

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 697 OF 2017**

*Sarina Khatun Sarkar* 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;">05 <hr/>12.09.2019</p>	<p><i>For the Applicant : Mr. S.K. Ghosh, Learned Advocate.</i></p> <p><i>For the State Respondents : None</i></p> <p><i>For 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. 6,24,747/- which was deducted from retiring gratuity, life time arrears of pension and commuted value of pension of the deceased husband of the applicant.</i></p> <p><i>One Abul Kalam Sarkar worked as Assistant Operator in the establishment of the respondent no. 3, Block Development Officer, Domkal in the District of Murshidabad. He retired from service on July 31, 2014 and died on November 03, 2004 living behind his legal heirs. The applicant being the wife of the deceased Abul Kalam Sarkar has been receiving family pension w.e.f. November 04, 2014. She is agrieved by order of deduction of Rs. 6,24,747/- from the gratuity, life time arrears of pension and commuted value of pension of her deceased husband by an order communicated to the applicant by the Assistant Accountant General/Senior Accounts Officer of the respondent A.G., West Bengal.</i></p> <p style="text-align: center;"><i>Having heard Learned Counsel for the applicant and the</i></p>	

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*departmental representative of the respondent A.G, West Bengal, we would like to decide whether the respondents are justified in deducting an amount of Rs. 6,24,747/- from the gratuity and other retirement benefits of the deceased government employee after his death. By following the judgment of the Hon'ble Supreme Court in the case of "State of Punjab v Rafiq Masih" reported in (2015) 4 SCC 334, we may point out that the Hon'ble Supreme Court has summarised the following situations in paragraph 18 of the judgment of "State of Punjab v Rafiq Masih" (Supra), 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*

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*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."

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

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to refund the amount *Rs. 6,24,747/- to the applicant.*

*In view of our above findings, the respondent no. 3, Block Development Officer, Domkal is directed to refund of Rs. 6,24,747/- to the legal heirs of the deceased Abul Kalam Sarkar including the applicant within a period of 12 (twelve) weeks from the date of communication of this order.*

*With the above direction, the original application is 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*