

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 694 OF 2016**

*Dr Swarup Kumar Sinha 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
<p style="text-align: center;">13</p> <hr/> <p>22.11.2018</p>	<p><i>For the Applicant : Mr. M. Karim, Learned Advocate.</i></p> <p><i>For the State Respondents : Mr. G.P. Banerjee, Learned Advocate.</i></p> <p><i>For the A.G.(A&amp;E), W.B. : Mr. B. Mitra, Departmental Representative.</i></p> <p><i>The applicant has prayed for direction upon the respondents for refund of Rs. 84,909/- which was deducted from the retiring gratuity of the applicant on the ground of excess payment due to wrong fixation of pay.</i></p> <p><i>The applicant retired from the post of Professor, Department of Paediatric Surgery, IPGME&amp;R, Kolkata on January 31m 2914. The grievance of the applicant is that a sum of Rs. 84,909/- was deducted from retiring gratuity of the applicant on the ground of excess payment due to wrong fixation of pay.</i></p> <p><i>Having heard Learned Counsel representing both parties, we find that there was excess payment of Rs. 84,909/- to the applicant due to wrong fixation of pay. However, this wrong fixation of pay was detected and order of recovery of excess payment from retiring gratuity was made after retirement of the applicant from service.</i></p>	

## ORDER SHEET

*Dr Swarup Kumar Sinha Roy*

Form No. ....

**Vs.**

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

Case No. OA 694 OF 2016

*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 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*

## ORDER SHEET

*Dr Swarup Kumar Sinha Roy*

.....

Form No.

**Vs.**

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

.....

Case No. OA 694 OF 2016

*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 "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.84.909/- to the applicant.*

*In view of our above findings, the respondent no. 3, Director, Institute of Post Graduate Medical Education & Research, Kolkata is directed to refund Rs. 84,909/- to the application within a period of twelve (12) weeks from*

**ORDER SHEET**

*Dr Swarup Kumar Sinha Roy*

Form No. ....

**Vs.**

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

Case No. OA 694 OF 2016

*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)**

*H.S*