

West Bengal Administrative Tribunal

Present.-

The Hon'ble Justice Ranjit Kumar Bag

&

The Hon'ble Dr. Subesh Kumar Das

Case No. **OA-213 of 2018**

Sri Ashoke Kr. Kabiraj

Versus

The State of West Bengal & Ors.

Serial No. and
date of orderOrder of the Tribunal
with signatureOffice action with date
and dated signature of
parties when necessary.

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21/11/2019

For the Applicant: Mr. B.K. Halder,
Mr. I. Halder,
Ld. Advocates.**For the State Respondent** : Mr. A.L. Basu,
Ld. Advocate.

The applicant has prayed for direction upon the respondents for refund of an amount of ₹ 2,76,383/- which was recovered from the retirement benefits of the applicant on the ground of excess payment due to wrong fixation of pay.

The applicant retired as Assistant Sub-Inspector of Police on February 28, 2017 from the office of the respondent no. 2, Superintendent of Police, Purba Bardhaman. It appears from the entries made in the copy of the Service Book annexed to the original application and the order communicated to the Principal Accountant General (A&E), West Bengal by the respondent no. 2 on July 12, 2017 that excess payment was made to the applicant to the tune of ₹ 2,76,383/- due to wrong fixation of his pay of ₹ 1,117/- instead of ₹ 962/- w.e.f. June 21, 1993 and thereby excess payment was drawn by the applicant during the period from September 14, 1995 to February 28, 2017.

The question for consideration of the Tribunal is whether the applicant is entitled to get refund of the amount of ₹ 2,76,383/- which was deducted from his

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	<p>retirement benefits after his retirement from service.</p> <p>Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that there was excess payment of ₹ 2,76,383/- to the applicant due to wrong fixation of his pay. However, this wrong fixation of pay was detected by the office of the Accountant General (A&E), West Bengal after retirement of the applicant from service and recovery was made from the retirement benefits after his retirement. We would like to point out that the fixation of pay of the applicant has been rectified by the respondent no. 2, Superintendent of Police, Purba Bardhaman will be the basis for drawing of pension by the applicant. In other words the applicant will not be permitted to draw pension on the basis of wrong fixation of pay.</p> <p>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> <i>(ii) Recovery from the retired employees, or the employees who are due to retire within one year of the order of</i></p>	

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	<p><i>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 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 & 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 retirement benefits 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>	

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Csm	<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 & Ors." (Supra), we are of the view that the state respondents are bound to refund an amount of ₹ 2,76,383/- to the applicant within specific period of time.</p> <p>In view of our above findings, the respondent no. 2, Superintendent of Police, Purba Bardhaman is directed to refund a sum of ₹ 2,76,383/- 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.</p> <p>Let a Plain Copy of the order be supplied to both parties.</p> <p style="text-align: center;">S. K. DAS MEMBER(A)</p> <p style="text-align: center;">R. K. BAG MEMBER(J)</p>	