

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-336 of 2022

SUBRATA CHAKRABORTY -- VERSUS – The State of West Bengal & Others.

Serial No.	For the Applicant	:	Mr. Gaurav Haldar,
and			Learned Advocate
Date of			
order	For the State Respondents	:	Mr. Gautam Pathak Banerjee,
			Learned Advocate
	For the Principal Accountant	:	Mr. Biswanath Mitra,
	General (A&E), West Bengal		Departmental Representative
<u>15</u>			
15.05.2025			

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. 1,91,877/- (Rupees One Lakh Ninety One Thousand Eight Hundred and Seventy Seven) only along with an interest @ 18% per annum. The applicant had joined in service as Basic Grade Typist on 17.06.1989 and had superannuated as a Typist, Grade-I on 30.11.2020. After completion of 16 years in service, the applicant was awarded the MCAS benefits on 01.07.2005. Although, he was promoted to the post of Typist, Grade-I with effect from 06.05.1994, but such order was cancelled and communicated to him on the ground of being erroneous in granting such promotion which was reserved for a Schedule Caste. Later, the applicant was awarded promotion to the post of Typist, Grade-I with effect from 01.06.2012 and continued to hold this promotional post till his superannuation on 30.11.2020.

His pension papers were returned by the Office of the Principal Accountant General (A&E), West Bengal pointing out that there was an overdrawn amount by the applicant out of his erroneous promotion to the post of Typist, Grade-I. The Office of the Principal Accountant General (A&E), West Bengal advised the pension sanctioning authority to re-submit the pension proposal after rectifying the date of promotion and recovery of the excess payment from his gratuity. In accordance with such advice, the respondent authorities calculated Rs. 1,91,877/- as the overdrawn amount and the pension proposal were re-submitted. The Pension Payment Order (PPO) issued on

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02.11.2021 had recorded the overdrawn amount with a direction to recover the same from the applicant's gratuity.

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 30.11.2020. The erroneous fixation of upward pay started with effect from 01.06.2012 and continued for a period of more than 8 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 recovering the amount from the gratuity of the applicant after his retirement 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

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impugned order No.122141009/P/21/10/327182 dated 02.11.2021 along with the impugned reasoned order vide memo No.927 dated 30.12.2022 are not tenable and thus quashable and they are quashed and set aside. The Tribunal directs the respondent No.2, the Commissioner, Directorate of Textiles and Sericulture 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.

SCN.

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