

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

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

Case No. **OA - 614 of 2014**

*Ram Krishna Ghosh*

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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06/12/2018

***For the Applicant*** : *Mr. G.P. Banerjee,*  
*Ld. Advocate.*

***For the State Respondent*** : *Mr. M.N. Roy,*  
*Ld. Advocate.*

***For the A.G., W.B.*** : *Mr. B. Mitra,*  
*Depttl. Representative.*

*The applicant has prayed for direction upon the respondents for grant of pension and other retirement benefits after cancellation of the impugned order dated January 19, 2013 submitted by the Finance Department, Government of West Bengal and the order communicated by the Joint Director of Agriculture, Burdwan Range, Burdwan, under letter dated April 23, 2014.*

*It appears from the materials on record that applicant joined as Store Keeper in the establishment of Joint Director of Agriculture, Burdwan Range, Burdwan on June 02, 1983 in the pay-scale of Rs. 300-685/- (Scale No. 6 under ROPA, 1981). The applicant moved this Tribunal by filing OA-9461/2008 praying for enhancement of pay-scale of the applicant at par with one Sudarshan Chakraborty, Store-Keeper working in the establishment of Director of Agriculture in the pay-scale of Rs. 380-910/-(Scale No. 9 under ROPA, 1981). The Principal Secretary to the Government of West Bengal,*

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	<p><i>Department of Agriculture passed a reasoned order on June 16, 2009 by granting Scale no. 9 i.e. Rs. 380-910/- to the applicant on the ground of parity in giving the pay-scale to Sudarshan Chakraborty, Store-Keeper working in the Directorate of Agriculture in compliance with the direction given by the Tribunal in OA-9461 of 2008. The reasoned order passed by the Principal Secretary to the Government of West Bengal, on June 16, 2009 was asked to be reviewed by the Finance Department. On November 25, 2010 the previous reasoned order was reviewed by the Principal Secretary to the Government of West Bengal, Department of Agriculture by passing another reasoned order by granting Scale No. 9 to the applicant. On January 19, 2013 the Finance Department turned down the claim of the applicant to get Scale No. 9 at par with Shri Sudarshan Chakraborty on the ground that they are not similarly circumstanced. The Respondent No. 4 sent a letter to the applicant on April 23, 2014, whereby the said respondent communicated to the applicant for recovery of Rs. 3,35,348/- from the retiring Gratuity of the applicant on the ground of excess payment of salary for giving wrong pay-scale to the applicant by the order of Principal Secretary to the Government of West Bengal, Department of Agriculture without concurrence of the Finance Department, Government of West Bengal. The operation of the said letter dated April 23, 2014 was stayed by an interim order passed by the Tribunal in the present</i></p>	

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	<p><i>original application on July 18, 2014 and the said interim order is still in force.</i></p> <p><i>With the above factual matrix, Mr. G.P. Banerjee, Learned Counsel for the applicant contends that the order passed by the Finance Department, Government of West Bengal is not justified on the ground that there is no existence of 2 (two) separate cadres of Store-Keepers under the Directorate of Agriculture as pointed out in the note of the Finance Department. He further submits that the duties and responsibilities of the Store-Keepers working in the Burdwan Range and the duties and responsibilities of the Store-Keeper working in the Directorate of Agriculture are same and as such the applicant is entitled to get Scale No. 9 which has been denied to him by the note of the Finance Department. On the other hand, Mr. M.N. Roy, Learned Counsel representing the state respondents submits that the appointing authority of the applicant as Store-Keeper is the Joint Director of Agriculture, Burdwan Range, whereas the appointing authority of Sudarshan Chakraborty as Store-Keeper is the Director of Agriculture, Government of West Bengal. He further submits that the procedure for recruitment of Store-Keeper in the establishment of Director of Agriculture is different from the procedure for appointment of the Store-Keeper in the establishment of Joint Director of Agriculture, Burdwan</i></p>	

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	<p><i>Range. Mr. Roy also submits that there is no existence of Recruitment Rules for recruitment to the post of Store-Keeper in the establishment of Joint Director of Agriculture, Burdwan Range, whereas the Recruitment Rules are in existence for recruitment to the post of Store-Keeper in the Directorate of Agriculture.</i></p> <p><i>Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the present applicant was appointed as Store-Keeper in the scale of pay of Rs. 300-685/- (Scale No. 6 under ROPA 1981) in the establishment of Joint Director of Agriculture, Burdwan Range. The admitted position is that Mr. Sudarshan Chakraborty was appointed as Store-Keeper in the establishment of Director of Agriculture in the pay-scale of Rs. 380-910/- (Scale No. 9 under ROPA 1981). The question for consideration of the Tribunal is whether the applicant is entitled to get pay-scale enjoyed by Mr. Sudarshan Chakraborty as Store-Keeper. The applicant was appointed to the post of Store-Keeper in the regional office of Joint Director of Agriculture, Burdwan Range, where no Recruitment Rule was in existence, whereas Mr. Sudarshan Chakraborty was appointed as Store-Keeper in the establishment of Director of Agriculture, Government of West Bengal on the basis of the Recruitment Rules which were in existence at the relevant point of time. The appointing authority of the</i></p>	

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	<p><i>applicant and the appointing authority of Sudarshan Chakraborty are not the same. The procedure for selection and appointment to the post of Store-Keeper in the regional office and in the Directorate of Agriculture is not the same. No Gradation List or Seniority List is placed on record to establish that both the applicant and Mr. Sudarshan Chakraborty belong to the same cadre. Under the above circumstances, we are of the view that the Finance Department, Government of West Bengal has rightly held that the applicant is not entitled to get pay-scale enjoyed by Mr. Sudarshan Chakraborty as claimed by the applicant. The logical inference is that the order passed by the Finance Department, Government of West Bengal on January 19, 2013 is valid and justified under the law.</i></p> <p><i>With regard to the proposal for deduction of a sum of Rs. 3,35,348/- from the retiring Gratuity and other retirement benefits of the applicant, we are of the view that the state respondents cannot deduct any amount of money from the retirement benefits and retiring Gratuity of the applicant, if excess payment was made due to grant of wrong pay-scale while the applicant was in service. On our query, Mr. Banerjee submits that the Gratuity and Leave Encashment have been disbursed in favour of the applicant. He further submits that the applicant is only getting provisional pension due to</i></p>	

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	<p><i>dispute over grant of pay-scale to the applicant. Had the impugned order dated April 23, 2014 not been passed by the Respondent No. 4, the applicant would have received the entire amount of Gratuity including alleged overdrawal amount of Rs. 3,35,348/- at least within a period of 3 (three) months from the date of retirement on October 31, 2012. The Hon'ble Supreme Court has summarized 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> <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>	

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	<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 Supreme Court in the "State of Punjab v Rafiq Masih (Supra)" and in the case of "Bireswar Dey v State of West Bengal &amp; Others (Supra)", we are of the view that the state respondents cannot deduct the amount of Rs. 3,35,348/- from the retiring Gratuity of the applicant. On the contrary, the applicant is entitled to get interest on the entire amount of Gratuity from February 01, 2013 till the</i></p>	

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	<p><i>last date of the month preceding the month in which the amount will be actually paid to the applicant, as the delay in payment of gratuity can not be attributed to the conduct of the applicant. The applicant is also entitled to get interest on the amount of Leave Encashment during the aforesaid period of time.</i></p> <p><i>On consideration of the rate of interest paid for G.P.F. or P.P.F. and the rate of interest paid by the Nationalized Bank for Long Term Fixed Deposit, the applicant is entitled to get interest at the rate of 8% per annum on the amount of Gratuity and Leave Encashment during the period from February 01, 2013 till the last date of the month preceding the month in which the said amount will be actually paid to the applicant.</i></p> <p><i>In view of our above findings, the impugned letter dated April 23, 2014 issued by the Respondent No. 4 is hereby set aside. The respondent no. 4, Joint Director of Agriculture, Burdwan Range is directed to take necessary steps for release of pension after adjustment of the amount of provisional pension already granted to the applicant, Gratuity and Leave Encashment in favour of the applicant along with interest @ 8% per annum on the amount of Gratuity and Leave Encashment during the period from February 01, 2013 till the last month preceding the month in which the payment will be made</i></p>	



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Csm	<p><i>within a period of 12 (twelve) weeks from the date of communication of the order.</i></p> <p><i>With the above direction the original application stands <b>disposed of</b>.</i></p> <p><i>Let a <b>Plain Copy</b> of the order be supplied to both parties.</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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