

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA-1318 of 2014 & MA-198 of 2016

Jitendra Nath Mondal 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
22 17.09.2019	<p>For the Applicant : None.</p> <p>For the State Respondents : Mrs. M. Mallick, Learned Advocate.</p> <p>Since the applicant has prayed for refund of the amount of money deposited by him under coercion, we fix the matter today under the heading "To be Mentioned" for passing the final order.</p> <p>None appears on behalf of the applicant on call. We have heard Learned Counsel representing the State respondents. We would like to dispose of both OA-1318 of 2014 and MA-198 of 2016 by passing this common order.</p> <p>The applicant has prayed for condonation of delay in filing original application before the Tribunal on the ground that the applicant suffered financial loss and mental agony from which he could not recover immediately after his retirement. Having heard Learned Counsel representing both parties and on consideration of the background of filing the original application, we are satisfied that the delay in approaching the Tribunal has been explained by the applicant to our satisfaction. Accordingly, the delay in preferring the present application is condoned under Section 21 (3) of the Administrative Tribunals Act, 1985.</p> <p>The applicant has prayed for direction upon the respondents for granting him benefit of Special Pay of Rs.80/- and refund of Rs.31,411/- deposited by him on account of excess payment towards</p>	

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drawing of Special Pay after cancellation of Memo dated August 6, 2009 issued by the Inspector General of Correctional Services, West Bengal, by which Special Pay of the applicant was withdrawn.

The applicant worked as Cashier in the establishment of the respondent No. 4, Superintendent, Central Correctional Home, Berhampore. He retired from the establishment of the respondent No. 4 on June 30, 2008. The contention of the applicant is that he was drawing Special Pay of Rs.80/- as Cashier in the establishment of the respondent No. 4 in terms of the order issued by Inspector General of Correctional Services, West Bengal. The further contention of the applicant is that the said Special Pay of Rs.80/- was withdrawn by Inspector General of Correctional Services, West Bengal by issuing letter dated August 6, 2009 and thereby the excess pay drawn by him to the tune of Rs.31,411/- on account of Special Pay had to be deposited in the treasury as pre-condition for release of pension and retirement benefits of the applicant. The applicant has now prayed for refund of not only Rs.31,411/- deposited by him by way of treasury challan on October 7, 2009, but has also prayed for direction upon the respondents for grant of Special Pay of Rs.80/- with effect from the date of fixation of pay of the applicant in terms of West Bengal Services (Revision of Pay and Allowance) Rules, 1998 (in short, ROPA, 1998) after setting aside order dated 29.09.2009 issued by the respondent No. 4.

On consideration of the materials on record, we find that Special Pay granted in favour of the applicant as Cashier was abolished

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under the provisions of ROPA, 1998 and thereby the order of Special Pay granted in favour of the applicant by Inspector General of Correctional Services was withdrawn by issuance of letter dated August 6, 2009. Since the applicant was not entitled to get Special Pay in terms of ROPA, 1998 and in terms of the order of Inspector General of Correctional Services, West Bengal dated August 6, 2009, the respondent No. 4 directed the applicant by issuing an order on September 29, 2009 for payment of Rs.31,411/- drawn by him in excess of salary on account of Special Pay. Since the Special Pay was abolished in ROPA, 1998, the applicant is not entitled to get Special Pay from the date of fixation of pay of the applicant in terms of ROPA, 1998.

Admittedly, the applicant was compelled to deposit Rs.31,411/- by way of treasury challan on the ground of excess payment of salary on account of Special Pay @Rs.80/-. The fact of excess payment of Rs.31,411/- towards Special Pay was detected after retirement of the applicant from service and the order for refund was issued more than one year after his retirement from service. The Hon'ble Supreme Court has observed in paragraph 18 of the judgment of "State of Punjab v. Rafiq Masih" reported in (2015) 4 SCC 334 that the recovery of excess payment by the State would not be permissible from the retired employee. This Tribunal has also laid down in the case of "Bireswar Dey v. State of West Bengal & Others" (OA 1045 of 2014, decided on August 20, 2018) that the 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

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payment from the retirement benefit of the Government employee, particularly when the recovery of over payment is done after prolonged period from the date on which the said recovery would have been effected and thereby causing hardship to the employee to such an extent, which will outweigh equitable balance of the right of the State to recover the same. In view of our above observation, we would like to hold that the respondents are bound to refund the amount of Rs.31,411/- to the applicant.

Accordingly, respondent No. 3, Inspector General of Correctional Services, West Bengal is directed to refund Rs.31,411/- to the applicant within a period of twelve weeks from the date of communication of the order.

With the above direction, both OA 1318 of 2014 and MA 198 of 2016 are disposed of.

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

S. K. DAS
MEMBER(A)

R. K. BAG
MEMBER(J)

Rajib

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