

**IN THE WEST BENGAL ADMINISTRATIVE
TRIBUNAL
BIKASH BHAVAN, SALT LAKE CITY
K O L K A T A – 7 0 0 0 9 1**

**Present :-
The Hon'ble Smt. Urmita Datta (Sen)
Member (J)**

**J U D G M E N T
-of-**

Case No. O.A. - 716 of 2018

Ganesh Chandra Dey Applicant

-Versus-

State of West Bengal & others....Respondents

**For the Applicant : - Mrs. Sunita Agarwal,
Advocate**

**For the State Respondents:- Mr. Goutam Pathak Banerjee,
Mr. Biswa Priya Roy,
Advocates**

Judgment delivered on : 10th May, 2022

**The Judgment of the Tribunal was delivered by:-
The Hon'ble Smt. Urmita Datta (Sen), Member (J)**

Judgement

1. The instant application has been filed praying for following reliefs:-

“(a) To direct the respondents authorities to grant pay protection to the applicant from the date of respondent No. 6 received the higher pay with all arrear salaries;

(b) To direct the respondents to re-fix the pension and other retiral benefits on the basis of the higher pay which will be granted to the applicant and to pay all his arrears.

(c) To declare that the applicant is entitled to the higher pay as was granted to the respondent No. 6 from the date the respondent No. 6 have been granted the higher pay than the applicant.

(d) To pass such other or further order or orders and/or direction or directions as to your Lordships may seem fit and proper. ”

2. As per the applicant, he was initially appointed as a Deputy Forests Ranger on 02.05.1974. Thereafter, he was promoted to the post of Forests Ranger on and from 15.06.1999, whereas the Respondent No. 6, who is junior to the applicant as per the Gradation List dated 30.11.1986 (Annexure ‘A’), was appointed as Deputy Forests Ranger on 12.04.1976 and was further promoted to the post of Forests Ranger on 01.04.2002. Though as per the applicant, he was senior to the private Respondent No. 6, Sri Sukumar Bandyopadhyay and his pay was correctly fixed prior to 12.04.2001 vis-à-vis his junior. However, on and from

12.04.2001, the pay of Respondent No. 6 was fixed higher than the pay of the applicant as would be evident from the comparative statement made by Additional P.C.C.F. and C.C.F., Personnel Management Cell, Deptt. of Forest (Annexure 'B').

3. As per the applicant, from the perusal of the afore-mentioned comparative chart, it would be evident that his pay was correctly fixed before 12.04.2001, whereas the pay of his junior i.e. respondent no. 6 was fixed at Rs. 6,125/- after granting him 25 years benefit under CAS subsequently.

4. Being aggrieved with, he made a representation to the Conservator of Forests on 07.10.2003 (Annexure 'C'). In pursuance to that, Principal Chief Conservator of Forests forwarded the relevant documents for pay protection of the applicant to the Principal Secretary, Govt. of West Bengal, Deptt. of Forests vide letter dated 25.02.2004 (Annexure 'D'). Again, Divisional Forest Officer, Bankura (North) Division sent the original service book of the applicant along with others to the Conservator of Forests, Personnel Management Cell vide Memo dated 01.07.2004 for necessary action (Annexure 'E'). The Divisional Forest Officer, Bankura (North) Division again vide his letter dated 13.06.2005 has asked for the latest position of prayer of pay protection of the applicant to the Principal Chief Conservator of Forests, West Bengal (Annexure 'F'). Subsequently, the applicant also made another reminder to the Principal Chief Conservator of Forests, Pay Protection vide letter dated 23.06.2007 (Annexure 'G'). As no steps was taken, the Divisional Forest Officer, Bankura (North) Division again asked the Principal Chief Conservator of Forest, West Bengal to do the needful (Annexure 'H') with regard to the pay protection of the applicant. The Divisional Forest Officer, Bankura (North) Division again vide his Memo dated

18.06.2012 had asked for necessary action to the Principal Chief Conservator of Forest. Again the Additional P.C.C.F. and Chief Conservator of Forests, Personnel Management Cell send the service book, comparative pay statement and relevant Gradation List to the Additional Chief Secretary, Government of West Bengal for his necessary action vide letter dated 08.08.2012 (Annexure 'J'). In the mean time, the applicant retired on 28.02.2013 on superannuation. But neither he has been granted pay protection vis-a-vis his junior nor he received any communication from the department. Being aggrieved with, he has made another representation to the respondents on 27.07.2018 (Annexure 'K') but with no fruitful effect. Therefore, ultimately he has approached this Tribunal asking for protection of pay and to direct the respondents to revise his pay by granting him pay protection. It has been submitted by the applicant that under Rule 55(4) of the West Bengal Service Rule Part – I, he is entitled to get pay protection vis-à-vis Sri Sukumar Bandyopadhyay as admittedly he is junior to the applicant.

5. The respondents have filed their reply, wherein they are basically admitted the fact, however, has submitted that the highest authority yet to take decision in this regard. During the course of the hearing, the counsel for the applicant has raised the point of limitation.
6. However, as per the applicant, since the case of the applicant was recommended by the Divisional forest Officer as well as Additional P.C.C.F. and C.C.F. to the Principal Secretary repeatedly and the same was pending before the Principal Secretary, Forest Department till date and as the applicant received lesser amount of pay in each and every month than his junior and subsequently the pension also, therefore he is entitled

to get the pay protection as per Rule 55(4) of West Bengal Service Rule Part - I. Therefore, as recurring cause of action is going on, thus, the instant application is not barred by limitation. He has further submitted that the respondents are going on communication and the case of pay protection is pending before the Additional Secretary, Deptt. of Forests, Govt. of West Bengal since 2004. But till date, neither he has been granted protection of his pay and pension has been revised nor any decision has been communicated to him.

7. I have heard the parties and perused the records. From the perusal of the comparative chart as prepared by Additional P.C.C.F. and C.C.F., Personnel Management Cell, it is noted that the applicant was admittedly senior to the respondent no. 6. However, prior to 12.04.2001, his pay was higher than the pay of the respondent no. 6. In the mean time, the applicant was promoted to the post of Forests Ranger on 15.06.1999 and as such his pay was fixed in the pay scale of Rs. 4500-9700/- at Rs. 5600/- and subsequently on 12.04.2001 his pay was fixed as Rs. 5950/- in the pay scale of Rs. 4500-9700/-, whereas the Respondent No. 6 was promoted to the post of Forests Ranger on 01.04.2002. However, his pay was fixed at Rs. 6125/- in pay scale of Rs. 4500-9700/- on 12.04.2001 as he was granted 25 years benefit under CAS i.e. before his promotion to the post of Forest Ranger. Therefore, from 12.04.2001, pay of Respondent No. 6 was fixed in a higher amount than the applicant, though the applicant admittedly is senior than the Private Respondent No. 6.

8. Rule 55(4) of West Bengal Service Rule Part – I stipulates inter alia:

**“(1) Subject to the provisions of clauses (bb)
and (c) of**

.....
..... in a post will draw the presumptive pay of that post.

(2) On an enhancement in the grade pay
.....
..... re-fixation of pay under sub-rule (2) of this rule.

(3) Omitted.

(4) If a Government employee while officiating in a higher post draws pay at a rate higher than his Senior Officer either due to fixation of his pay in the higher post under the normal rules, or due to revision of pay scales, the pay of the Government employee senior to him shall be re-fixed at the same stage and from the same date his junior draws the higher rate of pay irrespective of whether the lien in the lower post held by the Senior Officer is terminated at the time of re-fixation of pay, subject to the conditions that both the Senior and Junior Officers should belong to the same cadre and the pay scale of the posts in which they have been promoted are also identical.

The benefit of this rule shall not be admissible in case where a senior Government employee exercises his option to retain un-revised scale of pay, or where the pay drawn by the senior officer in the lower post before promotion to the higher post was also less than that of his junior.”

From the above, it is clear that the pay of senior government employee shall be re-fixed at the same stage and from the same date his junior draws the higher rate of pay irrespective whether the lien in the lower post held by the senior officer is terminated at the time of re-fixation of pay subject to the conditions that both the senior and junior officials who belonged to the same cadre and pay scale of the post in which they have been promoted are also identical.

9. In the instant case, admittedly the applicant is senior than the Respondent No. 6 as has been reflected in Gradation List as well as the communication / comparative chart made by the Additional P.C.C.F. and C.C.F. Both the applicant as well as Respondent No. 6, who are in the same cadre of Additional Forest Officer and were subsequently promoted to the post of Forest Officer. Though the applicant was promoted to the post of Forest Officer on 15.06.1999, whereas the Respondent No. 6 was promoted to the post of Forest Ranger on 01.04.2002. However, the anomaly with regard to the pay of the applicant vis-à-vis Respondent No. 6 starts from 12.04.2001 as the pay of the applicant was fixed as Rs. 5950/- in the scale of Rs. 4500-9700/-, whereas the pay of the Respondent No. 6 was fixed at Rs. 6125/- in the pay scale of Rs. 4500-9700/- on 12.04.2001.

10. Therefore, under the Rule 55(4) of West Bengal Service Rule Part- I, the pay of the applicant needs to be re-fixed from the same date his junior draws the higher rate of pay. Since the respondents till date have not decided the issue which they have to do as per the Rule 55(A) of West Bengal Service Rule Part – I and the lower authority had already sent the relevant papers to the Principal Secretary, Deptt. of Forests. Therefore, I have no option but to direct the respondent authorities to grant pay protection to

the applicant from the date the Respondent No. 6 received the higher pay with all arrear and also to re-fix the pension and other retiral benefits on the basis of such higher pay and to pay arrears thereof within a period of eight weeks from the date of receipt of the order. Accordingly, the O.A. is disposed of with the above observations and directions with no order as to cost.

URMITA DATTA (SEN)
MEMBER (J)

A.K.P.