

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 1048 OF 2014**

*Paresh Chandra Singha* 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;">17</p> <hr/> <p>11.04.2019</p>	<p><i>For the Applicant : Mrs. S. Mitra, Learned Advocate.</i></p> <p><i>For the State Respondents : Mr. S. Bhattacharyya, Departmental Representative.</i></p> <p><i>For A.G.(A&amp;E), W.B. : Mr. B. Mitra, Departmental Representative.</i></p> <p>The applicant has prayed for direction upon the respondents for refund of an amount of Rs. 80,257/- which was recovered from the retiring gratuity of the applicant on the ground of excess payment during the period of service of the applicant.</p> <p>The applicant retired from service from the establishment of the respondent no. 4, Sub-Divisional Land &amp; Land Reforms Officer, Jhargram on August 31, 2008. It appears from the copy of gratuity payment order dated September 01, 2008 that the applicant was entitled to get retiring gratuity of Rs. 2,42, 237/-, but direction was issued for recovery of an amount of Rs. 67,008/- on the ground of excess payment of salary during the period of service of the applicant. The contention of the applicant is that he received the balance amount of gratuity in terms of the gratuity payment order dated September 01, 2008.</p>	

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The question of consideration of the Bench is whether the applicant is entitled to get refund of an amount of Rs. 67,008/-. Learned Counsel for the applicant has failed to produce any copy of order for deduction of an amount of Rs. 80,257/- from the retiring gratuity of the applicant on the ground of excess payment of salary and as such we are of the opinion that the prayer for refund of Rs. 80,257/- is not justified under the law. What transpires from the material on record is that the applicant is entitled to get refund of Rs. 67,008/- in support of which copy of gratuity payment order is produced by the departmental representative of the respondent A.G., W.B.

Having heard all the parties and on consideration of the fact of recovery of an amount of Rs. 67,008/- from the retiring gratuity of the applicant on the ground of excess payment of salary during the period of service of the applicant, we would like to follow the decision of the Hon'ble Supreme Court in "State of Punjab v Rafiq Masih" reported in (2015) 4 SCC 334. The Hon'ble Supreme Court has summarised the following situations in paragraph 18 of the judgment of "State of Punjab v Rafiq Masih" (Supra) 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*

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*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."*

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

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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 are of the view that the state respondents are bound to refund an amount of Rs.67,008/- to the applicant within specific of time. In view of our above observation, the respondent no. 4, Sub-Divisional Land & Land Reforms Officer, Jhargram is directed to refund Rs. 67,008/- 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 is 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