

ORDER SHEET

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 93 of 2019

Narayan Debnath -- VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	: Mr. B. Chakraborty, Mrs. S. Agarwal, Ld. Advocates.
<u>18</u> 22.03.2023	For the State respondent	: Mr. G.P. Banerjee, Ld. Advocate.
	For the Pr.AG (A&E), WB	: Mr. B. Mitra, Depttl. Rep.

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

The prayer in this application is for setting aside the order of recovery issued under Memo. 2844-F(Y) dated 18.07.2016 as well the order issued under Memo. 4179-F(9) dated 10.10.2017.

The above two orders were in connection with the overdrawn amount on account of Deputation Allowance vide order of the Government dated 03.05.2013. The applicant, Narayan Debnath, a Group-A Officer was placed under suspension for the charges framed against him in a criminal case. As a suspended employee, he was given a subsistence allowance which erroneously, the Deputation Allowance which used to draw was also included as part of the subsistence allowance. Having realised the mistake made by the official, the Government issued one order dated 18.07.2016 by which, the total overdrawn amount of Rs.4,27,482/- was to be recovered from his subsistence allowance in instalments and by another order dated 10.10.2017, another overdrawn amount of Rs.2,02,482/- as interim allowance was to be recovered from him in twenty five instalments.

Aggrieved by such an order of recovery, the applicant submitted his representation before the respondent on 23.03.2017 followed by several reminders.

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Learned counsel for the applicant, at the very outset, questions the allegation of overdrawn. He relies on para 6.15 of the application in which, the subsistence allowance was to be paid on the basis of pay drawn by him while he worked in the University of Health Sciences. Secondly, attention is also drawn to para 6.16 of the application in which the term “leave salary” has been defined as per WBSR, Part-I. According to him, the subsistence allowance, as per the Rule, should be based on the leave salary of the employee which has been well defined in the Service Rules. Learned counsel also submits that since his subsistence allowance as per Rule was based on the leave salary, therefore, the applicant did not draw any excess amount from the State Exchequer, therefore, the question of recovery does not arise. Learned counsel for the applicant finally submits that the applicant’s case is covered under the Apex Court Judgment in State of Punjab & Ors. Vs. Rafiq Masih arising out of SLP (C) 11684 of 2012.

Responding on behalf of the State respondents, Mr. G.P. Banerjee, learned counsel submits that the applicant belonging to the Group-A service when deputed to West Bengal University of Health Sciences was allowed the Deputation Allowance. Later being involved in a criminal case, he was suspended and recalled to his headquarters, thus, the period of deputation also ended with this suspension. Therefore, the question of his drawing the Deputation Allowance even during his suspension period is not supported by any Rule. Under suspension only subsistence allowance, without the Deputation Allowance is admissible. On the question, the applicant being covered under the Apex Court Judgment in Rafiq Masih, Mr. G.P. Banerjee submits that it is very clear that the judgment covers only superannuated employees and not employees who are in service or who are under suspension. It is also important to submit that two orders of recovery dated 18.07.2016 and 10.10.2017 were served upon the applicant while he was in service and before his retirement.

Mr. Banerjee finally submits that being a knowledgeable Group-A Officer, it was his duty to report forthwith to the office the mistake of him

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being paid the Deputation Allowance to him when he was under suspension. However, despite knowing, he kept quiet and silently enjoyed the excess amount paid to him erroneously.

Responding to the applicant's reference to the Apex Court's Judgment in the case of "State of Punjab v. Rafiq Masih", the respondent submits that in case is not covered by the Judgment on the ground that this is not a case of recovery of overdrawn amount from a pensioner, nor as a Group-A Officer, he is covered by the said judgment.

Let the matter appear under the heading "**Further Hearing**" on **26.04.2023.**

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

CSM/SS