

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

Case No – **OA 231 OF 2016**

**Paresh Nath Das & Others** 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
11 <hr/> 31.07.2018	<p><b>For the Applicant</b> : Mr. G.P. Banerjee, Mrs. S. Agarwal, Learned Advocates.</p> <p><b>For the Respondents</b> : Mr. M.N. Roy, Learned Advocate.</p> <p><b>For the AG (A&amp;E),WB</b> : Mr. B. Mitra, Departmental Representative.</p> <p>The applicants have prayed for direction upon the respondents to grant them benefit of pre-revised scale no. 19 (Pay Band 5) under West Bengal Services (ROPA) Rules, 2009 w.e.f. January 1, 2006 after modification of Memorandum No. 10581-F(P) dated December 28, 2012 issued by the Finance Department (Audit Branch), Government of West Bengal.</p> <p>The applicants were recruited through common competitive examinations viz West Bengal Civil Service (Executive) and allied services Examination held in the year 1975, 1976 and 1979 respectively. They were placed in West Bengal Food &amp; Supplies Service on the basis of merit-cum-option exercised by them. All the applicants retired from service during the period between January 31, 2006 and November 30, 2012. The contention of the applicants is that the Government of West Bengal sanctioned only 3 posts in scale no. 19 for the Officers belonging to West Bengal Food &amp; Supplies Service under ROPA 1998 by issuing G.O. dated June 21, 1990. The further contention of the applicants is that 4 more posts in scale no. 19 were</p>	

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sanctioned by Government of West Bengal for the Officers of West Bengal Food & Supplies Service by issuing G.O. on March 13, 2001. It is contended on behalf of the applicants that there were only 7 sanctioned posts in scale no. 19 for the Officers of West Bengal Food & Supplies Service, whereas there were 145 sanctioned posts in scale no. 19 for the Officers belonging to West Bengal Civil Service (Executive). The grievance of the applicants is that only 2.5% of Officers belonging to West Bengal Food & Supplies Service got the benefit of scale no. 19, whereas 8.2% of Officers belonging to West Bengal Civil Service (Executive) got the benefit of scale no. 19. By Memorandum No. 10581-F(P) dated December 28, 2012 issued by the Joint Secretary to the Government of West Bengal, Finance Department (Audit Branch) the benefit of scale no. 19 is given to all Officers belonging to State constituted services other than West Bengal Secretariat Service on completion of 25 years of service out of which three (03) years of service must be in pre-revised scale No.18 and on fulfilment of some other conditions, even when those Officers are not falling within the quota of sanctioned posts of scale no. 19. It is relevant to quote the said Memorandum dated December 28, 2012 which is as follows :

**“Government of West Bengal  
Finance Department  
Audit Branch  
Writers’ Buildings, Kolkata – 700 001.**

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**No. 10581-F(P)**

**Dated : 28.12.2012**

**Memorandum**

The question of movement to pre-revised scale no. 19 for the Officers belonging to State Constituted Services other than West Bengal Secretariat Service has been under active consideration of the Government for sometime past.

2. After careful consideration of the matter, the Governor has been pleased to decide to allow to move the Officers belonging to West Bengal State Constituted Services other than West Bengal Secretariat Service borne in scale no. 16 to move to pre-revised scale no. 19 i.e. Rs.14300-400-18300/- (PB No. 5 with GP of Rs.8700/- as per ROPA, 2009) after completion of 25 years of service in case they do not come under the existing quota within the said period and completed at least 3 years of service in pre-revised scale no. 18 and also subject to the following conditions :-

- (a) such movement will be purely non-functional ;
- (b) the eligible Officers may hold the same as personal to them without any change of designation and nature of duties.

3. The norms of such movement regarding APR will be as per Para 3.30.6 of the recommendation of the 5<sup>th</sup> Pay Commission in Part-II of Volume-I. Necessary screening will be done by the Departmental Promotion Committee.

4. This order will take effect from 01.12.2012.

5. The Accountant General (A&E), West Bengal and Principal Accountant General, West Bengal may be informed accordingly.

**Sd/- A.K. Das**  
**OSD & E.O. Joint Secretary to the**  
**Government of West Bengal**  
**Finance Department”**

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The applicants have retired before December 1, 2012 and the benefit of above Memorandum dated December 28, 2012 has been made effective from December 1, 2012. The applicants have prayed for modification of the said Memorandum, so that benefit of the said Memorandum is given w.e.f. January 1, 2006 notionally and actual financial benefit is given w.e.f. August 1, 2008.

Mr. G.P. Banerjee, Learned Counsel for the applicants, submits that the financial benefit of Memorandum No. 961-F(P) dated February 7, 2011 issued by the Finance Department (Audit Branch), Government of West Bengal is given to Officers who retired prior to January 1, 2006 as well as Officers who are still in service, but the benefit of Memorandum dated December 28, 2012 is not given to the Officers who retired till November 30, 2012 and thereby the applicants have been prejudiced. By relying on paragraph 64.9 and 64.10 of the Chapter 64 under the heading "Promotion Policy and Career Advancement Scheme" recommended by 5<sup>th</sup> Pay Commission set up by Government of West Bengal, Mr. Banerjee further submits that the cut off date for giving benefit of recommendation of Pay Commission should be from 01.01.2006 notionally while actual financial benefit should be given from August 1, 2008. He also submits that Memorandum dated December 28, 2012 was issued by the Finance Department, Government of West Bengal on the basis of recommendation of 5<sup>th</sup> Pay

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Commission. According to Mr. Banerjee, the cut off date for implementation of Memorandum issued on December 28, 2012 is fixed in an arbitrary manner. In support of his above contention, he has relied on the decision in the case of “Sukumar Mukherjee & Others v State of West Bengal & Others” (OA No. 1197 of 2014 disposed of on January 11, 2016 by West Bengal Administrative Tribunal) and connected case of “Kamal Bhattacharya & Others v State of West Bengal & Others” (OA No. 1281 of 2015 disposed of on March 21, 2016 by WBAT), which was upheld by the Division Bench of the Hon’ble High Court in WPST 194 of 2016 and also by the Supreme Court of India on November 3, 2017 in connection with Diary No. 27504 of 2017.

Mr. M.N. Roy, Learned Counsel representing the state respondents submits that the case of “Sukumar Mukherjee & Others” (supra) and “Kamal Bhattacharya & Others” (supra) have no manner of application in the facts of the present case. He further submits that Memorandum dated December 28, 2012 was issued by the Finance Department, Government of West Bengal for giving benefit to the serving Officers and the said Memorandum was not issued on the basis of recommendation of 5<sup>th</sup> Pay Commission. The specific submission of Mr. Roy is that there is no arbitrariness in fixing cut off date for giving effect to Memorandum dated December 28, 2012 and the applicants who retired on or before November 30, 2012 are not entitled to get the benefit of the said Memorandum.

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In “Sukumar Mukherjee & Others” (supra) and “Kamal Bhattacharya & Others” (supra), this Tribunal dealt with the issue of giving benefit of pre-revised scale no. 17 to promotee Deputy Commissioner of Police (in short DCP). The Government of West Bengal issued G.O. for giving benefit of pre-revised scale no. 17 to promotee Deputy Commissioner of Police w.e.f. June 1, 2013. The 5<sup>th</sup> Pay Commission made recommendation for upgradation of pre-revised scale no. 16 to pre-revised scale no. 17 to promotee DCPs in order to bring uniformity in the pay scale of promotee DCPs and directly recruited DCPs. Since the Government of West Bengal did not give the benefit of pre-revised scale no. 17 to the promotee DCPs w.e.f. January 1, 2006 notionally and actual financial benefit from August 1, 2008 which was given to all other Government employees, the Tribunal held that the cut off date for giving benefit of pre-revised scale no. 17 to promotee DCPs was fixed in an arbitrary way w.e.f. June 1, 2013 and thereby the said Memorandum was struck down by the Tribunal which was subsequently upheld by the Division Bench of the Hon’ble High Court and was also upheld by the Apex Court.

In the instant case, 5<sup>th</sup> Pay Commission made recommendation in paragraph 64.9 and 64.10 of Chapter 64 not to alter the number of posts for giving benefit of scale no. 19 in different State constituted services. The further recommendation of the 5<sup>th</sup> Pay Commission in the said Chapter was that the pre-

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revised scale no. 19 may be given to the Officers after completion of 28 years of total service in pre-revised scale no. 16, 17 and 18 with at least 3 years of service in pre-revised scale no. 18 beyond the quota of posts in scale no. 19 already allocated to different State constituted services. By issuing Memorandum dated December 28, 2012, the Government of West Bengal has laid down that the Officers of State constituted services who do not come within the existing quota of posts allocated to scale no. 19, may get the benefit of pre-revised scale no. 19 as per ROPA 2009 after completion of 25 years of service and after completion of at least 3 years of service in pre-revised scale no. 18 and on fulfilment of some conditions laid down in the said Memorandum. Since this Memorandum has reduced total length of service from 28 years to 25 years by way of deviation of recommendation made by 5<sup>th</sup> Pay Commission, we are of the view that this Memorandum dated December 28, 2012 was not issued by the Finance Department, Government of West Bengal on the basis of recommendation of 5<sup>th</sup> Pay Commission.

The citation of Memorandum dated February 7, 2011 issued by the Finance Department, Government of West Bengal for getting benefit of pre-revised scale no. 19 by the applicants cannot be accepted by us, because the said Memorandum dated February 7, 2011 was issued for fixation of revised pay of only retired Officers, particularly the Officers who retired prior to

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January 1, 2006. We do not find any relevance of citing the said Memorandum dated February 7, 2011 for getting benefit of the Memorandum dated December 28, 2012 to the applicants.

The facts of “Sukumar Mukherjee & Others” (supra) and “Kamal Bhattacharya & Others” (supra) are clearly distinguishable from the facts of the present case where the applicants have claimed financial benefit on the basis of Memorandum dated December 28, 2012 which came into force after their retirement from service. We have already observed that in “Sukumar Mukherjee & Others” (supra) and “Kamal Bhattacharya & Others” (supra), the Government of West Bengal fixed the cut off date for giving financial benefit in an arbitrary manner without following the recommendation of 5th Pay Commission, particularly when the benefit was given to all other Government employees w.e.f. January 1, 2006. Accordingly, the ratio of the case of “Sukumar Mukherjee & Others” (supra) and “Kamal Bhattacharya & Others” (supra) cannot have any manner of application in the facts of the present case.

On perusal of Memorandum dated December 28, 2012, we find that the Officers of State constituted services who will not get scale no. 19 by availing of the posts of the existing quota of the post allocated to the particular service, will get the benefit of pre-revised scale no. 19 after completion of total length of 25 years of service and after completion of 3 years of service in



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pre-revised scale no. 18, if they fulfil the conditions, inter alia, recommendation of the Departmental Promotion Committee. The Officers who retired before coming into force of Memorandum dated December 28, 2012 cannot be evaluated by the Departmental Promotion Committee for the purpose of giving scale no. 19. Accordingly, we are unable to accept the contention made on behalf of the applicants that the Officers who retired till November 30, 2012 should have got the benefit of Memorandum dated December 28, 2012, which came into force on December 1, 2012.

In view of our above findings, we can safely hold that the cut off date for giving effect of Memorandum dated December 28, 2012 has not been fixed in an arbitrary and whimsical manner as contended on behalf of the applicants. As a result, the application fails and the same is **dismissed**.

Let an urgent xerox certified copy of this order be supplied to the parties, if applied for, on priority basis on completion of necessary formalities.

**( S.K. DAS )**  
MEMBER(A)

**( R. K. BAG )**  
MEMBER (J)

Sanjib