

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

**Present-**

**The Hon'ble Mrs. Urmita Datta (Sen), Member (J),**

**Case No. OA – 1117 of 2015**

**Abha Pradhan - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No. and Date of order <u>20</u> 10.03.2022	For the Applicant	: Mr. M. Karim, Mr. M. Islam, Ms. P. Khanna, Advocates.
	For the Respondents	: Mrs. S. Agarwal, Advocate
	For Pr. A.G. (A & E), West Bengal	: Mr. B. Mitra, Departmental Representative

All the parties have submitted that they have no objection to be heard by the Single Bench.

As per the applicant, she retired on 31<sup>st</sup> March, 2014 as Health Supervisor (Female). However, on 03.03.2014, though she received one letter from the office of Pr. A.G. (A & E), West Bengal written to the Block Medical Officer of Health, Chandipur – Manikpur B.P.H.C., wherein the Pr. A.G. (A & E), West Bengal's office has observed that the pay of the applicant was wrongly fixed. However, without granting her any opportunity to represent against such allegation of wrong fixation of pay and though there was no mis-representation on her part in this regard, the Block Medical Officer of Health, Chandipur – Manikpur B.P.H.C., Uluberia vide Memo dated 22.07.2014 (Annexure 'F') had re-fixed her pay, which is a gross violation of natural justice. Further pension and pensionary benefit has been disbursed on the said impugned re-fixation. Even the respondent had deducted the so called overdue amount, which she received on the basis of last pay drawn.

During the hearing, the counsel for the applicant has submitted that such action / non-action on the part of the respondent, is not only a gross violation of

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natural justice but contrary to the settled principle of law as has been held in the case of State of Punjab and Others –vs- Rafiq Masih and Others reported in (2015) 4 SCC 334.

Therefore, the applicant has prayed for a direction for refund of the deducted overdrawn amount as claimed by the respondent and also re-fixation of his pay and pensionary benefit.

The counsel for the respondent has submitted that the applicant was aware about the re-fixation through the referred communication of Pr. A.G. (A & E), West Bengal dated 03.03.2014. However, the counsel for the respondent has admitted that they have not issued any show cause notice prior to the fixation of the pay vide order dated 22.07.2014.

The Departmental Representative for the Pr. A.G. (A & E), West Bengal has submitted that they have already made objection and referred it to the Department for necessary action. However, with regard to issuance of show cause or anything also, they have nothing to do in this regard.

Heard the parties and perused the records. It is admitted fact that as per the observation of the Pr. A.G. (A & E), West Bengal dated 03.03.2014, there may be a wrong fixation of pay of the applicant, which was communicated to the Block Medical Officer of Health, Chandipur – Manikpur B.P.H.C. for taking appropriate action with a copy to the applicant. However, admittedly without issuance of any show cause notice as to why the pay of the applicant would not be re-fixed as per the observation of the Pr. A.G. (A & E), West Bengal, the department had directly re-fixed the pay of the applicant and accordingly her pension and pensionary benefit was disbursed. Further, they have also deducted

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the overdrawn amount of Rs. 57,682/- . It is a settled principle of law that employer has every right to rectify mistakes, which has been done by them while fixing the pay even if there is no mis-representation on the part of the employee concerned. However, before such fixation they should give a proper opportunity to represent the applicant by way of issuance of Show Cause Notice in details to the employees and if it has not been done it would be treated as gross violation of natural justice. In the instant case, admittedly the respondent has re-fixed the pay and pensionary benefit without granting any opportunity to the applicant by way of issuance of show cause notice, which amounts to gross violation of natural justice. Therefore, it is liable to be interfered and quashed.

The Hon'ble Apex Court in the case of Rafiq Masih, with regard to the recovery of the overdrawn amount 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 the recovery.**
- (iii) Recovery from the employees, when the excess**

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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.”**

As per the re-fixation order dated 22.07.2014, his pay was wrongly fixed on and from 01.07.1996 on wards and the applicant retired in the year 2014. Further, there is no allegation that the applicant being a Group – C employee has made any mis-representation on her part, therefore, the decision of the Hon’ble Apex Court in the Rafiq Masih is squarely applicable in case of recovery of the overdrawn amount. Therefore, I quash and set aside the Memo dated **04.09.2014** whereby the said overdrawn amount of Rs. 57,682/- has been deducted from the pensionary benefit and direct the authority to refund back the said amount with statutory interest to the applicant within a period of eight weeks from the date of receipt of the order.

I also quash and set aside the re-fixation order with a liberty to grant an opportunity to the applicant with regard to re-fixation of her pay and pensionary benefit and to take decision after verification and after granting the applicant appropriate opportunity. However, in the mean time, the applicant will get the

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present pension till the final decision of the respondent and the whole action is to be completed positively within a period of three months from the date of receipt of the order.

Accordingly, the O.A. is disposed of with no order as to costs.

Since for circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.

URMITA DATTA (SEN)  
MEMBER (J)

A.K.P./P.K.D.