

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 73 OF 2018

Tapan Kumar Sen 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/>14.03.2019</p>	<p><i>For the Applicant : Mr. R.K. Mondal, Learned Advocate.</i></p> <p><i>For the State Respondents : Mrs. M. Mallick, Learned Advocate.</i></p> <p><i>For A.G.(A&E), W.B. : Mr. B. Mitra, Departmental Representative.</i></p> <p style="text-align: center;"><i>The applicant has prayed for direction upon the respondents for refund of Rs. 1,82,446/- which was deducted from retired gratuity on the ground of excess payment due to wrong fixation of salary by giving benefit of Carrier Advancement Scheme.</i></p> <p style="text-align: center;"><i>It appears from the materials on record that the applicant joined as Lower Division Clerk in the Directorate of Irrigation & Waterways, Government of West Bengal on July 10, 1974 and retired from service from the establishment of the respondent no. 3 on November 30, 2013. The contention of the applicant is that a sum of Rs. 1,82,446/- was recovered from the retiring gratuity of the applicant on the ground of excess payment due to wrong fixation of pay while the applicant was in service.</i></p> <p style="text-align: center;"><i>Having heard Learned Counsel representing both</i></p>	

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<p><i>parties, we find that the recovery due to wrong fixation of pay was done from the retiring gratuity of the applicant.</i></p> <p>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 :</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> <p><i>(v) In any other case, where the Court arrives at the conclusion that recovery if made from the employee,</i></p>	
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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 to refund an amount of Rs.1,82,446/- to the applicant.

In view of our observation, the respondent no. 3, the Director of designs, Central Design Office, Irrigation & Waterways Directorate is directed to refund Rs. 1,82,446/-

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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 all the parties.

(S.K.DAS)
Member (A)

(R.K.BAG)
Member (J)

H.S