

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – **OA 656 of 2017**

Tapan Kumar Chowdhury 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 09.01.2020	<p>For the Applicant : Mr. D.N. Roy, Mr. S. Ghosh, Mr. R.K. Mondal, Learned Advocates.</p> <p>For the Respondent : Mr. M.N. Roy, Learned Advocate.</p> <p>For the AG (A&E),WB : Mr. B. Mitra, Departmental Representative.</p> <p>Liberty is given to the applicant to amend the cause title of the original application by way of substituting the words “Director of Textiles, Government of West Bengal” with “Commissioner of Textiles and Sericulture, West Bengal” in course of this day.</p> <p>The applicant has prayed for direction upon the respondents for re-fixation of pension by taking into consideration the initial basic pay of ₹ 510/- on the date of joining in the post of Assistant Inspector of Sericulture after setting aside the order conveyed under Memo. No. 128/Seri dated April 18, 2013 issued by the Deputy Director of Textiles (Sericulture), Midnapore. The applicant has also prayed for refund of an amount of ₹ 3,36,586/- along with interest, which was recovered as excess payment of salary from the retiring gratuity of the applicant after</p>	

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his retirement from service.

The applicant joined in the post of Assistant Inspector, Sericulture on July 24, 1979. He was confirmed in the said post of Assistant Inspector w.e.f. January 1, 1984. The applicant and 53 other officers working under Directorate of Sericulture submitted application for appointment in the post of Extension Officer and the said applications were forwarded to the Secretary of Public Service Commission, West Bengal by the Director of Sericulture, West Bengal on January 17, 1983. The applicant was appointed to the post of Extension Officer under Directorate of Sericulture, West Bengal by Notification dated March 27, 1984 in the pay scale of ₹ 470-20-550-25-750-30-870-40-1230/- plus usual allowances admissible under the rules of the State Government. The initial basic pay of the applicant was fixed at ₹ 510/- w.e.f. June 1, 1984 in the scale of pay of ₹ 470-1230/- plus usual allowances by order dated July 19, 1986 issued by the Director of Sericulture, West Bengal. The service of the applicant was confirmed by order dated July 18, 1988 issued by Deputy Secretary to the Government of West Bengal, Department of Cottage & Small Scale Industries. He retired from service on October 31, 2013. About six months before superannuation of the applicant from service initial basic pay of the applicant was refixed at ₹ 470/- instead of ₹ 510/- w.e.f. June 1, 1984 by order of the Deputy Director of Textiles (Sericulture), Midnapore on April 18, 2013 on the ground that

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initial fixation of pay of the applicant was done erroneously. Consequent to re-fixation of pay of the applicant before his retirement from service a sum of ₹ 3,36,586/- was deducted from retiring gratuity on the ground of excess payment due to wrong fixation of pay while he was in service.

With the above factual matrix, Mr. D.N. Roy, Learned Counsel for the applicant, contends that the applicant was appointed in the post of Extension Officer by way of promotion by issuance of Notification dated March 27, 1984 in the name of the Governor by the Assistant Secretary to the Government of West Bengal, Department of Cottage & Small Scale Industries. In support of his contention that the applicant was appointed on promotion in the post of Extension Officer, he has relied on the Recruitment Rules notified on January 22, 1990 for filling up the post of Extension Officer in the Directorate of Sericulture, West Bengal. By referring to the method of recruitment to fill up the post of Extension Officer in the Directorate of Sericulture from the Recruitment Rules, Mr. Roy submits that the post of Assistant Inspector held by the applicant before his appointment to the post of Extension Officer was one of the feeder posts for promotion to Extension Officer in the Directorate of Sericulture. By referring to the judgment of the Hon'ble Supreme Court in "State of Punjab v. Rafiq Masih" reported in (2015) 4 SCC 334, Learned Counsel has tried to impress upon us that the initial fixation of pay of the applicant even if done erroneously, the

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same must be given effect for grant of pension to the applicant. The gist of submission of Mr. Roy is that the appointment of the applicant in the post of Extension Officer in the Directorate of Sericulture is by way of promotion and as such initial fixation of pay of the applicant at ₹ 510/- instead of ₹ 470/- is justified and the same cannot be subsequently rectified by the state respondents immediately before retirement of the applicant from service.

Mr. M.N. Roy, Learned Counsel representing the state respondents, has referred to the Notification dated March 27, 1984 issued in the name of the Governor by the Assistant Secretary to the Government of West Bengal, Department of Cottage & Small Scale Industries and submitted that 14 candidates were appointed by the said Notification in the post of Extension Officer in the Directorate of Sericulture and out of those 14 candidates one Ashis Kumar Pani who was appointed as Extension Officer worked as Lecturer in Berhampore in the district of Murshidabad and the said post of Lecturer was not included in the feeder posts for promotion to Extension Officer in terms of the Recruitment Rules notified on January 22, 1990. The specific submission of Mr. M.N. Roy is that the applicant was appointed in the post of Extension Officer as a directly recruited departmental candidate in terms of the Recruitment Rules and as such the initial fixation of pay of the applicant at ₹ 510/- by taking into consideration the last pay drawn by him in the past service for fixation of pay was erroneous and thereby

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the applicant had drawn excess payment of salary to the tune of ₹ 3,36,586/- which was deducted from his retiring gratuity.

Having heard Learned Counsel representing both parties and on consideration of the facts disclosed above the first issue for our determination is whether the applicant was appointed in the post of Extension Officer in the Directorate of Sericulture by way of promotion or by way of direct recruitment as a departmental candidate. It is relevant to quote the provisions of Recruitment Rules notified under proviso Article 309 of the Constitution of India on January 22, 1990 for filling up the post of Extension Officer in the Directorate of Sericulture, which is as follows :

“Method of Recruitment :

- (i) By selection (direct recruitment), departmental candidates being eligible to apply;
- (ii) By promotion from the feeder posts consisting of Assistant Superintendent of Nurseries/Assistant Inspectors /Seed Examination Officer/Supervisor, Sericulture Training Institute/Junior Assistant, Silk Conditioning House and Silk Sub-Station/Manager, Tribal Demonstration Farm.
Provided that in order to be eligible for promotion officer should have put in three years' service as such in the post or posts taken together ;
- (iii) By inter transfer of holders of the posts :

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Provided that the ratio between the direct recruitment and promotion shall be 50:50”

On perusal of above method of recruitment for filling up the post of Extension Officer in the Directorate of Sericulture, we find that there is provision for promotion from the feeder post of Assistant Inspector and there is also provision for direct recruitment of the departmental candidates who are eligible to apply for appointment to the post of Extension Officer. In the instant case, the Director of Sericulture, West Bengal forwarded the application of 54 departmental candidates including the present applicant to the Secretary of Public Service Commission, West Bengal on January 17, 1983. The forwarding letter of the Director of Sericulture dated January 17, 1983 (Annexure-B to the original application) indicates that the Director of Sericulture has only forwarded the application of different departmental candidates including the applicant to the Secretary of Public Service Commission, West Bengal without specifically mentioning about recommendation of the names for promotion to the post of Extension Officer. The ACRs/APRs of the departmental candidates and the certificate of vigilance clearance and gradation list/seniority list are conspicuously absent from the forwarding letter dated January 17, 1983. Had the names of the departmental candidates been recommended to the Public Service Commission for promotion to Extension Officer, the forwarding note would have indicated the same and the copy of ACRs/APRs; gradation list/Seniority list and vigilance

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clearance certificates would have been enclosed by the Director of Sericulture.

The applicant was appointed in the post of Extension Officer in the Directorate of Sericulture by Notification dated March 27, 1984 issued in the name of the Governor by the Assistant Secretary to the Government of West Bengal, Department of Cottage & Small Scale Industries. We would like to quote the said Notification dated March 27, 1984, which is as follows :

**“ Government of West Bengal
Cottage & Small Scale Industries Department**

**No. 1195-Cot.(VI)
1Q-1(I)/82**

Dated Calcutta, the 27th March, 1984

NOTIFICATION

The Governor has been pleased to appoint on a temporary basis, the following persons to the temporary posts of Extension Officer/Manager, State Grainage under the Directorate of Sericulture, West Bengal as detailed in table below with effect from the date they take over charges and until further order

Sl. No.	Name of the appointee	Posts held at present	Posts in which appointed	Place of posting
1	Sri Moley Goswami	Asstt. Superintendent, Krishnapur Graft Nursery Malda.	Extension Officer	Karandighi Reeling Unit, West Dinajpur
2	Sri Bulbul Hossain Mondal	-Do- Bankura	-Do-	Chaki Rearing Centre Murshidabad
3	Sri Ashoke Mukherjee	-Do- Sadullapur Graft Nursery Malda	-Do-	Introduction of Seri amongst Tribal People Naxalbari, Darjeeling

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4	Bijon Kumar Mondal	Junior Asstt. Officer of Dev. Officer, Purulia	-Do-	Inter-State Tasar Project, Bankura
5	Tapan Kumar Chowdhury	Asstt. Supdt. Kalitha Nursery, Birbhum	-Do-	D.P.A.P. Jhargram, Midnapur.
6	Bijon Mukherjee	Asstt. Inspector Malda	Manager	State Grainage, Amnity, Malda
7	Ashis Kr. Pani	Lecturer, Berhampore, Murshidabad	Extension Officer	Introduction of Sericulture among tribal Chalsa, Jalpaiguri.
8	Nayan Kumar Rizal	Investigator, Office of the Dy. Director, Sericulture, Darjeeling.	-Do-	Hill Demonstration farm, Bijonbari, Darjeeling.
9	Samiran Roy	Sr. F.C.L.A. Central Tasar Research & Training Institute, Central Silk Board, Govt. of India.	Manager	Throwing Plant Malda.
10	Arunoday Biswas	Sr. F.C.L.A. Central Tasar Research & Training Institute, Central Silk Board, Govt. of India.	Extension Officer	Dev. of Seed Organisation, West Dinajpur
11	Sisir Kumar Sharma	Asstt. Superintendent, Seed Supply Station, Taldanga, Bankura	Manager	State Grainage Kalimpong, Darjeeling
12	Goutam Buddha Sinha	Senior Field-cum-Laboratory Asstt. Central Sericulture, Research & Training Institute, Berhampur, Murshidabad, (Govt.	Extension Officer	Khagrabadi composite Unit, Intensive Sericulture Development Project, Coochbehar.

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	<p style="text-align: center;">of India)</p> <p>13 Parimal Asstt. Inspector Extension D.P.A.P., Bankura Bikash ISDP, Jhargram, Officer Paul Midnapur</p> <p>14 Pulin Asstt. Inspector -Do- Training-cum-Servicing Behari Debra Sericulture Centre, Bankura Mullick Nursery, Midnapur</p> <p style="text-align: center;">2. The appointments are made in public interest.</p> <p style="text-align: center;">By order of Governor of West Bengal</p> <p style="text-align: center;">T.P. Ghosh <u>Assistant Secretary</u></p> <p>On plain reading of the above Notification dated March 27, 1984, we find that the applicant (SP No.-05) was appointed in the post of Extension Officer on temporary basis. The Notification of appointment does not indicate that the appointment is made in the post of Extension Officer by way of promotion. The candidates whose names appear in serial no. 7, 8, 9, 10 and 12 of the said Notification were appointed as Extension Officer along with the applicant on temporary basis, though the said candidates were not holding feeder posts for promotion to the cadre of Extension Officer under Directorate of Sericulture in terms of the Recruitment Rules. Had the applicant been appointed on promotion in the post of Extension Officer, the Notification would not have included the names of the candidates having serial no. 7, 8, 9, 10 and 12 who did not hold the feeder posts for promotion to Extension Officer as laid down in the Recruitment Rules.</p>	
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The admitted position is that the applicant along with other candidates who were appointed in the post of Extension Officer on temporary basis by Notification dated March 27, 1984 were confirmed in the permanent post of Extension Officer under Directorate of Sericulture by Notification dated July 18, 1988 issued in the name of the Governor by the Deputy Secretary to the Government of West Bengal, Department of Cottage & Small Scale Industries. Had the applicant been promoted to the post of Extension Officer from the feeder post of Assistant Inspector, he would not have been confirmed for the second time in the post of Extension Officer by Notification dated July 18, 1988, as the applicant was already confirmed in the service while working as Assistant Inspector under Directorate of Sericulture.

In view of our above findings, we would like to hold that the applicant was appointed in the post of Extension Officer under Directorate of Sericulture as directly recruited departmental candidate in terms of the Recruitment Rules. The logical inference is that the applicant was not appointed in the post of Extension Officer by way of promotion from the feeder post of Assistant Inspector in terms of the Recruitment Rules as contended on behalf of the applicant. The case made out by the applicant, thus, suffers a major jolt.

The next issue for our consideration is whether the initial

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<p>fixation of pay of the applicant on his appointment as Extension Officer under Directorate of Sericulture was done as directly recruited candidate or as promotee officer. The order of fixation of pay dated July 19, 1986 issued by the Director of Sericulture, West Bengal indicates that the initial pay of the applicant was fixed at ₹ 510/- w.e.f. June 1, 1984 instead of ₹ 470/- in the scale of pay of ₹ 470-1230/- erroneously by taking into consideration the last pay drawn by the applicant as Assistant Inspector and by treating the appointment of the applicant by way of promotion. Since the applicant was appointed in the post of Extension Officer as a directly recruited departmental candidate, the pay should have been fixed at the initial basic pay of ₹ 470/- in the scale of pay of ₹ 470-1230/- plus usual allowances admissible to the applicant under the Rules. This erroneous fixation of initial basic pay of the applicant was rectified by issuance of the impugned order dated April 18, 2013 issued by the Deputy Director of Textiles (Sericulture), Midnapore. Since the basic pay of the applicant was erroneously fixed at the initial stage of joining in the post of Extension Officer, we do not find any illegality or irrationality in re-fixation of the pay of the applicant by the impugned order dated April 18, 2013. We do not find any merit in the submission made by Mr. D.N. Roy that the rectification of previous erroneous pay fixation of the applicant could not be done after lapse of five years from the date when the erroneous pay fixation was done. We can, thus, hold without hesitation that the</p>	
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refixation of pay of the applicant was rightly done by the impugned order dated April 18, 2013 and the excess payment of salary was rightly calculated to the tune of ₹ 3,36,586/-.

Now, the question for consideration of the Tribunal is whether the state respondents were justified in deducting ₹ 3,36,586/- from the retiring gratuity of the applicant due to wrong fixation of pay after his retirement from service. 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 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

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*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 (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 this Tribunal in "Bireswar Dey v. State of West Bengal & Others" (Supra), we are of the view that the state

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respondents are bound to refund to the applicant a sum of ₹ 3,36,586/-. The applicant has prayed for refund of the said amount of money along with interest. Since the applicant enjoyed the benefit of excess salary to the tune of ₹ 3,36,586/- almost during his entire period of service, though he was not entitled to enjoy the same during the period of his service, we are not inclined to grant any interest on the said amount of money in favour of the applicant.

In view of our above findings, the respondent no. 2, Commissioner of Textiles and Sericulture, West Bengal is directed to refund a sum of ₹ 3,36,586/- to the applicant within a period of 12 (twelve) weeks from the date of communication of the order.

With the above direction, the original application stands **disposed of**.

Let a **Plain Copy** of the order be supplied to both parties.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib & CSM