

**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 62 OF 2025**

**KEYA MUKHERJEE @ KEYA PATWARI MUKHERJEE - VS - THE STATE OF WEST BENGAL & ORS.**

Serial No. and Date of order	For the Applicant	:	Mr. Gaurav Haldar, Mrs. Priya Sasmal, Learned Advocates
<u>3</u> 28.07.2025	For the State Respondents	:	Mr. Gautam Pathak Banerjee, Mr. Sankha Ghosh, Learned Advocates

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 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

The prayer in this application is for a direction to the respondent authorities to set aside the impugned Order No.1896-BCW dated 26.12.2024 passed by the Deputy Secretary, Backward Classes & Welfare Department. By this impugned order, an overdrawn amount of Rs.5,96,826/- is to be deducted from the salary of the incumbent in 14+1 instalments from January, 2025 to March, 2026.

The pay of Smt. Keya Mukherjee, WBLs, in the post of Joint Secretary, was earlier fixed with effect from 04.05.2019 by granting her promotion upon completion of 20 years' service in the WBLs cadre. Arrear salary for the period from 04.05.2019 to 30.04.2021 amounting to Rs.2,20,058/- was sanctioned vide U.O. No.1049 dated 16.07.2021. It is submitted by the learned counsel for the applicant that by issuance of another corrigendum No.715 dated 25.06.2024, issued by the Law Department, her promotion was given effect from 24.02.2021 which is bad in law. Taking support from the judgement in *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. At paragraph 18 of the judgement, the Hon'ble Court held that under 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.

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- (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. Mr. Halдар, learned counsel submits that the representation of the applicant may be considered.

Mr. Gautam Pathak Banerjee, learned counsel has pointed out that the representation dated 03.01.2025, being without signature, was technically not acceptable. If a direction is passed, the same shall be complied by the respondent authority as per Rules.

The Tribunal finds that there is neither any misrepresentation nor suppression of material fact from the applicant's side. Such date of promotion was changed from 04.05.2019 to 24.02.2021 without any fault of the applicant.

Having heard the submissions of the learned counsels and considering the facts and circumstances of the matter, the Tribunal disposes of this application with a direction to the applicant to file a fresh representation before the respondent Nos.1 and 3, the Principal Secretary, Law Department and the Deputy Secretary, Backward Classes Welfare Department, Kolkata respectively, ventilating her grievances within a period of one month. If it is furnished within the time frame, the said respondent No.1 and 3 shall dispose of the same by passing a reasoned and speaking order within three months from the date of submission of the fresh representation.

This application is disposed of.

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

SCN.