

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

**THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,
Case No. – OA 11 OF 2023**

SUJIT PATRA & OTHERS - Vs - THE STATE OF WEST BENGAL & OTHERS.

Serial No. and

Date of order

07

06.08.2024

For the Applicants : Mr.K.Bhattacharya
Mrs.Sunita Agarwal
Ms. K.Chakraborty
Advocates

For the State Respondents : Mr. Soumendra Narayan Ray
Advocate

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

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The following submissions were recorded on the date the matter was heard on 04.08.2023.

“The prayer in this application is for a direction to the respondent authorities to extend the same benefits of Dearness Allowance and House Rent Allowance as was given earlier to the Male / Lady Constables of West Bengal Police appointed on the basis of Notification dated 26.03.2013. The present applicants are Excise Constables (Male / Female) appointed in the year 2014.

Mr.S.N.Ray, learned counsel for the State respondents refers to page 255 of this application which appears to be a Notification governing the pay and allowance for Group-C during the probation period, in particular para 8 is referred to which states that “*During the period of probation only the entry point pay i.e. Basic Pay plus Grade Pay of the concerned Group-C posts or service or cadre or category*

shall be allowed with annual increment @ 3% per annum and medical allowance, if any.”

Mr.K.Bhattacharya, learned counsel for the applicants submits that, similarly circumstanced Constables of West Bengal Police have been given their Dearness Allowance and House Rent Allowance while undergoing training as probationers. Since the present applicants, as Excise Constables, are also similarly circumstanced, therefore, a direction may be given to the respondents to sanction their Dearness Allowance and House Rent Allowances when they were probationers in the year 2014.

Today, Mr.Bhattacharya, learned counsel refers to the reasoned order at page 166 and submits that since such benefits have already been awarded to the petitioners in OA-166 of 2020, the same benefits are also admissible to the applicants in this application. The relevant parts of the reasoned order passed by the Principal Secretary dated 08.12.2021 as referred above is as under:

“(7) The petitioners have contended that those Lady Constables, who joined the service in between the month of January to December, 2015 were granted full salary without deducting any amount of DA, HRA and other allowances but despite having the same status of Group ‘C’ employees alike those Lady Constables and appointed by the same recruitment board i.e. West Bengal Police Recruitment Board, the petitioners have been deprived from all admissible allowances during their probationary period. The petitioners have also stated that, in their appointment letters nothing was mentioned about deduction of admissible allowances during the probation period.

In view of the factual matrix stated above, I hold the opinion that

during the probation period of their service, the petitioners are entitled to get all admissible allowances as per norms prevalent at that point of time.”

In terms of such an order passed by the Principal Secretary, the Excise Commissioner passed his order dated 10.06.2022 for disbursal of these admissible arrears.

Submission is that several representations were furnished by the applicants praying for such benefit before the Excise Commissioner. Since those representations were addressed to the Excise Commissioner, liberty is prayed for furnishing a joint representation addressed to the Additional Chief Secretary, Finance Department.

Mr.S.N.Ray, learned counsel has some reservations to the prayers in this application. His primary argument is that, though not in dispute the fact that similar appointees were given such benefits of DA and HRA during their probation period, but these applicants being fence stragglers cannot ask for the same benefits. Mr.Ray has cited the judgement of Apex Court - Civil Appeal No. 4369 of 2006. Submission of Mr.Ray, in the light of this judgement, in which four conditions have been laid, none of these applicants fulfil these criterias. Therefore, they are not entitled to approach this Tribunal for a direction for such benefits. Mr.Ray further quotes paragraph 14 of the above said judgement, the relevant part is as under:

“On the other hand, where only the affected parties approach the court and relief is given to those parties, the fence-sitters who did not approach the court cannot claim that such relief should have been extended to them thereby upsetting or interfering with the rights which

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had accrued to others.”

Having heard the submissions of the learned counsels and considering the facts and circumstances of this case, liberty is given to the applicant side to furnish a joint representation praying for such benefits before the respondent No. 1, the Additional Chief Secretary, Finance Department. In the light of the observations recorded in the foregoing paragraphs, the Additional Chief Secretary, Finance Department shall pass a reasoned and speaking order, preferably within a period of four months from the date of submission of their representation and convey the decision to the applicant side within two weeks thereof.

The application is disposed of.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)

BLR