

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

Hon'ble Justice Soumitra Pal,
Hon'ble Dr. Subesh Kumar Das,

Hon'ble Chairman &
Administrative Member.

CASE NO. OA 355 of 2018.

MANGAL CHANDRA SEN – VERSUS- STATE OF WEST BENGAL & OTHERS.

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;">8</p> <hr/> <p>2.7.2019.</p>	<p>For the Applicant : Mrs. S. Mitra, Advocate.</p> <p>For the Respondents : Mr. S.N. Ray, Advocate.</p> <p>In this application, Mangal Chandra Sen, the applicant, has prayed for certain reliefs, the relevant portion of which is as under :-</p> <p>“(a) Pass an order directing the respondents to release the arrears of pension payable to the applicants calculating the retirement benefit from the date of appointment of the applicants, this is from 18.04.1996.</p> <p>(b) Pass an order directing the respondent authority to refund the amount paid to the respondent authority for the period of alleged excess payment made to the applicants from 18.04.1996 to 30.4.1997.....”.</p> <p>The matter was admitted and directions were issued for filing reply and rejoinder. Reply has been filed on behalf of the State respondents and is on record.</p> <p>On a query, Mrs. S. Mitra, learned advocate appearing on behalf of the applicants submit that though the applicant is drawing pension, however, if prayers are allowed, his client would be getting enhanced pension.</p>	

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	<p>Drawing our attention to the office order dated 9th April, 1996, appearing at page 26 of the application, it is submitted that since it is evident that pursuant to the said office order, the applicant had joined on 18th April, 1996, the respondent authorities may be directed to recalculate the retirement benefits and to pay pension from 18th April, 1996 and to return the amount already refunded by the applicant for the alleged excess payment made to the applicant from 18th April, 1996 to 30th April, 1997. In this regard, our attention has been drawn to the order dated 19th December, 2012 passed in W.P.S.T. No. 335 of 2012 Gora Chand Bej –vs- The State of West Bengal & Others, the order delivered on 9th January, 2013 passed in W.P.S.T. No. 265 of 2012 Jagabandhu Mahata – versus- State of West Bengal & Ors passed by the High Court and the order dated 16th August, 2013 passed in OA 518 of 2013 C. Soren-Versus- The State of West Bengal & Ors.</p> <p>Mr. S.N. Ray, learned advocate appearing on behalf of the State respondents relying on the reply, particularly paragraph 10 thereof, submits that as the applicant had joined the post on 1st May, 1997 and not on</p>	

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	<p>18th September, 1996, in view of the memo dated 17th May, 2002, and the applicant acting on the said memo had refunded the excess payment made to him from 18th April, 1996 to 30th April, 1997, the issue cannot be reopened and the applicant is not entitled to the orders as prayed for.</p> <p>Heard Mrs. Mitra and Mr. Ray, learned advocates for the parties.</p> <p>There is no dispute that Mangal Chandra Sen, the applicant is drawing pension. It appears from the reply filed by the State that the date of joining of the applicant is 1st May, 1997 and not 18th September, 1996 as mentioned in the memo dated 17th May, 2002. The applicant had acted on the said memo and at that relevant point of time had refunded the excess payment made to him from 18th April, 1996 to 30th April, 1997 which also means that he has accepted 1st May, 1997 as the date of joining the post. Since he accepted the memo and had refunded the excess payment, now he cannot reopen the issue and pray for refund. The judgements in Gora Chand Bej (supra), Jagabandhu Mahata (supra) and in C.Soren (supra) are distinguishable on facts as therein</p>	

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Skg.	<p>the question was whether the applicants therein had completed ten years of service, which is a pre condition for granting pension, whereas in the case in hand, the applicant is drawing pension. Prayer for enhanced pension and for refund of the amount from 18th April, 1986 to 30th April, 1987 cannot be acceded to as the applicant, as already mentioned, had acted on the memo dated 17th May, 2002 and had refunded the amount at that relevant point of time, which means that he had accepted the date of joining as 1st May, 1997. Hence for the reasons as aforesaid, the applicant is not entitled for refund as well as for enhancement of pension. Thus, there is no order is passed on this application. The application is dismissed.</p> <p>(Subesh Kumar Das) Member (A).</p>	<p>(Soumitra Pal) Chairman.</p>