

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

**The Hon'ble JUSTICE RANJIT KUMAR BAG  
& The Hon'ble DR. SUBESH KUMAR DAS**

**Case No – OA 707 OF 2019**

*Santilata Maity* Vs **The State of West Bengal & Ors.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;">04 <hr/>17.02.2020</p>	<p><i>For the Applicant</i> : <i>Mr. S.K. Nandi,</i> <i>Learned Advocate.</i></p> <p><i>For the State Respondents</i> : <i>Mrs. S. Agarwal,</i> <i>Learned Advocate.</i></p> <p><i>For the A.G.(A&amp;E), W.B.</i> : <i>Mr. B. Mitra,</i> <i>Departmental Representative.</i></p> <p style="text-align: center;"><i>Affidavit of service filed on behalf of the applicant is kept on record.</i></p> <p style="text-align: center;"><i>The applicant has prayed for direction upon the respondents for refund of Rs. 1,14,498/-, which was deducted from the retiring gratuity of the husband of the applicant. The applicant has also prayed for interest @ 8% p.a. on the amount of Rs. 1,14,498/-.</i></p> <p style="text-align: center;"><i>It appears from the materials on record that one Sudhir Kumar Maity, husband of the present applicant retired from service on December 31, 2011 and he died on May 11, 2017. The applicant as the wife of the deceased government employee has been receiving family pension. It further appears from the order of payment of gratuity issued on August 07, 2012 that the husband of the applicant received balance amount of gratuity to the tune of Rs. 1,36,286/- out of total amount of gratuity of Rs. 2,50,784/-, as a sum of Rs. 1,14,498/- was deducted from the retiring gratuity on the ground of excess payment of salary due</i></p>	

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*to wrong fixation of pay. Admittedly, the excess payment was deducted after retirement of husband of the applicant from government service and a sum of Rs. 1,14,498/- was deducted from the retiring gratuity of the said government employee after his retirement from service. Having heard both sides, we would like to observe that 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 :*

*"... (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*

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*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."*

We have laid down in the case of "Bireswar Dey v State of West Bengal & 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.

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 & Ors." (Supra), we would like to hold that the state respondents are duty bound to refund an amount of Rs. 1,14,498/- to the applicant, as the wife of the deceased Government employee. Since the husband of the applicant enjoyed the amount of Rs.

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1,14,498/- for prolonged period of time in excess of salary to which he was not entitled and since the applicant has approached this Tribunal after almost seven (07) years of retirement of the husband of the applicant, we are not inclined to grant any interest on the amount of Rs. 1,14, 498/- for payment to the applicant.

In view of our above findings, the respondent no. 5, the Commandant, State Armed Police, 2<sup>nd</sup> Battalion, Barrackpore is directed to refund Rs. 1,14,498/-, to the applicant within a period of 12 (twelve) weeks from the date of communication of the order.

With the above direction, the original application stands **disposed of.**

Let a plain copy of the order be supplied to both parties.

( S.K.DAS)  
Member ( A)

( R.K.BAG)  
Member (J)

*H.S*