

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

**Hon'ble Justice Soumitra Pal, Hon'ble Chairman.**  
**& Hon'ble Dr. Subesh Kumar Das, Administrative Member.**

Case No. OA 413 of 2018.

AMAL CHANDRA SHYAM – VS- STATE OF W.B. & 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>5 18.12.2018.</p>	<p>For the Applicant : Mrs. S. Mitra, Advocate.</p> <p>For the State Respondent: Mr. S.K. Chakraborty, Advocate.</p> <p>For the Principal Accountant General (A &amp; E) W.B. : Mr. B. Mitra, Departmental representative.</p> <p>As prayed for, leave granted to the applicant to correct the typographical error in prayer (a) of the original application.</p> <p>On a query it is further submitted by Mrs. S. Mitra, learned advocate for the applicant that she is not pressing for issuing revised pension payment order and disbursement of arrear pension and due terminal benefits as stated in the prayers.</p> <p>In this application the applicant, an Assistant Operator and a Group C employee, who had retired from service on 31<sup>st</sup> March, 2016 has challenged the memo dated 10<sup>th</sup> April, 2017 seeking recovery of Rs.4,59,410/- and Rs. 1,09,773/- on the ground that same is not permissible in view of the judgement of the Supreme Court passed in State of Punjab and Others –Vs- Rafiq Masih (2015) 4 SCC 334. Submission is that as the order</p>	

**ORDER SHEET**

AMAL CHANDRA SHYAM.

Form No. ....

Vs.

Case No. OA 413 of 2018.

The State of W.B. &amp; 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>directing recovery of the amount was passed after the superannuation of the applicant as evident from the memo dated 5<sup>th</sup> May, 2016, being annexure 'C' to the application, appropriate order may be passed.</p> <p>We find that though on 12<sup>th</sup> October, 2018 directions were issued on the state respondent to file reply, it has not been filed. In the absence of reply, the statements made in that application are deemed to be admitted by the respondents. Since admittedly the applicant was a group C employee, who had superannuated on 31<sup>st</sup> March, 2016 and as the memo dated 5<sup>th</sup> May, 2016 directing recovery was made after the date of superannuation, in our view the issue is covered by the judgement passed in State of Punjab –Vs- Rafiq Masih (supra) where the Supreme Court had held as under :-</p> <p><i>“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :</i></p>	

**ORDER SHEET**

AMAL CHANDRA SHYAM.

Form No. ....

Vs.

Case No. OA 413 of 2018.

The State of W.B. &amp; 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><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 five 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>Since the issue is covered by the principles of law laid down by the Supreme Court, the order directing recovery of Rs. 4,59,410/- and Rs. 1,09,773/- from the applicant is set aside and quashed. The application is</p>	

**ORDER SHEET**

AMAL CHANDRA SHYAM.

Form No. ....

Vs.

Case No. OA 413 of 2018.

The State of W.B. &amp; 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
Skg.	<p>allowed. The Block Development Officer, Raiganj Development Block, Raiganj, Uttar Dinajpur – the respondent no. 4 is directed to refund the said sum of Rs. 4,59,410/- and Rs.1,09,773/- to the applicant within eight weeks from the date of presentation of a copy of this order after verifying the records.</p> <p>(Subesh Kumar Das) Member(A).</p> <p>(Soumitra Pal) Chairman.</p>	

**ORDER SHEET**

AMAL CHANDRA SHYAM.

Form No.

.....

Vs.

Case No. OA 413 of 2018.

The State of W.B. & 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
---------------------------------------	---	--