

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 832 OF 2012

Arabinda Bhandari 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
23 <hr/> 05.02.2019	<p><i>For the Applicant : Mr. S. K. Nandi, Learned Advocate.</i></p> <p><i>For the State Respondents : Mr. S. K. Mondal, 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 an amount of Rs. 2,31,482/- which was recovery from the retiring gratuity of the applicant on the ground of excess payment due to wrong fixation of pay.</i></p> <p style="text-align: center;"><i>The applicant retired as Assistant Sub-Inspector of Police from the office of Superintendent of Police, Howrah (Rural) on April 30, 2009. It appears from record that the amount of retiring gratuity of the applicant was initially fixed at Rs. 2,34 663/- which was revised to Rs.3,22,889/-. He received only Rs.88,226/- towards revised gratuity and Rs.3,181/- as unrevised amount of gratuity. It further appears from record that an amount of Rs.2,31,482/- was deducted from the retiring gratuity on the ground of excess payment of salary due to wrong fixation of pay. The applicant received the balance</i></p>	

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amount of unrevised gratuity of Rs.3,181/- on August 10, 2009, when the applicant should have received the balance amount of gratuity to the tune of Rs.2,31,482/- which was actually deducted from the retiring gratuity.

Having heard Learned Counsel representing the applicant, Learned Counsel representing the state respondents and the Departmental Representative of the respondent AG, WB, and by following the judgment of the Hon'ble Supreme Court of India in the case of "State of Punjab v Rafiq Masih" reported in (2015) 4 SCC 334, we find that the Hon'ble Supreme Court of India has summarised the following situations in paragraph 18 of the judgment when recovery of excess payment by the state respondent 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;

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(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 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

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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. 2,31,482/- to the applicant along with interest . Since the applicant would have received the said amount of Rs. 2,31,482/- on August 10, 2009 when the balance amount of gratuity was received by him, we are of the view that the applicant is entitled to get interest during the period from August 10, 2009 till the last date of the month preceding the month in which this 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% per annum.

In view of our above findings, the respondent no. 5, the Superintendent of Police, Howrah (Rural) is directed to refund Rs. 2,31,482/- to the applicant along with interest @ 8% per annum on the said amount of money during the period from August 10, 2009 till the last date of preceding month in which the

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payment will be actually made to the applicant, within a period of 12 (twelve) weeks from the date of communication of the order.

With the above observation, the original application stands disposed of.

Let a plain copy of this order be supplied to both parties.

(S.K.DAS)
Member (A)

(R.K.BAG)
Member (J)

H.S

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