

**IN THE HIGH COURT AT CALCUTTA
In the Circuit Bench at Jalpaiguri
Appellate Side**

Present:

The Hon'ble Justice Biswaroop Chowdhury

W.P.A. 1651 of 2021

Debjit Roy

VERSUS

The State of West Bengal & Ors.

For the Petitioner:

Mr. Subhasish Misra, Adv.

Mr. Satyajit Paul, Adv.

For the State:

Ms. Rounak Ghosh, Adv.

Mr. Hirak Barman, Adv.

Last Heard on: March 24, 2026

Judgment on: June 11, 2026

Biswaroop Chowdhury, J:

This Writ Application is directed against the Orders dated 02/08/2021, 27/08/2021, and 01-09-2021 passed by the respondent no-2 and 5 by which Deputy Director of Agriculture and Project Director of ATMA, Cooch Behar Respondent no. 5 herein cancelled the previous order of the DDA (WBP) and PD. ATMA Cooch Behar vide Memo. No. 736(3) dated 19.04.2017 and the basic emoluments of the petitioner was revoked and fixed to previous monthly rate of Rs. 16,000/- as per his present basic emoluments of Rs. 25,000/- p.m. with

retrospective effect from 1st April 2017. The orders dated 31/08/2021, and 01/09/2021 are consequential to orders dated 27/08/2021.

The case of the writ petitioner may be summed up thus:-

1. The petitioner under the said ATMA scheme has been appointed on contractual basic as a computer programmer post after being selected in a walk in interview held on 14-03-2013 by the respondent no-4. From the said appointment letter dated 04-04-2013 issued by the respondent no. 4 herein on the strength of the memo no. 638(18)/P.S. dated 17-10-2012 issued by the respondent No. 2 herein, a monthly consolidated remuneration of Rs. 12,000/- has been fixed for the petitioner. As per the ATMA scheme guideline all the contractual employees shall be benefited with an annual increase of 10% in emoluments who will continue in their employment for more than 1 year.
2. After the said appointment in the post of computer programmer the petitioner had been rendering his service efficiently and diligently for one and half year till 2014. The petitioner made a comprehensive representation regarding enhancement of the monthly honorarium before the respondent No.5. By a memo dated 15-12-2015 issued from the office of the respondent no-1 addressed to the respondent No-2 herein it is clear that regarding the said issue of enhancement of

remuneration of ATMA functionaries the SAME guidelines will be followed.

3. By Memo No. 309 dated 16-02-2016 issued by the respondent no.5 herein regarding the said issue of enhancement of remuneration of ATMA functionaries being the post of the computer programmer it was particularly suggested that considering the eligibility criteria requisite skill, sets and experience their remuneration may be enhanced from the present scale of Rs. 16,000/- upto Rs. 25,000/- to Rs. 28,000/- considering the WBSSC and Ministry of Agriculture, Department of Agriculture and cooperation under Government of India, criteria and norms. Latter on the said respondent no-5 by virtue of memo 273 dated 16-02-2017 issued a further letter towards canvassing the entire issue regarding the said enhancement of remuneration of ATMA functionaries being the computer programmer referring the various ATMA guide lines of ATMA Governing Body.
4. Ultimately considering the entire aspect regarding the said issue of enhancement of remuneration of ATMA functionaries being the post of computer programmer the respondent no-5 herein in consonance with the other respondent authorities, and by virtue of Memo dated 15.12.2015 was pleased to pass an order dated 19-04-2017 towards revising/enhancing the remuneration up to Rs. 25,000/- along with ATMA guidelines which would be effective from 01-04-2016 as retrospective effect.

5. The special secretary Department of Agriculture, Government of West Bengal issued a letter dated 24-02-2021, towards clarifying the subject matter regarding extending service benefit to the contractually engaged IT personnel as entitled in P and AR Deptt. Notification No. 192-IT/06/2020/P and AR-e Gov dated 16.10.2020, wherein a table of list has been published indicating the petitioner's name also as serial Number-12 covering the petitioner as well as other contractual IT, Personal the benefits of revision of service terms and conditions.
6. All on a sudden a memo being No. 900(22) PSJ dated 30.07.2021 was issued by the Director of Agriculture and EX officio Secretary, Department of Agriculture addressing to the respondent no. 4 herein, for conducting a further verification of original documents of the incumbents in respect of the contractual IT personnel pertaining to allowing their benefits of revision of service terms and conditions and thereby to file a compliance report to the respective cells.
7. The Director of Agriculture and EX Officio Secretary and SNO-Atma West Bengal Department of Agriculture issued a impugned letter being memo No-62/ATMA dated 02.08.2021 towards referring that the earlier order/approval regarding enhancement of remuneration from Rs. 16,000/- to Rs. 25,000/- of the petitioner was not issued from his end as such order issued by the Joint Secretary to the Government of West Bengal Vide No. 1300-/Web/9M(Nab)-112/2015 dated 15th December 2015 shall be adhered to. By another order

dated 27-08-2021 the respondent no-5 revoked the petitioner's earlier order of enhancement/revision issued vide memo No. 736(3) dated 19-04-2017 and thereby fixing the previous monthly remuneration to the tune of Rs. 16,000/- which was prevailing before 01.04.2017.

8. The petitioner being aggrieved by the acts of respondents on 3/9/2021, and, 6/9/2021 made representation and the same was not considered. As the representation was not considered the petitioner has come up with the instant writ application.
9. By order dated 25-08-2023 the respondent no-4 was directed to file a report in the form of affidavit as to how the monthly remuneration of the petitioner has been decreased. It was further ordered that till the matter is decided there cannot be any question of refund of money.

In terms of Order dated 25-08-2023 the respondent no-5 has submitted an affidavit contending as follows:

- A. The Writ Petitioner Sri Debojit Roy son of Late Kalipada Roy resident of S.N. Road (East) Vivekananda Pally Cooch Behar-736101 had been appointed to the contractual post of Computer programmer under Agricultural Technology Management Agency (ATMA) in Cooch Behar District vide Memo No. 677 dated 04/04/2013 of the Deputy Director of Agriculture (WBP) and Project Director ATMA Cooch Behar vide Memo No. 736(3) dated 20-04-2019 as per approval of ATMA. Governing Board meeting held on 17-03-2016 and 23-03-2017 with

effect from 01/04/2017 with normal increment but the said order was issued without any concurrence and/or approval from ATMA state Nodal Officer. The said order regarding enhancement of remuneration of Sri Debojit Roy was therefore patently unauthorized and unsustainable on account of want of necessary approval/sanction of the ATMA State Nodal Officer. As such an Order vide Memo No. 62/ATMA dated 02/08/2021 was issued by the Director of Agriculture and Ex-officio Secretary and State Nodal Officer ATMA West Bengal; to the Project Director, ATMA Cooch Behar, clarifying that no such approval regarding enhancement of remuneration of Sri Debojit Roy from Rs. 16,000/- to Rs. 25,000/- was granted by the Director of Agriculture and Ex-Officio Secretary and State Nodal Officer ATMA, West Bengal. Vide Memo No. 62/ATMA dated 02/08/2021, the Deputy Director of Agriculture (WBP) and project Director ATMA issued an order vide Memo. No. 277(20)/ATMA dated 27/08/2021 rectifying his mistake by cancelling and revoking his previous order issued vide Memo No. 736(3) dated 20/04/2017 and reverting the basic emoluments of Sri Debojit Roy Computer Programmer of ATMA Cooch Behar to previous monthly rate of Rs. 16,000/-.

The respondent no-5 apart from filing Affidavit in terms of Order dated 25-08-2023 has filed affidavit in opposition. The contentions in the affidavit in opposition may be summed up thus:-

- I. The Director of Agriculture West Bengal and State Nodal Officer ATMA West Bengal issued a letter vide Memo No. 498 dated Kolkata-25/06/2014 regarding activity under SAME Agriculture Technology Management Agency.
- II. The Joint Secretary to the Govt of West Bengal by Memo No. 1300 Nab/19M(Nab) 112/2015 dated Howrah, the 15th December 2015 clarified regarding payment of remuneration of Agriculture Technology Management Agency (ATMA) functionaries.
- III. By Memo no. 309 dated Cooch Behar, dated 16/02/2016 was issued and forwarded by the Deputy Director of Agriculture (Admn) and Project Director ATMA Cooch Behar to the OSD and Ex-Officio Director of Agriculture, Government of West Bengal, Jessop Buildings.
- IV. A letter regarding enhancement of salary for the post of Computer Programmer and Accountant cum-clerk under ATMA Cooch Behar vide Memo no. 273 dated Cooch Behar the 16/02/2017 to the OSD and Ex-Officio Director of Agriculture and SNO ATMA West Bengal made regarding instruction solicited of said matter.
- V. Order regarding revised rate of remuneration to the computer Programmer was issued by the Deputy Director of Agriculture

(WBP) and Project Director ATMA Cooch Behar vide Memo No- 736(3) dated Cooch Behar the 20/04/2017.

- VI. By Memo vide No. 62/ATMA dated 02/08/2021 was issued by the Director of Agriculture and Ex-Officio Secretary and SNO ATMA, West Bengal to the project Director ATMA Cooch Behar district regarding increase of remuneration of Sri Debojit Roy, Computer Programmer of ATMA Cooch Behar wherein it was stated that no such order/approval regarding enhancement of remuneration from Rs. 16,000/- to Rs. 25,000/- of Sri Debojit Roy was issued by the Director of Agriculture and Ex-Officio Secretary and SNO ATMA West Bengal.
- VII. Consequently an order vide Memo No. 277(20)/ATMA dated Cooch Behar the 27/08/2021 was issued by the Deputy Director of Agriculture (WBP) and Project Director ATMA Cooch Behar the 27/08/2021 was issued by the Deputy Director of Agriculture (WBP) and project Director ATMA Cooch Behar cancelling the previous Order bearing Memo No. 736(3) dated Cooch Behar the 20/04/2017 reverting the basic emoluments of Sri Debojit Roy, Computer Programmer ATMA to previous monthly rate of Rs. 16,000/- in place of Rs. 25,000/- per month with effect from 1st April 2017.
- VIII. Again by Memo vide No. 281/ATMA dated Cooch Behar 31/08/2021 was issued by the Deputy Director of Agriculture

(WBP) and Project Director ATMA Cooch Behar to Sri Debojit Roy directing refund of overdrawn amount of remuneration.

Heard Learned Advocate for the petitioner and Learned Advocate for the respondents. Perused the materials on record.

Learned Advocate for the petitioner submits that the order for enhancement of remuneration was issued by the Deputy Director of Agriculture (WBP) and project Director of ATMA Cooch Behar in accordance with law which was subsequently revoked causing hardship to the petitioner. Learned Advocate submits that the order of cancellation cannot be sustained and is bad in law.

Learned Advocate for the respondents submits that the order granting enhancement is without jurisdiction as no approval regarding enhancement of remuneration from Rs. 16,000/- to Rs. 25,000/- was obtained from Directorate of Agriculture West Bengal.

Upon perusal of record it appears at the outset that by letter dated 16/02/2017 the respondent no-5 suggested that as per modified and latest guidelines of ATMA, 2014, which was approved by the HDWG of West Bengal (Memo No. 498 dated 25-06-2014 of the DAWB and SNO ATMA West Bengal) and the Notification No. 1300-Nab/9M(Nab)-112/2015 dated 15-12-2015 issued by the Joint Secretary to the Govt. of West Bengal the remuneration may be enhanced. It was further stated that in different schemes under the Control of State Government the remuneration of Computer Programmer with a

basic qualification MCA/B.Tech are paid remuneration ranging from Rs. 25,000/- to Rs. 28,000/-. It was stated that as GB of ATMA Cooch Behar approved the whole matter the remuneration of Computer Programmer may be fixed at Rs. 25,000/- per month and Accountant-cum-Clerk may be Rs. 21,000/- per month. In the said letter ATMA GUIDELINES 2014 under NMAET and ATMA G.B. Resolution letter was forwarded to the District Magistrate and Chairman of ATMA Cooch Behar, and to the Director SAMETE Ram Krishna Mission Ashrama Narendrapur.

It further appears that by Memo No-1300-Nab/9M(Nab) 112/2015 dated 15th December 2015 the Joint Secretary to the Government of West Bengal Department of Agriculture informed all the District Magistrate and Chairman ATMA GB, with regard to payment of remuneration to ATMA functionaries. The contents of the letter are as follows:-

'I am directed to inform that the revised rate of remuneration has been provided in the SAME Guideline [under Para 2.9 in page 29 and Annexure-II(C) which may be seen in the website of the Department of Agriculture Co-operation and Farmers Welfare Government of India.

The payments of remuneration to ATMA functionaries at the revised rate may be followed by the ATMA Governing Body in terms of the Guidelines.'

Copy was forwarded for information and necessary action to the OSD and E.O. and director of Agriculture and Deputy Director of Agriculture (HQ) for information and taking necessary action.

Thus by the Letter dated 15th December 2015, Chairman of ATMA Governing body was empowered to pay remuneration to ATMA functionaries at the revised rate provided in the SAME Guideline issued by Department of Agriculture Co-operation and Farmers Welfare Government of India. Copy of the said letter was forwarded for information and taking necessary action to OSD and EO Director of Agriculture and Deputy Director of Agriculture for information and necessary action. The Deputy Director of Agriculture (WBP) and Project Director ATMA Cooch Behar by Order dated 20/04/2017 on the basis of Letter of Joint Secretary and as per approval, of ATMA Governing Board (GB) was pleased to fix the consolidated pay of Computer Programmer as Rs. 25,000/-. The Order dated 19/04/2017 reads as follows:-

ORDER

In pursuance with Memo No-1300-Nab/9M (Nab)-112/2015 Howrah the 15th December 2015 of the Joint Secretary to the Government of West Bengal and as per approval of ATMA Governing Board (GB) meeting held on 17-03-2016, and 23-03-2017, the revised rate of remuneration has been provided to the Computer Programmer has been notionally fixed as consolidated pay of Rs. 25,000/- (Rupees Twenty Five Thousand) only per month from 01.04.2016. No arrear payment will be given from 01.04.2016 to 31.03.2017. the pay will be effective from 01.04.2017 with normal increment as per ATMA Guidelines 2014.'

The copy of the order was forwarded to the District Magistrate and Chairman of ATMA Cooch Behar, the OSD and Ex-Officio Director of Agriculture and SNC ATMA, and the Director SAMETI Ram Krishna Mission Ashrama Narendrapur-Kolkata-700029.

Thus it is clear that the Deputy Director of Agriculture passed the order of enhancement relying upon the Letter dated 15th December 2015 by the Joint Secretary Government of West Bengal and as per approval of the ATMA Governing Board (GB). The copy of the order dated 20/04/2017 was forwarded to the District Magistrate and Chairman of ATMA, Cooch Behar the OSD and Ex-Officio Director of Agriculture and SNO. ATMA and the Director SAMETI Ram Krishna Mission Ashrama. Thus the entire process was done in a transparent manner.

The ground taken by the respondents is that the Memo No. 736(3) dated 20/04/2017 by which the salary of the petitioner was increased did not have the concurrence/and/or approval of the Director of Agriculture and State Nodal Officer ATMA Government of West Bengal and as such the same was cancelled vide Memo No. 277(20)/ATMA. dated 27/08/2021. However no such rule or Government Order is relied upon by the respondents in support of their stand that regarding enhancement of Remuneration, of Computer Programmer under ATMA approval/sanction is required by the Deputy Director of Agriculture (WBP) and project Director ATMA from Director of Agriculture and Ex-Officio Secretary and SNO-ATMA West Bengal.

Upon perusal of Letter dated 15th December 2015 issued by the Joint Secretary to the Government of West Bengal it is clear that the said memorandum empowers the District Magistrate and Chairman ATMA GB to provide revised rate of remuneration as provided in SAME Guideline. The Copy of such letter is also communicated to Director and Deputy Director for necessary steps. There is no provision for any approval or sanction from Director when such decision is taken. Moreover the Letter dated 02/08/2021 issued by the Director of Agriculture and Ex-Officio Secretary addressed to the project Director ATMA Cooch Behar District although stated that no approval of Director is obtained but it was observed that order issued by the Joint Secretary to the Go. WB. Vide No. 1300-Nab/9M(Nab)-112/2015 dated 15th December 2015 shall be adhered to. Nowhere in the said letter it was provided that the order increasing the remuneration should be revoked. Thus in terms of the direction of the letter dated 02/08/2021 issued by the Director of Agriculture respondent no-2 herein it was incumbent upon the respondent no-5 to apply his mind and consider as to whether the increase of remuneration was in accordance with the Letter dated 15th December 2015 issued by Joint Secretary Department of Agriculture Government of West Bengal, and then take necessary decision. The Respondent no-5 without applying his mind revoked order of DDA (WBP) and PD. ATMA Cooch Behar vide Memo No. 736(3) Dated-19-04-2017 Thus the order dated 27/08/2021 passed by the Respondent no-5 cannot be sustained.

It is to be remembered that recovery of excess money paid to an employee can be made as nobody can be permitted to enrich himself unjustly at the cost of others. Thus when an employee receives excess payment knowing fully that the said excess payment are due to an error and does not point out the same to the department he is said to have enriched himself unjustly. Accordingly recovery can be made. However when a policy decision is taken by the employer/authority on the basis of which salary of employee is enhanced and subsequently the said decision is struck down by any Court of Law or revoked by the employer/authority the employee cannot be made to suffer as there is no fault on his part and the conduct is also not mala fide, and the decision on which extra remuneration or excess payment is made is valid rule till revoked or struck down by Court of Law. Thus the direction to refund excess remuneration for the period 01-04-2017 to 01-07-2021 cannot be sustained and the same should be set aside.

In the facts and circumstances this Writ Petition WPA-1651/2021 stands allowed. Order dated 27-08-2021 issued by the Deputy Director of Agriculture (WBP) and Project Director of ATMA Cooch Behar the respondent no-5 herein and marked annexure 'P-7' to the writ petition is set aside. The petitioner is entitled to all consequential benefits in terms of setting aside of order dated 27/08/2021 passed by respondent no-5. The benefits if due and payable be paid to the petitioner within 3 months from the date of communication of this order.

Urgent photostat certified copy of this order, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)