

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das**

Case No –OA 1251 OF 2011

Bijoy Kumar Barua 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>11</p> <hr/> <p>04.10.2018</p>	<p>For the Applicant : Mr. D. Dutta, Learned Advocate.</p> <p>For the State Respondents : Mr. S.N. Ray, Learned Advocate</p> <p>The applicant has prayed for direction upon the respondents for refund of Rs.63,158/- which was deducted from the retiring Gratuity of the applicant on cancellation of letter dated March 21, 2011 issued by the Superintendent of Police, Jalpaiguri (Annexure C to the original application).</p> <p>The contention of the applicant is that he retired from service as Constable of West Bengal Police on June 30, 2010 from the establishment of the Respondent No. 4, Superintendent of Police, Jalpaiguri. The grievance of the applicant is that a sum of Rs.63158/- was deducted from his retiring Gratuity on the ground of excess payment of salary due to wrong fixation of pay. The original application was disposed of by this Tribunal, which was challenged by the State respondents before the Hon'ble High Court by filing WPST 369 of 2012. On December 5, 2012, the Division Bench of the Hon'ble High Court disposed of WPST 369 of 2012 by setting aside the order passed by this Tribunal and by remanding the matter to the Tribunal for fresh decision after taking into consideration the provisions of Rule 140 of West Bengal Services (Death-cum-Retirement Benefit)</p>	

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	<p>Rules, 1971 (in short, "DCRB Rules, 1971").</p> <p>With the above factual matrix, we have to decide whether the applicant is entitled to refund of Rs.63, 158/- which was deducted from retiring gratuity and leave salary of the applicant on the ground of excess payment due to wrong fixation of pay.</p> <p>Having heard Learned Counsel representing both parties and on consideration of the order passed by the Division Bench of the Hon'ble High Court in WPST 369 of 2012, we find that the applicant did not press for refund of Rs.13,571/- which was deducted from leave encashment of the applicant. Accordingly, the question for consideration is whether the applicant is entitled to refund of Rs.47587/- which was deducted from retiring gratuity on the ground of excess payment due to wrong fixation of pay.</p> <p>It appears from the order under challenge in the original application that excess payment of Rs.47,587/- was made due to wrong fixation of pay and the same was detected 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 :</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>	

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	<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, 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."</i></p> <p>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</p>	

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Rajib	<p>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.</p> <p>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.47587/- to the applicant .</p> <p>In view of our above findings, the respondent no. 4, the Superintendent of Police, Jalpaiguri is directed to refund Rs.47587/- to the applicant within a period of 12 (twelve) weeks from the date of communication of the order.</p> <p>With the above direction, the original application stands disposed of.</p> <p style="text-align: center;">S. K. DAS MEMBER(A)</p> <p style="text-align: center;">R. K. BAG MEMBER(J)</p>	

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