

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 51 OF 2015

Tarak Kumar Bandyopadhyay & Ors. 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
20 28.11.2018	<p>For the Applicants : Mr. A.L. Basu, Mr. A.J. Sengupta, Mr. N.N. Roy, Learned Advocates.</p> <p>For the Respondents : Mr. S. N. Ray, Learned Advocate.</p> <p>For the Respondent No. 3 : Mrs. S. Agarwal, Learned Advocate.</p> <p>For the Respondent No. 4 : Mr. S. K. Mondal, Learned Advocate.</p> <p>The applicants have prayed for quashing of the order conveyed under letter dated November 27, 2014 issued by the Joint Secretary to the Government of West Bengal, Department of Technical Education and Training (Annexure C to the original application) and direction upon the respondents not to recover excess payment made to the applicants for granting advance increments.</p> <p>The applicant no.3 has already been expunged from the</p>	

ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

	<p>record by order dated August 3, 2016 on the basis of prayer of the said applicant. The applicant no. 1 having M. Tech degree joined in the post of Principal of Government Polytechnic on January 2, 1987 and received five advance increments for acquiring Ph. D degree while he was in service. The applicant no. 2 having B. Tech degree joined in the post of Principal of Government Polytechnic on August 18, 1999 and received one advance increment for obtaining M.Tech degree on June 1, 2009. The applicant no. 4 having Ph.D degree joined the post of Principal of Government Polytechnic on March 6, 2006 and got five advance increments at the time of entry into service. The applicant no. 5 having M. Tech degree joined in the post of Principal of Government Polytechnic on December 4, 1996 and got five advance increments for acquiring Ph. D degree in the month of December, 2005 while he was in service. The applicant no. 6 having Ph.D degree joined in the post of Principal of Government Polytechnic on June 5, 2006 and got five advance increments at the time of entry into service. The applicant no. 7 having M.Tech degree joined in the post of Principal of Government Polytechnic on August 24, 2006 and got two advance increments at the time of entry into service. The applicant no. 8 having Ph.D degree joined in the post of Principal of Government Polytechnic on June 1, 2006 and obtained five advance increments at the time of entry into service. The applicant no. 9 having M.Tech degree joined in the post of Principal of Government Polytechnic on January 7, 2001 and</p>	
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ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

acquired Ph. D degree while in service, but no advance increments were granted in his favour till date. The applicant no. 10 having Ph.D degree joined in the post of Principal of Government Polytechnic on April 1, 2006 and got five advance increments at the time of entry into service. The applicants are still in service except the applicants no. 1, 2 and 9, who have already retired from service.

The contention of the applicants is that they were granted non-compounded advance increments for acquiring higher educational qualifications in terms of G.O. No. 574-TET (Poly)/5P-1/2010 dated September 13, 2010 issued by the Joint Secretary to the Government of West Bengal, Department of Technical Education and Training, Polytechnic Branch. The grievance of the applicants is that the benefit of advance increments already granted in favour of the applicants w.e.f. September 1, 2008 was curtailed by the impugned letter No. 782-TET (Poly)/ET/O/5P-04/2012 dated November 27, 2014 issued by the Joint Secretary to the Government of West Bengal, Department of Technical Education and Training (Annexure-C to the original application) and over payment is sought to be recovered from each of the applicants. It is relevant to point out that operation of the order communicated under letter dated November 27, 2014 issued by the Secretary to the Government of West Bengal, Department of Technical Education and Training was stayed by an interim order of the

ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

Tribunal passed on February 16, 2015 in connection with MA-15 of 2015 arising out of present original application.

Mr. A.L. Basu, Learned Counsel representing the applicants contends that the impugned letter dated November 27, 2014 is arbitrary and illegal on the grounds : first, earlier Notification dated September 13, 2010 in terms of which advance increments were granted in favour of the applicants was neither cancelled nor modified by the impugned letter dated November 27, 2014, secondly, the existing financial benefit already granted in favour of the applicants cannot be curtailed or withdrawn to the disadvantage of the applicants without proper justification and thirdly, reduction of salary of the applicants by curtailing the existing financial benefits by the impugned letter dated November 27, 2014 is in violation of the provisions of Article 311 of the Constitution of India. By referring to the impugned letter dated November 27, 2014, Mr. Basu further submits that the previous order for grant of advance increments to the applicants was never misinterpreted as contained therein and thereby there is no justification for curtailing the existing financial benefits of the applicants. He also submits that the state respondents are estopped from curtailing the existing financial benefits enjoyed by the applicants for about six years in terms of Government Order dated September 13, 2010.

Mr. S.N. Ray, Ld. Counsel representing the State

ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

respondents submits that the advance increments obtained by the applicants as Principal of Government Polytechnics is not justified as the advance increments were meant only for the Lecturers working in the Government/Government sponsored Polytechnics in terms of G.O. dated September 13, 2010. He supports the stand taken by the State respondents for curtailing the existing financial benefits of grant of advance increments to the applicants by issuing the impugned letter dated November 27, 2014.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the applicants got the benefit of advance increments for acquiring M.Tech/M.Phil or Ph. D degree at the time of their entry into the service or while they were in service in terms of G.O. dated September 13, 2010. The question for consideration of the Tribunal is whether the State respondents were justified in withdrawing/curtailing the financial benefit of advance increments already enjoyed by the applicants for about six years by issuing impugned letter dated November 27, 2014 (Annexure C to the original application).

It is relevant to quote the impugned letter dated November 27, 2014 by which benefit of advance increments granted in favour of the applicants as incentive for acquiring higher educational qualifications was curtailed, which is as follows :

ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

	<p>“Government of West Bengal Technical Education & Training Department Vocational Training Institute 3rd Floor, Block-B/7 Action Area-III, New Town Rajarhat, Kolkata-700156</p> <p>No.782-TET(Poly)/ET/O/5P-04/2012 Date -27.11.2014</p> <p><i>From : B. Bhattacharya, IAS Joint Secretary to the Government of West Bengal</i></p> <p><i>To : The Directorate of Technical Education & Training, W.B.</i></p> <p><i>It has come to the notice of the Government in the Technical Education & Training Department that pay of Principals of some of the Government/Government Sponsored Polytechnics, who possessed higher than requisite qualification, had been fixed allowing advance increments as incentives for attaining higher qualifications by misinterpreting this Department’s order No.574-TET(Poly) dt. 13.09.2010.</i></p> <p><i>After careful examination of the matter, the Governor has been pleased to order that no benefit of advance increment as incentive for higher than requisite qualification is admissible to</i></p>	
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ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

the incumbents in the post of Principal of Government/Government Sponsored Polytechnics either at entry level or while in service.

The date of entry level shall mean entry into Government/Government Sponsored Polytechnics on or after 01.01.2006.

Overdrawal, if any, for the clarification made herein, shall be recovered as per extant rules of the Government. For the cases of death/VRS/retirement such recovery shall be adjusted from the death gratuity/retirement gratuity/leave salary or all.

The Directorate of Technical Education & Training, West Bengal will calculate the overdrawal amount, if any, and recover the sum in equal instalments depending on the length of service left with an incumbent following the prevalent Government Rules in this regard.

This order issues with the concurrence of the Finance Department vide their U.O. No. Group-PI/2014-2015/1059 dt. 13.11.2014.

This order will take immediate effect.

Joint Secretary

to the Government of West Bengal

Date-27.11.2014 “

On consideration of the above letter dated November 27, 2014, we find that the benefit of advance increments granted in

ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

	<p>favour of the Principals of Government/Government sponsored Polytechnics in terms of G.O. dated September 13, 2010 cannot be given either at entry level or while in service on the ground that advance increments as incentive for acquiring higher educational qualifications laid down in G.O. dated September 13, 2010 were granted by way of misinterpretation of the said G.O. dated September 13, 2010. Learned Counsel representing the State respondents has failed to explain how the G.O. dated September 13, 2010 was misinterpreted for grant of advance increments as incentive for acquiring higher educational qualifications by the Principals of Government/Government sponsored Polytechnics. The specific stand of the State respondents is that grant of advance increments is not meant for Principals of Government/Government sponsored Polytechnics, and the said advance increment is meant only for Lecturers working in Government/Government sponsored Polytechnics. On close scrutiny of the entire G.O. dated September 13, 2010, we do not find that the provision for grant of incentives for acquiring higher educational qualifications of Ph. D or M.Tech/M.Phil is applicable only to the Lecturers and not to the Principals working in Government/Government sponsored Polytechnics. It is relevant to quote paragraph 3 of the said G.O. dated September 13, 2010 wherein provisions have been laid down for grant of incentives for acquiring Ph. D or M.Tech/M.Phil degree by the teachers of Government/Government sponsored Polytechnics, which is as follows :</p>	
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ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

	<p>“Government of West Bengal Department of Technical Education & Training Polytechnic Branch <u>Bikash Bhavan, Salt Lake, Kolkata – 700 091</u> No.574-TET(poly)/5P-1/2010 Dated 13th September, 2010 From: Smt. N. Basu Joint Secretary to the Government of West Bengal.</p> <p>To: The Director of Technical Education & Training West Bengal</p> <p>Sub: The revision of pay structure of the Principals and Lecturers of Government and Government Sponsored Polytechnics in West Bengal w.e.f. the 1st day of January, 2006.</p> <p>.....</p> <p><i>3. Incentives for Ph.D/M.Tech. and other qualifications :</i></p> <p><i>(i) Five non-compounded advance increments shall be admissible at the entry level of recruitment to persons possessing the degree of Ph.D awarded in the relevant discipline by a recognized university following the process of registration, course-work and external evaluation as prescribed by UGC.</i></p>	
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ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

	<p>(ii) <i>M.Phil degree holders at the time of recruitment to the post of Lecturer shall be entitled to two non-compounded advance increments.</i></p> <p>(iii) <i>Those possessing Post Graduate degree in a professional course such as M.Tech in relevant branch/discipline recognized by a Statutory University shall also be entitled to 2 non-compounded advanced increments at the entry level.</i></p> <p>(iv) <i>Teachers who complete their Ph.D degree while in service shall be entitled to three non-compounded increments if such Ph.D is in the relevant branch/discipline and has been awarded by a University complying with the process prescribed by the UGC for enrolment, course-work and evaluation etc.</i></p> <p>(v) <i>However, teachers in service who have been awarded Ph.D at the time of coming into force of this scheme or having been enrolled for Ph.D have already undergone course-work, if any, as well as evaluation, and only notification in regard to the award of Ph.D is awaited, shall also be entitled to the award of three non-compounded increments even if the university awarding such Ph.D has not yet been notified.</i></p> <p>(vi) <i>Teachers in service who have not yet enrolled for Ph.D shall, therefore derive the benefit of three non-</i></p>	
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ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

	<p style="text-align: center;"><i>compounded increments on award of Ph.D, while in service only if such enrolment is with a University recognized by UGC.</i></p> <p>(vii) <i>Teachers who acquire M.Phil degree or a M.Tech degree in a relevant branch/discipline recognized by a statutory University while in service, shall be entitled to one advance increment.</i></p> <p>(viii) <i>All the advance increments shall take effect from 01.09.2008 or thereafter.”</i></p> <p>On consideration of the above provisions laid down in paragraph 3 of the G.O. dated September 13, 2010, we find that advance increments will be admissible to the teachers either at entry level or while in service as incentive for acquiring higher educational qualifications w.e.f. September 1, 2008. This benefit for grant of advance increments is not confined to the Lecturer only as contended on behalf of the State respondents. Since the term “teachers” is used for grant of advance increments as incentive for acquiring higher educational qualification, we are of the view that Principals working in the Government/Government sponsored Polytechnics have not been excluded for grant of advance increment as incentive for acquiring higher educational qualification either at the time of entry into the service or while in service. In view of our above findings, we are constrained to hold that the provisions of G.O. dated September 13, 2010 have not been misinterpreted for grant of advance increments to the</p>	
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ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

	<p>Principals of Polytechnics/Government sponsored Polytechnics as incentive for acquiring higher educational qualifications as mentioned in the impugned letter dated November 27, 2014.</p> <p>Admittedly, the applicants have been enjoying advance increments in terms of G.O. dated September 13, 2010 for about six years before issuance of letter dated November 27, 2014. The financial benefits already granted in favour of the applicants have been curtailed by the impugned letter dated November 27, 2014 without any justification. Since the applicants have been enjoying benefit of advance increments as incentive for acquiring higher educational qualifications in terms of G.O. dated September 13, 2010, the State respondents are estopped from curtailing the said financial benefits without any justification by issuing letter dated November 27, 2014, particularly when the previous G.O. has not yet been cancelled. In our view, the impugned letter dated November 27, 2014 is liable to be quashed as arbitrary and illegal.</p> <p>What transpires from materials on record is that the applicants have joined on different dates as Principal of Government Polytechnics and they had different qualifications at the time of entry into the service. We also find that some of them have acquired higher educational qualifications after entering into service. The criteria for grant of advance increments as incentive for acquiring higher educational</p>	
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ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

qualification are laid down in paragraph 3 of G.O. dated September 13, 2010. Sufficient materials have not been placed before us to decide whether proper advance increments have been granted in favour of each of the applicants for acquiring higher educational qualifications either at the time of entry into the service or while in service. Accordingly, we of the view that the Respondent No. 1 should consider whether number of advance increments granted in favour of the applicants for acquiring higher educational qualifications in terms of G.O. dated September 13, 2010 is justified and in case of excess payment of salary to any of the applicants, the same may be recovered from the salary of the respective applicant before retirement after giving the concerned applicant an opportunity of hearing.

In view of our above observation, the Respondent No. 1, Principal Secretary to the Government of West Bengal, Department of Technical Education and Training is directed to consider whether number of advance increments granted in favour of each of the applicants for acquiring higher educational qualifications either at the time of entry into service or while in service in terms of G.O. dated September 13, 2010 is justified within a period of twelve weeks from the date of communication of the order and communicate the result of the same to each of the applicants within a period of four weeks thereafter. The impugned letter dated November 27, 2014 (Annexure C to the original application) is hereby quashed. The interim order

ORDER SHEET

Tarak Kumar Bandyopadhyay & Ors.
.....

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 51 OF 2015**

Rajib	stands confirmed. The original application is thus disposed of. Let a plain copy of the order be supplied to both parties. (S.K. DAS) MEMBER(A)	(R. K. BAG) MEMBER (J)
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