

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. OA – 454 of 2023

Amit Gupta - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. S. Dutta,
and Mr. H. Adhikari,
Date of order Advocates
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06.12.2024 For the Respondents : Mr. S.K. Mondal,
Advocate

For the Pr. A.G. (A & E), : Mr. B. Mitra,
W.B. (Departmental Representatives)

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638 – WBAT / 2J-15/2016 dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

Voklatnama filed by Mr. Adhikari be kept in record.

Mr. Dutta files rejoinder to the Reply, earlier filed by Mr. S.K. Mondal, learned counsel on behalf of the respondent authority. Copy has been served.

Brief facts of the case:

The prayer in this application is for a direction to the respondent authorities to release his unpaid differential arrear salary dues as well as pensionary and other retiral dues in terms of Scale No. 19 MCAS dated 28.12.2012 as admissible.

Mr. Adhikari, learned counsel for the applicant submits that similar benefit has been ordered to similarly circumstanced employees for such benefit as prayed for by this applicant in this application.

Despite being eligible and submission of several representations, the prayer of the applicant has not been considered by the respondent authorities. In response to the limitation of this application, Mr Adhikari submits that representations have been submitted before the respondents and in a correspondence dated 22.10.2019 the Department addressed the Director regarding the benefits of awarding MCAS after completion of 25 years to the applicant. Therefore, since the cause of action has been continuing since his superannuation till 2021, the question of limitation in filing this application does not arise.

From the statements recorded in the application by the applicant, the

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applicant joined the cadre of West Bengal Junior Statistical Service (WBJSS) on 24.02.1981 and was posted as a District Statistical Officer (DSO)/Assistant Statistician in the scale of pay of Rs. 400-750/- w.e.f. 01.06.1986. The applicant was confirmed in the service by the Department of Development and Planning. By recommendation of the Public Service Commission, the applicant was later promoted and posted as Assistant Director/Statistician getting a scale of Rs. 2200-4000/- which is equivalent to scale no. 16. By recommendation of the Pay Review Committee, an integral part of the 3rd Pay Commission being Ropa 1990, 17 posts of District Statistical Officer were upgraded and included in the cadre of West Bengal Statistical Service to the post of Assistant Director. By Finance Department Memo No. 11140-F dated 09.11.1995. The applicant was subsequently awarded the higher scale of pay as per Carrier Advancement Scheme (CAS) under Ropa Rules, 1998 after completion of his service of ten years from 01.01.1996 in accordance with the Department's Memo No. 2703 dated 02.12.1998. The Finance Department by Memo 3015-F dated 13.03.2001 relating to improvement of the CAS issued a Memo 6075-F dated 21.06.1999. This was notified on 13.03.2001. This Notification allowed a Government employee appointed in the revised pay scale No. 13 to 16 to move to the higher scale on completion of 8 years' of continuous and satisfactory service. Every movement to such higher scale was subject to fulfilment of norms of promotion as applicable. The applicant was subsequently awarded the higher scale of pay of 16 years of CAS benefit by the Department with effect from 01.01.2002. On the other hand, the Principal Accountant General objected to the Department for its not obtaining the approval of PSC in terms of Recruitment Rules prior to implementation of the aforesaid orders dated 09.11.1995, 30.08.1996 and 31.01.1997. The Department sought post facto approval from the PSC which was refused. The Department, therefore, moved a Cabinet proposal for approval of the Cabinet and such approval was accorded on 30.08.2005 approving the regularisation of appointments of 60 officers of the Department. Such approval was also communicated to the principal Accountant General. The name of the applicant was part of the first 17 incumbents in the said upgraded post being serial No. 9.

On 19.02.2007, the applicant was promoted to the cadre of West Bengal Higher Statistical Service (WBHSS) as per the recommendation of the PSC vide Department's

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Memo dated 395 dated 19.02.2007. However, as stated by the applicant in his application, he did not get any pay scale benefit for his promotion in WBHSS cadre on the ground that he had already been given such scale benefit under CAS for completion of 16 years of service. The applicant also states that he had availed the benefits of CAS twice after completion of 10 years and 16 years but did not get any pay scale benefit for his promotion to WBHSS cadre in the post of Deputy Director, Socio Economic Survey office. On 28.12.2012, the Finance Department issued a Memo No. 1058-F(P) which decided that the officers belonging to West Bengal Constitute Services other than West Bengal Secretariat Service borne in scale No. 16 to move to pre-revised scale No. 19 i.e Rs. 14,300 – 400 – 18300(P.B. No. 5 with G.P. 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. The said Notification was conditional on the ground that (a) such movement will be purely non-functional and (b) the eligible officers may held the same as personal to them without any change of designation and nature of duties.

The applicant retired as Deputy Director, Industrial Statistics Office after attaining the age of superannuation on 31.07.2013 after coming into effect the modified CAS of 28.12.2012 under which his services were moved from scale No. 16 to pre-revised scale No. 19 in terms of Ropa, 1990.

The contention of the applicant is that though his name was listed at serial No. 9 in the WBSS cadre to the post of Assistant Director, therefore, he fulfilled all the criteria for upgradation to the said post of WBSS. The applicant having already been completed requisite 25 years of service became entitle to the benefit of scale No. 19 as per Memo dated 28.12.2012. However, he was not given the benefit of scale No. 19 with effect from 28.12.2012 till his superannuation on 13.07.2013. He was entitled to draw the salary in the scale No. 19 28.12.2012 to 13.07.2013, which was denied to him. Thus, he superannuated at scale No. 18B and his pension was also fixed taking scale No. 18B ignoring his entitlement for scale No. 19. The applicant being aggrieved for such deprivation furnished several representations before the authorities. Three such representations are dated 07.07.2015, 28.08.2019 and 12.07.2021. But none of these representations were answered or responded by the respondent authorities. The Joint

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Secretary of the Department by his letter dated 22.10.2019 wrote to the Director, Bureau of Applied Economics and Statistics regarding his prayer for awarding him MCAS. The competent respondent authority has not responded to such proposal or reply to the applicant. It also appears from his application that he may have overdrawn some amount for which he is willing to refund. The applicant also aggrieved that three officers juniors to him drawing scale No. 19 denying this applicant being junior to them benefit of scale No. 19.

Having been aggrieved of scale No. 19 and the authorities not responding to his representations, the applicant was compelled to file this application before this Tribunal praying for a direction to the respondent authorities to release him his unpaid differential arrear salaries as admissible including revision in his pension and other retiral benefits.

Reply of the State Respondents:

The State respondents have filed their replies, relevant points are as follows:
This application is not barred by limitation in the reason that he superannuated on 13.07.2013 but filed this application before this application in 2023. The applicant has not justified the reasons by such an application was filed and has not prayed for condonation of such delay. The order of the Finance Department in U.O. No. Group P1/2015-2016/0444 dated 15.03.2016 clearly stipulated that the officers who did not get promotion to WBSS on regular basis through the WBPSB but were allowed promotion to WBSS due to upgradation, may be allowed to draw pay in the pay scale of WBSS with effect from the actual date of taking over the charge of the post. Therefore, such officers may not entitle to receive benefits of CAS/MCAS till their confirmed in WBSS after their regularisation on 19.10.2005. The Finance Department further issued another order being U.O. No. Group P1/2021-2022/0279 dated 04.11.2021 mentioning that, “in respect of Shri Gupta, all CAS/MCAS benefits available for WBSS shall be reckoned from the date of his regular appointment as Assistant Director in WBSS on recommendation of WBPSB, CAs/MCAS benefits already allowed need to be reviewed.”

The applicant who had retired on 31.07.2013 thus comes under the ambit of U.O. No. Group P1/2015-2016/0444 dated 15.03.2016. Therefore, by dint of such order of

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Finance Department, the applicant had given his consent in writing on 09.12.2022 to refund the overdrawal amount.

Submissions of the Applicant's side:

Mr. Dutta begins his submission by quoting the two conditions required to be entitled for the MCAS benefit as stipulated in the order dated 28.12.2012. The two conditions are :-

- (i) Completion of 25 years of service in case they do not come within the existing quota within the said period, and
- (ii) Completion of at least three years of service in pre-revised scale No. 18.

Submission is that the applicant fulfils both the conditions.

Mr. Dutta has also submitted that the applicant felt discriminated and prejudiced when juniors to him, namely Mrinal Banerjee, Tapas Ghoshal and Smt. Debasree Mukherjee were awarded such benefits.

Further submission is that when the Notification No. 10581-F(P) was published on 28.12.2012, the applicant was very much in the service. In fact this Notification also informs that it will take effect from 01.12.2012, the applicant being in the service was not considered for such benefit.

Response of the Respondent's side:

Appearing on behalf of the respondents, Mr. S.K. Mondal, learned counsel has made the following submissions:

That the basic principle of MCAS is to give some benefit to an employee who had not got any promotions previously. Explaining this objective, Mr. Mondal enlightens that any employee if he had received a promotion between first and eight years of his service, will not be entitled for the 8 years CAS benefit. Similarly, if the employee had received any promotion between eight to sixteen years of his service, he would not be entitled for any CAS benefit during this period. Likewise, if the employee had received any promotion during his service tenure from 16 to 25 years, he would not be entitled for such benefit. Mr. Mondal emphasises that the applicant had received his 16 years MCAS benefit on 01.01.2022. He would have been entitled to receive 25 years MCAS benefit had he not been promoted on 19.02.2007 from a post in West Bengal Statistical Service to West Bengal Higher Statistical Service. Such promotion was given during

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his 16 to 25 years of service.

Mr. Mondal further argues that the Memo No. 10581-F(P) dated 28.12.2012 relied on by the applicant's side for claiming such benefit is not applicable in his case for the reason that he had already completed 25 years of service in 2011, prior to issue of this Memo. Therefore, such benefit as stipulated in this Memo cannot be given to the applicant with retrospective effect.

Responding to Mr. Dutta's allegation that depriving the applicant, three of his juniors, Mrinal Banerjee, Tapas Ghoshal and Smt. Debasree Mukherjee were extended such benefit, Mr. Mondal is of the opinion that by admitting that the three named persons were junior to the applicant, it is also an admission of the fact that they had completed their 25 years of service after the publication of Memo 10581-F(P) dated 28.12.2012. Therefore, if any eligible employee who had completed 25 years of service after 28.12.2012 will be entitled for the 25 years MCAS benefit. Therefore, such comparison and claim of the applicant for such benefit is not a valid ground.

Observations of this Tribunal:

Having heard the submissions of the learned counsels, representing both the sides and after examination of the records in this case, the Tribunal finds that by a Memo 162740/2021 dated 03.12.2021, the Department had communicated to the Director-in-charge that such prayer for MCAS in favour of the applicant, Amit Gupta, ex-Deputy Director has received the observation of the Finance Department and suitable action has been asked from his end. The above Memo is cited as under:

“Sub: Prayer for MCAS-01 benefit of Sri Amit Gupta, Ex-Dy. Director.

Sir,

I am directed by the order on the subject mentioned above and to send herewith (copy enclosed) the observation of Finance Department, Gr.-P1, which is self explanatory, (UO No.: Group P1/2021-2022/0279 dated 04/11/2021) for taking necessary action at your end.”

From this important document, it is evident that this matter was referred to the Finance Department and its opinion was obtained. However, the respondent authorities, in particular, the Bureau of Applied Economics and Statistics were sitting tight over it and have not taken any suitable action. Since the Bureau has not taken any decision nor

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communicated the same to the applicant, the Tribunal is of the strong impression that the prayer for MCAS of the applicant has already been settled. Mr. Mondal, learned counsel has also not been briefed by the respondent's office about the outcome of such opinion expressed by the Finance Department in their communication to the Department.

Conclusion:

In view of what has been stated above, the Tribunal feels it is rather imperative that the respondent authority be directed to communicate to the applicant the decision taken relating to the prayer of the applicant in the light of the opinion expressed by the Finance Department its U.O. No. *Group P1/2021-2022/0279 dated 04/11/2021*.

In the light of above observation, the respondent No. 2, the Director, Bureau of Applied Economics and Statistics is hereby directed to communicate the decision taken relating to the MCAS benefit of the applicant as evident from the correspondence of the Department addressed to him by Memo No. 1/162740/2021 dated 03.12.2021 within a period of four weeks from the date of communication of this order.

In the event, if it is found by the respondents that despite the opinion communicated by the Finance Department, either the Bureau or the Department had not taken any follow up action, than the Tribunal further directs the respondent No. 2 to initiate such a proposal in the light of the Finance Department's opinion quoted in the above Memo and take a final decision and communicate the same to the applicant within eight weeks from the date of communication of this order.

Accordingly, this application is disposed of.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P/H.S.