

ORDER SHEET

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-524 of 2024

TAPAN KUMAR MUKHAPADHYAY -- VERSUS – The State of West Bengal & Others.

Serial No.	For the Applicant	:	Mr. Soumendra Narayan Ray,
and			Learned Advocate
Date of			
order	For the State Respondents	:	Mr. Gaurav Haldar,
			Learned Advocate
<u>3</u>	For the Principal Accountant	:	Mr. Biswanath Mitra,
19.06.2025	General (A&E), West Bengal		Departmental Representative

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. 3,07,491/- (Rupees three lakh seven thousand four hundred and ninety one) only along with an interest @ 18% per annum. The applicant had joined in service on 27.05.1988 as Assistant Inspector and had superannuated on 30.09.2023 as an Assistant Director in the office of the Deputy Director of Sericulture, Suri, Birbhum. On 11.06.1992, he was appointed as a Sericulture Extension Officer under the Directorate of Textiles (Sericulture). His pay was erroneously fixed at Rs.1665/- instead of Rs.1610/- with effect from 11.06.1992 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 11.06.2000. He also availed another two CAS benefits after completion of 16 years and 25 years on 11.06.2008 and 11.06.2017 respectively and his pay had been revised from time to time as per ROPA Rules. The then Joint Director of Textiles & Sericulture, Bolpur, Birbhum, vide his order No.32 dated 17.10.2023 re-fixed the pay of the applicant. Therefore, at the time of his retirement on 30.09.2023 his re-fixed pay had arrived at Rs.95,500/- (Level No.16, Cell 19). Based on this re-fixation, the due drawn statement of salary for the period from 11.06.1992 to 30.09.2023 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 11.06.1992. 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

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from his gratuity. In accordance with such advice, the respondent authorities calculated Rs.3,07,491/- as the overdrawn amount and the pension proposal was re-submitted. 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 fixed with effect from 11.06.1992 and after such re-fixation, an amount of Rs.3,07,491/- 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 30.09.2023. The erroneous fixation of upward pay started with effect from 11.06.1992 and continued for a period of 31 years. The payment was made for a long duration of time for which the

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employee is not responsible. The impact being more unfair and improper, the decision of 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.32 dated 17.10.2023 is not tenable and thus quashable, therefore, it is quashed and set aside. The Tribunal directs the respondent No.3, the Joint Director, Directorate of Textiles (Sericulture), Bolpur, Birbhum 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.

SCN.

The application is disposed of.

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