860/-. Submission of Mr. Roy is to the effect that without fault of the applicant, the respondent has not only been downgraded in designation but also recovered the overdrawals from his August salary without even giving a chance to represent. Mr. Roy relying on the Rafiq Masih case reported in (2015) 4 SCC 334 submits that the action taken by the respondent is illegal and liable to be set aside. The relying portion of the above quoted Supreme Court case is as under:

“18. 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 retired employees.....*
- (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”*

Mr. Roy finally prays for an order restraining the respondent not to recover any further so called overdrawn amount from his salary in future.

Mr. S. Konar appearing on behalf of the Respondent No. 3 prays for time to consult with his respondent and submit a reply before the next date.

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After hearing both the learned counsels, let the matter appear on 10.02.2023 with a direction to the Respondent No. 3 not to recover any further 'overdrawn amount' from his salary till disposal of the case.

Rejoinder, if any, in the mean time.

Let the matter appear under the heading 'Admission Hearing' on 10.02.2023.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P