

**ORDER SHEET**  
**West Bengal Administrative Tribunal**

Present.-  
The Hon'ble Justice Ranjit Kumar Bag  
&  
The Hon'ble Dr. Subesh Kumar Das

Case No. **OA - 530 of 2014**

*Sujit Kumar Chatterjee*

Versus

*The State of West Bengal & Ors.*

Serial No. and  
date of order

Order of the Tribunal  
with signature

Office action with date  
and dated signature of  
parties when necessary.

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07/02/2019

***For the Applicant*** : *Mr. R.A. Chowdhury,*  
*Ld. Advocate.*

***For the State Respondent*** : *N O N E.*

*Liberty is given to the applicant to implead Estate Manager, O.S.D. and Ex-Officio Deputy Secretary to the Government of West Bengal, Department of Urban Development, Kalyani as Respondent No. 4 by way of amendment of cause-title of the original application in course of this day.*

*The applicant has prayed for direction upon the respondents for fixation of appropriate salary of the applicant and for refund for the amount deducted from the Gratuity of the applicant along with interest.*

*It appears from the materials on record that the applicant retired from the post of Head Clerk in the establishment of Estate Manager and Ex-Officio Deputy Secretary to the Government of West Bengal, Department of Urban Development, Kalyani on June 30, 2003. The contention of the applicant is that the amount of Rs. 82, 046/- was deducted wrongly from the retiring Gratuity of the applicant on the ground of overdrawal of salary due to wrong fixation of pay. The applicant has also prayed for interest on the*

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	<p><i>amount deducted from the retiring Gratuity of the applicant @ 10% per annum.</i></p> <p><i>None appears on behalf of the state respondents on call. Mr. Chowdhury, Learned Counsel for the applicant has not pressed for prayer of the applicant for fixation of salary. He fairly submits that the amount recovered from the retiring Gratuity of the applicant may be refunded with interest.</i></p> <p><i>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></p> <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 5 years, before the order of recovery is issued;</i></p>	

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	<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><i>We have laid down in the case of "Bireswar Dey v State of West Bengal &amp; 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 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.</i></p> <p><i>By following the decision of the Hon'ble</i></p>	

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	<p><i>Supreme Court in the case of “State of Punjab v Rafiq Masih (Supra)” and the decision of “Bireswar Dey v State of West Bengal &amp; Ors (Supra)” we are of the view that the state respondents are bound to refund the amount of Rs. 82, 046/- to the applicant along with interest. On consideration of the rate of interest paid for G.P.F. or P.P.F. and rate of interest paid by the Nationalised Bank for long term fixed deposit, the applicant is entitled to get interest @ 8% per annum. Since the order for recovery of an amount of Rs. 82, 046/- from the Gratuity of the applicant due to overdrawal of pay and allowances was issued in the month of January 01, 2005 and since the applicant approached the Tribunal praying for refund of the said amount of money by filing the present application on April 28, 2014, we are not inclined to grant any interest to the applicant during the aforesaid period of time. However, the applicant is entitled to get interest from the month of May 01, 2014 till the last date of the month preceeding the month in which the payment will be actually made to the applicant.</i></p> <p><i>In view of our above findings, the respondent no. 4, Estate Manager, O.S.D. and Ex-Officio Deputy Secretary to the Government of West Bengal, Department of Urban Development, Kalyani is</i></p>	

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	<p><i>directed to refund an amount of Rs. 82, 046/- to the applicant along with interest @ 8% per annum on the said amount of money during the period from May 01, 2014 till the last date of the month preceeding the month in which the payment will be actually made, within a period of 12 (twelve) weeks from the date of communication of the order. With the above direction, the original application is <b>disposed of</b>.</i></p> <p><i>Let a <b>Plain Copy</b> of the order be supplied to the applicant.</i></p> <p><b>S. K. DAS</b> <b>MEMBER(A)</b></p> <p><b>R. K. BAG</b> <b>MEMBER(J)</b></p>	

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