

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 695 OF 2016

Subal Chandra Ghosh 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;">09 <hr/>14.11.2018</p>	<p><i>For the Applicant : Mr. M. Karim, Learned Advocate.</i></p> <p><i>For the State Respondents : Mr. M.N. Roy, Learned Advocate.</i></p> <p><i>For A.G.(A&E), 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. 51,771/-, which was recovery from the retiring gratuity of the applicant on the ground of excess payment for wrong fixation of pay.</i></p> <p><i>The applicant retired from the post of Police Driver on January 31, 2009 from the establishment of the respondent no. 3. It appears from letter dated September 12, 2012 issued by the Deputy Superintendent of Police (HQ), Howrah (Rural) District in favour of the applicant that an amount of Rs. 34,671/- was deducted from the amount of gratuity on the basis of observation of A.G. in the letter dated December 26, 2008 and Rs. 17,040/- was deducted from the amount of gratuity on the basis of observation of A.G. in the letter dated April 30, 2009 on the ground of excess payment due to wrong fixation of</i></p>	

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pay. The applicant received the balance amount of gratuity to the tune of Rs. 2,04,155/- on the basis of order dated September 06, 2011.

Having heard Learned Counsel representing the respective parties and on consideration of the materials on record, we find that the excess payment of Rs. 51,711/- to the applicant due to wrong fixation of pay was detected by respondent A.G., West Bengal and order for recovery of excess payment from retiring gratuity of the applicant was made effective after retirement of the applicant 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 Ground 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 employee, when the excess payment has been made for a period in excess of 5 years,

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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 (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.

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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 & others" (Supra), we are of the view that the state respondents are bound to refund an amount of Rs. 51,711/- to the applicant along with interest. On consideration of the materials on record, we find that the applicant must have received the amount of gratuity within three months after September 06, 2011. Had this amount of Rs. 51,711/- not been deducted from retiring gratuity of the applicant, the applicant would have received the said amount at least after three months from September 06, 2011. Accordingly, the state respondents are duty bound to pay interest to the applicant during the period from December 01, 2011 till the last date of month proceeding the month in which the amount will be actually paid to the applicant. On consideration of the rate of interest paid for GPF or PPF and the rate of interest paid by the Nationalised Bank for long term fixed deposit, the applicant is entitled to get interest @ 8% p.a.

In view of our above findings, the respondent no. 3, Superintendent of Police, Howrah (Rural) District is directed to refund Rs. 51,711/- to the applicant along with interest @ 8% p.a. on the said amount of money during the period from December 01, 2011 till the last date of the

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month preceding the month in which the payment will be actually made to the applicant, within a period of 12 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 the parties.

(S.K.DAS)
Member (A)

(R.K.BAG)
Member (J)

H.S

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