

**ORDER SHEET**  
**West Bengal Administrative Tribunal**

Present.-  
The Hon'ble Justice Ranjit Kumar Bag  
&  
The Hon'ble Dr. Subesh Kumar Das

Case No. **OA 467 of 2019 and MA 126 of 2019 arising out of  
OA 467 of 2019**

Panchu Gopal Ghosh

Versus

The State of West Bengal & Ors.

Serial No. and date of order	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary.
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1  <u>06</u> 17/02/2020	<p><b>For the Applicant</b> : Mr. S.K. Nandi, Ld. Advocate.</p> <p><b>For the Respondent</b> : Mrs. S. Agarwal, Learned Advocate.</p> <p><b>For the A.G., W.B.</b> : Mr. B. Mitra, Depttl. Representative.</p> <p>The applicant has prayed for direction upon the respondents for refund of a sum of ₹ 53,356/- along with interest @ 8% per annum, which was deducted from the retiring Gratuity of the applicant.</p> <p>It appears from the materials on record that the applicant retired as Group 'D' employee from the establishment of the Respondent No. 4 on April 30, 2009. The Gratuity payment order of the applicant dated September 11, 2009 indicates that a sum of ₹ 53,356/- was deducted from the retiring Gratuity on the ground of excess payment of salary due to wrong fixation of pay. He received the balance amount of Gratuity of ₹ 2,12,834/-. The grievance of the applicant is that the state respondents cannot deduct an amount of ₹ 53,356/- from the retiring Gratuity after retirement from service.</p> <p style="text-align: center;">Having heard Learned Counsel representing the</p>	

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	<p>applicant, Learned Counsel representing the state respondents and the Departmental Representative of the Respondent A.G., W.B., we find that there was excess payment of ₹ 53,356/- to the applicant due to wrong fixation of pay while he was in service. However, this wrong fixation of pay was detected after his retirement from service and order for recovery of excess payment was made from the retiring Gratuity. The Hon'ble Supreme Court has summarised the following situations in paragraph 18 of the judgment of "State of Punjab v Rafiq Masih" reported in (2015) 4 SCC 334, when recovery of excess payment by the state respondents would not be permissible in law :</p> <p><i>".... (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service);</i></p> <p><i>(ii) Recovery from the retired employees, or the employees who are due to retire within one year of the order of recovery;</i></p> <p><i>(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;</i></p> <p><i>(iv) Recovery in cases where an employee has wrongfully</i></p>	

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	<p><i>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;</i></p> <p><i>(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."</i></p> <p>We have laid down in the case of "Bireswar Dey v State of West Bengal &amp; Ors." (OA-1045 of 2014 decided on August 20, 2018), that state respondents cannot invoke the provisions of Rule 140(2) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 for recovery of excess payment of pay and allowances from the retiring Gratuity of the Government employee, particularly when the recovery of over payment from retiring gratuity is done after prolonged period from the date on which the said recovery would have been effected and thereby causing hardship to the applicant to such an extent, which will outweigh equitable balance of the right of the Government to recover the same.</p> <p>By following the decision of the Hon'ble Supreme Court in the case of "State of Punjab v Rafiq Masih" (Supra) and the decision of "Bireswar Dey v State of West Bengal &amp; Ors." (Supra), we are of the view that the</p>	

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Csm	<p>state respondents are duty bound to refund an amount of ₹ 53,356/- to the applicant. Since the applicant enjoyed the amount of ₹ 53,356/- for prolonged period of time while he was in service and since the applicant has prayed for refund of the said amount after almost 09 (nine) years of retirement from service, we are not inclined to grant any interest on the amount of ₹ 53,356/- for payment to the applicant.</p> <p>In view of our above findings, the Respondent No. 4, The Commandant, State Armed Police, 3<sup>rd</sup> Battalion, Barrackpore is directed to refund a sum of ₹ 53,356/- to the applicant within a period of 12 (twelve) weeks from the date of communication of the order.</p> <p>With the above direction, the original application and the Miscellaneous Application stand <b>disposed of</b>.</p> <p>Let a <b>Plain Copy</b> of the order be supplied to both parties.</p> <p><b>S. K. DAS</b> <b>MEMBER(A)</b></p> <p><b>R. K. BAG</b> <b>MEMBER(J)</b></p>	