

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- 620 of 2022

Serial No. and Date of order	Jayanta Kumar Naskar For the Applicant	:	VERSUS – The State of West Bengal & Ors. Mr. S.N. Ray, Learned Advocates.
<u>06</u> 07.07.2023	For the State Respondents	:	Mr. S. Ghosh, Learned Advocate.

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.

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

Mr. Soumendra Narayan Ray, learned counsel appearing on behalf of the applicant and relying on the judgement in the case of State of Punjab & Others v. Rafiq Masih (White Washer) & Others reported in (2015) 4 SCC 334, prays for a direction to the respondents to refund an amount of Rs.1,49,020/- deducted from the applicant from his gratuity. Mr. B. Mitra, appearing on behalf of the Principal Accountant General (A&E), West Bengal submits that the actual figure is Rs.1,28,113/-.

Mr. Sankha Ghosh, learned counsel appearing on behalf of the State submits that the said amount was deducted on 07.09.2016 after paying the balance of Rs.4,50,980/-. Therefore, there is a clear limitation point of approaching the Tribunal in the year 2022.

Mr. Ray, countering the point made by Mr. Ghosh and relying on Para 18 of the Rafiq Masih cases submits that in Para 18(ii) even Group C employee are covered by this judgement. Further, 18(ii) also covers the applicant since he had already superannuated. Mr. Ray, further submits that this matter of release of pension and deduction

etc. is not barred by limitation because this is a continuous cause of action.

Mr. Ghosh, referring to the pension paper, submits that the knowledge of the amount deducted was very much with the applicant since 2015. Since then the applicant, although aware of the deduction, did not file any application before the Tribunal or any sort of representation before the respondent. Therefore, filing an application before the Tribunal after lapse of seven years, this application is barred by limitation.

Mr. Ray, however, disagrees with the point of limitation and according to him this is a continuous cause of action and the respondent never communicated to the applicant the fact that this amount was deducted from his gratuity.

Further submission of Mr. Ray is that such an amount has been deducted from his gratuity was revealed to him only from an R.T.I. reply dated 16.08.2022. Therefore, this application was filed before this Tribunal in the same year-2022 and the question of limitation does not arise.

Disagreeing with Mr. Ray on the point of limitation, Mr. Ghosh presents a copy of the P.P.O. and attention is drawn to the highlighted line which is "deduct recoveries of overpayment (911) below the concerned head (overdrawn pay)-Rs. 1,28,113.00." Therefore, it is evidently clear that the applicant was aware of this fact of this deduction since a copy of this G.P.O. was also endorsed to the applicant. The original page pertaining to the applicant's family pension calculation is also done in which in red inks, the sentence "overdrawn of pay amounting to Rs. 1,28,113.00 may be realized from his retiring gratuity. This order sheet is signed by the D.F.O. and in the next page,

which is the application for pension, the applicant himself has signed dated 10.03.2015.

After hearing the submissions of the learned counsels and perusing the records, this Tribunal is of the view that this amount was deducted at the time of processing the pension papers by the office of the Principal Accountant General. This was communicated to the respondent authority after verifying the records. Besides, the Tribunal feels that at the time of processing of pension papers, the applicant was aware of this fact and after receiving his pension papers also understood that some overdrawn amount has been adjusted in the gratuity. Therefore, the Tribunal does not find any merit in this application.

Mr. Ray has referred to the judgement in the Rafia Masih, but in the Tribunal's view the judgement in the Rafiq Masih is not applicable here since the applicant was aware that such overdrawn amount has been deducted from his gratuity. It is a usual practice at the office of Principal Accountant General while processing the pension papers that such errors are detected and these overdrawn amounts are deducted. In the Tribunal's view it is not an arbitrary or whimsical deduction of the amount by the respondent. Accordingly the application is disposed of without any orders.

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SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)