

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 51 OF 2016**

*Subrata Sankar Roy 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
18 <hr/> 27.02.2019	<p><i>For the Applicant : Mr. M. Karim, Mr. M. Islam, Mr. S. Haque, Mr. S.S. Mandal, Learned Advocates.</i></p> <p><i>For the State Respondents : Mr. S. Ghosh, Learned Advocate.</i></p> <p><i>For A.G., W.B. : Mr. B. Mitra, Departmental Representative.</i></p> <p><i>The applicant has prayed for direction upon the respondents for refund of an amount of Rs. 1,00,506/- which was recovered from the retiring gratuity and leave encashment of the applicant on the ground of excess payment due to wrong fixation of pay. The applicant retired from the post of Assistant Sub-Inspector of Police on June 13, 2015 from the establishment of the respondent no. 3. It appears from the reply submitted of the state respondents that an amount of Rs. 93,406/- was recovered from the retiring gratuity of the applicant and an amount of Rs. 7,100/- was recovered from the amount of leave encashment of the applicant.</i></p> <p><i>The issue for consideration of the Tribunal is whether the applicant is entitled to get refund of</i></p>	

**ORDER SHEET**

*Subrata Sankar Roy*

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

Case No. **OA 51 OF 2016**

.....

*Rs.93,406/- as retiring gratuity and Rs. 7,100/- as leave encashment.*

*Having heard Learned Counsel representing both parties, we find that there was excess of payment of Rs. 93,406/- to the applicant due to wrong fixation of pay while applicant in service. However, the wrong fixation of pay was detected and order for recovery of excess payment from retiring gratuity was made after retirement of the applicant from service. However, the amount of leave encashment was calculated on the verge of the retirement of the applicant though the amount of leave encashment was payable to the applicant only after his retirement from service. The applicant received the amount of leave encashment on the date of his retirement from service on June 13, 2015 due to wrong fixation of pay of the applicant while he was in service and the order for recovery of excess payment of Rs. 7,100/- was passed on August 26, 2015.*

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 :

*"... (i) Recovery from the employees belonging to Class III*

**ORDER SHEET**

*Subrata Sankar Roy*

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

Case No. **OA 51 OF 2016**

.....

*and Class IV service (or Group C and Group D 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*

**ORDER SHEET**

*Subrata Sankar Roy*

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

Case No. **OA 51 OF 2016**

.....

*(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 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.93,406/- to the applicant. Since the amount of leave salary was payable to the applicant after retirement and since the same was recovered due to excess payment within a period of 2 (two) months after payment, we are of the view that the principle of law enunciated by the Hon'ble Supreme Court in the case of "State of Punjab v Rafiq Masih" (Supra) will not apply in case of recovery of Rs. 7,100/- as excess payment of leave encashment of the applicant. So, the applicant is not entitled to recover the said amount of Rs. 7,100/- as excess payment of leave

**ORDER SHEET**

*Subrata Sankar Roy*

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

Case No. **OA 51 OF 2016**

.....

<p><i>H.S</i></p>	<p>encashment.</p> <p>In view of our findings the respondent no. 3, Commandant, 9<sup>th</sup> Bn. State Armed Police is directed to refund an amount of Rs. 93,406/- to the applicant within a period of 12 (twelve) weeks from the date of communication of the order.</p> <p>With the above direction, the original application is disposed of.</p> <p>Let a plain copy of the order be supplied to both parties.</p> <p>( S.K.DAS) Member ( A)</p> <p>( R.K.BAG) Member (J)</p>	
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