

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. –OA-257 of 2024

SONTOSH KUMAR SARKAR -- VERSUS – The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	:	Mr. Gaurav Haldar, Mr. Arindam Mitra, Learned Advocates
	For the State Respondents	:	Mr. Soumendra Narayan Ray, Learned Advocate
<u>5</u> 15.05.2025	For the Principal Accountant General (A&E), West Bengal	:	Mr. Biswanath Mitra, Departmental Representative

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No.638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

In this application, the applicant has prayed for a direction to the respondent authorities to refund the overdrawn amount recovering from his gratuity amounting to Rs. 1,06,813/- (Rupees One Lakh Six Thousand Eight Hundred and Thirteen) only along with an interest @ 18% per annum. The applicant had superannuated as a Constable in West Bengal Police on 12.09.1987. After completion of 10 years in service, the applicant was awarded the CAS benefits on 01.01.1996. Although, he was promoted to the post of Assistant Sub-Inspector of Police on 26.09.1997 and further, he was given promotion to the post of Sub-Inspector of Police on 19.08.2005. Later, he was promoted to the post of Inspector of Police on 04.06.2021 and continued to hold this promotional post till his superannuation on 31.07.2023.

At the time of promotion in the year 1995, an erroneous fixation of pay was done. His pension papers were returned by the Office of the Principal Accountant General (A&E), West Bengal pointing out that there was an overdrawn by the applicant out of his erroneous fixation of pay with effect from 01.01.1996. The Office of the Principal Accountant General (A&E) advised the pension sanctioning authority to re-submit the pension proposal after rectifying of the fixation of pay and recovery of the excess payment from his gratuity. In accordance with such advice, the respondent authorities calculated Rs. 1,06,813/- as the overdrawn amount and the pension proposal was re-submitted. The Pension Payment Order (PPO) issued on 27.09.2023 had recorded the overdrawn amount with a direction to recover the same from the applicant's gratuity.

The Office of the Principal Accountant General (A&E), West Bengal has returned his

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pension case with the observation after pointing out the inconsistencies while fixing his pay. It advised that on promotion to the post of Sub-Inspector of Police, his pay on 09.08.2005 may be fixed at Rs. 5,250/- in the Scale of Pay Rs. 4,500/- - 9,700/- according to his revised pay on 01.01.2006 may be fixed at Rs. 13,670/- in the P.B. 7,100/- - 37,600/- including G.P. Rs. 3,900/-. It has been also advised to recover any amount which was inadvertently drawn in accordance with such observation and his pay was revised with effect from 01.01.1996 and after such re-fixation, an amount of Rs. 1,06,813/- was assessed as an excess drawal of pay and allowances.

Neither the fact of the erroneous fixation of pay nor its cancellation was ever assailed and disputed by the applicant. It is only when the recovery of the overdrawn amount was recorded in PPO, the applicant found it reasonable to challenge the same before this Tribunal. Taking support from the judgement reported in (2015) 4 SCC 334 : *State of Punjab and others-Vs.-Rafiq Masih*, the applicant argues that such recovery is a non est in the eyes of law and thus, not tenable. Paragraph 18 of the said judgement lays down that under the following situations, recoveries by the employees would be impermissible 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 five 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.

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.

The Tribunal finds, in this case, the applicant superannuated on 31.07.2023. The erroneous fixation of upward pay started with effect from 01.01.1996 and continued for a period of 27 years. The payment was made for a long duration of time for which the employee is not responsible. The impact being more unfair and improper, the decision of

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recovering the amount from the gratuity of the applicant is iniquitous, harsh and arbitrary. As the error was due to mistakenly done by the employer, such recovery is impermissible and non est in the eyes of law.

In view of the above observations, the Tribunal comes to the conclusion that the impugned memo No.1219/1(1)/EB dated 12.09.2023 is not tenable and thus quashable and it is quashed and set aside. The Tribunal directs the respondent No.4, the Deputy Inspector General of Police to issue necessary order for refund of the recovery amount within a period of three months time in terms of the judgement passed in *Rafiq Masih(supra)* and as per Rules and re-submit a fresh proposal to the Principal Accountant General (A&E). The office of the Principal Accountant General (A&E) is directed to act accordingly.

The application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)

SCN.