

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Mrs. Urmita Datta (Sen), Officiating Chairperson & Member (J)

Case No. – OA 697 of 2019

*Soumen Banerjee* -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and  
Date of order

15  
14.09.2022

For the Applicants : Mr. S.N. Ray,  
Mrs. S. Das,  
Ld. Advocates.  
For the State Respondent : Mr. A.L. Basu,  
Mr. S. Bhattacharjee,  
Ld. Advocates.  
For the Pr.AG (A&E), : Mr. B. Mitra,  
WB Departmental Representative.

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 536-WBAT/2J-15/2016 dated 26<sup>th</sup> August, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The instant application has been filed basically praying for refund of a sum of Rs.3,57,433/- along with interest of 10% per annum, which was deducted from the pensionary benefits of his father on the ground of over-payment. It has been submitted by the applicant that his father while working as Head Police Driver went missing leaving behind his wife, one married daughter and the applicant as a son from 28.09.2010 and after seven years, he was declared as civil death by the competent Court of Law on 06.12.2017. The wife of the missing Government employee also died on 04.02.2015. Thereafter, the applicant approached before the authority for making payment of the pensionary benefits, which he had received vide order dated 06.07.2020 issued by the Assistant Accountant General/Senior Accounts Officer, Indian Audit & Accounts Department, wherein Rs.3,41,183/- was deducted as overdrawn. It has further been submitted by the applicant that since during the service period of his father, his father was not granted any opportunity by way of issuing Show Cause Notice of deduction of over-payment and as his father was declared as civil death, therefore, the applicant is entitled to get the refund of the amount deducted on account of such wrong fixation and refund of such deduction of over-payment on equity ground as his father was covered by the judgment of “State of Punjab v Rafiq Masih” reported in (2015) 4 SCC 334,

Form No.

Case No. **OA-697 of 2019**

---

**Vs.**

The State of West Bengal & Ors.

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when recovery of excess payment by the state respondents would not be permissible 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 5 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.”*

The counsel for the respondent has submitted that they have rightly deducted the said amount i.e. Rs.3,41,183/- on account of recovery of over-payment made on wrong fixation and another recovery of leave salary of Rs.16,250/-.

I have heard the parties and perused the records. It is noted that the applicant was paid Death-cum-Retirement Benefits amounting to Rs.6,00,000/- and LTA EFP @9020/- from 29.09.2010 to 04.02.2015. However, for the over-payment due to the wrong fixation of pay, no Show Cause Notice was issued and/or no opportunity was granted to the applicant even the concerned Government employee was missing since 2010 and was declared civil death in 2017. Being a Group-D staff, without granting any opportunity to make representation against such recovery of alleged wrong fixation but deducted an amount of Rs.3,41,183/- straightway from the retiral

**ORDER SHEET**

*Soumen Banerjee*

Form No.

Case No. **OA-697 of 2019**

---

**Vs.**

The State of West Bengal & Ors.

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benefit is not permissible. Therefore, case of applicant is squarely covered by the case of Rafiq Masih. Accordingly, the respondents are directed to refund the amount of Rs.3,41,183/- within a period of three months from the date of receipt of the order.

Accordingly, the OA is **disposed of** with the above observations and directions with no order as to costs.

CSM/SS

**URMITA DATTA (SEN)**  
**Officiating Chairperson & Member (J)**