

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Justice Soumitra Pal (Chairman)****& The Hon'ble Dr.Subesh Kumar Das (Administrative Member)****Case No. OA – 444 OF 2013****DR ABDUR RAHED NADAB Vs. THE STATE OF WEST BENGAL.**

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;"><u>20</u> 24.08.18</p>	<p>For the Applicant : Mrs.S.Mitra Advocate</p> <p>For the Respondent : None</p> <p>For the A.G.W.B. : Mr.B.Mitra (Departmental Representative)</p> <p>In this application, the applicant, Professor in the Department of General Surgery, Medical College, Kolkata, who had retired on 28<sup>th</sup> February, 2011 after attaining the age of 62, has prayed for a direction upon the respondents to refund Rs.4,45,312/-, which has been deducted from the gratuity and commuted value of pension, along with interest. It appears that the applicant had received the pension payment order on 25<sup>th</sup> August, 2010 and thereafter he had retired. Referring to the Memo. dated 4<sup>th</sup> March, 2011 issued by the Principal, Medical College, Kolkata, the respondent no. 3 to the Director of Medical Education &amp; Ex-Officio Secretary to the Government of West Bengal, the respondent No. 3, it is submitted that since evidently the application of the applicant was allowed to draw non-practicing allowance which was subsequently sanctioned, though not formally entered into the official records, steps taken by</p>	

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	<p>the respondent authorities in deducting the said sum of Rs.4,45,312/- is harsh and illegal. It is submitted by Mrs.S.Mitra, learned advocate appearing on behalf of the applicant, that though several opportunities were granted to the respondent authorities to file reply, it has not been filed. Therefore, according to her as the statements made in the Original Application have gone uncontroverted, those are deemed to be correct. Accordingly, prayer is made to grant the reliefs as prayed for as evident from pages 7 and 8 of the application.</p> <p>Mr.B.Mitra, the Departmental representative submits that the sum of Rs.4,45,312/- has been deducted in accordance with law.</p> <p>Heard Mrs.S.Mitra, learned advocate for the applicant and Mr.B.Mitra, the Departmental representative for the Accountant General (A&amp;E) West Bengal. None appears on behalf of the State respondents. Admittedly, the Original Application was filed on 11<sup>th</sup> March, 2013. Thereafter, the matter was admitted. From time to time, the matter came up for hearing. On several dates directions were issued to file affidavits. However, till date no reply has been filed on behalf of the State</p>	

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BLR	<p>respondents controverting the statements in the Original Application. Therefore, as the statements made in the Original Application have gone uncontroverted, it is covered by the principles of the doctrine of non-traverse. Hence, the statements in the application are deemed to be correct. Since we find from page 10 of the application that the applicant had applied on 15<sup>th</sup> April, 2008 before the Principal, Calcutta Medical College to draw non-practicing allowance and since it was granted, as evident from Memo. dated 4<sup>th</sup> March, 2011 issued by the Principal, Medical College, Kolkata as evident from page 16 of the application, the deduction of Rs.4,45,312/- from the gratuity cannot be sustained. Thus, the Memo. dated 3<sup>rd</sup> November, 2011 issued by the Principal, Medical College, Kolkata, appearing at page 18 of the application is set aside and quashed. Hence, the application is allowed. Therefore, the Principal, Medical College, Kolkata, the respondent No.3 is directed to refund the said amount of Rs.4,45,312/- within ten weeks from the date of presentation of a copy of this order along with interest @ 8 % to be calculated from the date of payment of gratuity till 31<sup>st</sup> July, 2018.</p> <p style="text-align: center;">.....</p> <p style="text-align: center;"><b>(S.K.DAS)</b> <b>MEMBER(A)</b></p> <p style="text-align: center;"><b>(SOUMITRA PAL)</b> <b>CHAIRMAN</b></p>	

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