

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. –OA-523 of 2024

KALYAN DAS -- VERSUS – The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	:	Mr. Soumendra Narayan Ray, Learned Advocate
	For the State Respondents	:	Mr. Gaurav Halder, Learned Advocate
	For the Principal Accountant General (A&E), West Bengal	:	Mr. Biswanath Mitra, Departmental Representative

3
19.06.2025

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

In this application, the applicant has prayed for a direction to the respondent authorities to refund the overdrawn amount recovering from his gratuity amounting to Rs. 2,74,901/- (Rupees two lakh seventy four thousand nine hundred and one) only along with an interest @ 18% per annum. The applicant had superannuated on 30.04.2023 as a Sericulture Extension Officer under the Directorate of Textiles (Sericulture) at Krishnanagar, Nadia. His pay was erroneously fixed at Rs.6,450/- with effect from 11.01.2001 at the time when he got appointed to the said post. After completion of 8 years in service, the applicant was awarded the CAS benefits on 11.01.2009. He also availed another CAS benefit after completion of 16 years on 01.07.2017 and his pay had been revised from time to time as per ROPA Rules. The then Deputy Director of Sericulture, Head Quarters, Kolkata, who was in charge of the Deputy Director of Sericulture, Krishnanagar, Nadia, vide his order No.10 dated 30.05.2023 re-fixed the pay of the applicant. Therefore, at the time of his retirement on 30.04.2023 his re-fixed pay had arrived at Rs.83,600/- (Level No.14, Cell 26). Based on this re-fixation, the due drawn statement of salary for the period from 11.01.2001 to 30.04.2023 had been prepared to ascertain the over drawn amount. His pension papers were returned by the Office of the Principal Accountant General (A&E), West Bengal pointing out that there was an overdrawn by the applicant out of his erroneous fixation of pay with effect from 11.01.2001. The Office of the Principal Accountant General (A&E) advised the pension sanctioning authority to re-submit the pension proposal after rectifying of the fixation of pay and recovery of the excess payment from his gratuity. In accordance with such advice, the respondent authorities calculated Rs.2,74,901/- as the overdrawn amount and the pension proposal was re-submitted.

ORDER SHEET

Form No.

KALYAN DAS

Vs.

Case No. - OA-523 of 2024

THE STATE OF WEST BENGAL & ORS.

The Pension Payment Order (PPO) issued on 15.09.2023 had recorded the overdrawn amount with a direction to recover the same from the applicant's gratuity.

The Office of the Principal Accountant General (A&E), West Bengal has returned his pension case with the observation after pointing out the inconsistencies while fixing his pay. It has been advised to recover any amount which was inadvertently drawn in accordance with such observation and his pay was revised with effect from 11.01.2001 and after such re-fixation, an amount of Rs. 2,74,901/- was assessed as an excess drawal of pay and allowances.

Neither the fact of the erroneous fixation of pay nor its cancellation was ever assailed and disputed by the applicant. It is only when the recovery of the overdrawn amount was recorded in PPO, the applicant found it reasonable to challenge the same before this Tribunal. Taking support from the judgement reported in (2015) 4 SCC 334 : *State of Punjab and others-Vs.-Rafiq Masih*, the applicant argues that such recovery is a non est in the eyes of law and thus, not tenable. Paragraph 18 of the said judgement lays down that under the following situations, recoveries by the employees 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.

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 Tribunal finds, in this case, the applicant superannuated on 30.04.2023. The erroneous fixation of upward pay started with effect from 11.01.2001 and continued for a period of 23 years. The payment was made for a long duration of time for which the employee is not responsible. The impact being more unfair and improper, the decision of

ORDER SHEET

Form No.

KALYAN DAS

Vs.

Case No. - OA-523 of 2024

THE STATE OF WEST BENGAL & ORS.

recovering the amount from the gratuity of the applicant is iniquitous, harsh and arbitrary. As the error was due to mistakenly done by the employer, such recovery is impermissible and non est in the eyes of law.

In view of the above observations, the Tribunal comes to the conclusion that the impugned memo No.10 dated 30.05.2023 is not tenable and thus quashable and it is quashed and set aside. The Tribunal directs the respondent No.4, the Deputy Director, Directorate of Textiles (Sericulture) at Krishnanagar, Nadia to issue necessary order for refund of the recovery amount within a reasonable period of time in terms of the judgement passed in *Rafiq Masih(supra)* and as per Rules and re-submit a fresh proposal to the Principal Accountant General (A&E). The office of the Principal Accountant General (A&E) is directed to act accordingly.

The application is disposed of.

SCN.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)