

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : **HON'BLE JUSTICE SOUMITRA PAL,**
HON'BLE SAYEED AHMED BABA,

HON'BLE CHAIRMAN &
ADMINISTRATIVE MEMBER.

Case No. – OA 403 of 2015.

ARUNAVA KUNDU – VERSUS- THE STATE OF W.B. & OTHERS.

Serial No. and
Date of order

34
26.8.2022

For the Applicant : Mr. B.P. Subba,
Ms. B. Shrestha,
Advocates.

For the State Respondent : Mr. S. Ghosh,
Mr. S. Bhattacharjee,
Advocates.

For the Advocate : Mr. G.P. Banerjee,
General, West Bengal Advocate.

Arunava Kundu, the applicant has prayed for certain reliefs, the relevant portion of which is as under :-

- “a) An order thereby declaring that that second clause of the clause A(ii) of the impugned notification being Memo no. 201-F (Pen) dated 25.02.2009 is ultra vires and liable to be quashed.*
- b) An order thereby directing the respondents to pay the pension of the applicant at 50 per cent of the basic pay as fixed by them.*
- c) Pass such other or futher order or orders as to this Hon'ble Tribunal may deem fit and proper....”.*

It appears that the applicant was appointed as a Technical Assistant Grade-I on 22nd June, 1981 and joined the post on 2nd July, 1981 at Hand Loom Development Officers Office at Howrah. After completing his service tenure, the applicant superannuated on 31st December, 2008 and started drawing pension from 1st January, 2009. It may be mentioned that the Government of West Bengal, Finance Department (Pension Branch) published a Notification being memo No. 201-F (Pen) dated 25th February, 2009 wherein the modification of the Rules granting pensionary benefits to the State

Government employees consequent to revision of pay structure under the West Bengal Services (Revision of Pay and Allowances) Rules, 2009 was enacted and clause A(ii) therein stipulated a “Revision of pension/family pension, gratuity and commutation of pension of post 01.01.2006 pensioners”. The relevant portion of the memorandum, which is under challenge, is as under :-

“...This provision, however, shall be applicable to the Government employees retiring on or after the date of issue of this memorandum and should not be made applicable in respect of those employees who have retired on or after the 1st day of January, 2006, but before issue of the memorandum....”.

It was submitted by Mr. B.P. Subba, learned advocate for the applicant that the aforesaid clause in the said memorandum is discriminatory, arbitrary and unjustified as after having rendered more than twenty-seven years of service such denial of financial benefits to the applicant is against the principles of equity, fair play and the spirit of the Constitution of India. Submission is the impugned memorandum has purported to form two classes of employees out of the same class of employees only on the basis of the date of retirement which is against canons of law and violative of Article 14 of the Constitution of India. In this regard, he has referred to the judgements in D. S. Nakara and others – vs- Union of India : AIR 1983 SC 130(1) and in Union of India – versus- Deoki Nandan Aggarwal : 1992 AIR (SC) 96 in support of his submission.

Mr. G.P. Banerjee, learned advocate appearing on behalf of the learned Advocate General, West Bengal submitted that the employees who have retired on or after 1st January, 2006 but before the date of issue of the memorandum on 25th February, 2009 are not entitled to the benefits in paragraph A(i) of the said memorandum. Mr. Banerjee relied on paragraphs 22, 26 and 29 of the judgement in State of Punjab vrs. Amarnath Goel : 2005(6) SCC 754 and Krishena Kumar v. Union of India (S.C.) : 1990 (4) SLR 716 in support of his submission.

Mr. S. Ghosh, learned advocate for the State respondents adopted the

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submission of Mr. Banerjee.

It is an established principle of law that after revision of pay structure under the West Bengal Services (Revision of Pay and Allowances) Rules, 2009, the memorandum dated 25th February, 2009 has been issued with a stipulated period in respect of those employees who had retired between 1st January, 2006 and 25th February, 2009, that is the date of issue of the memorandum, which cannot be termed as arbitrary and discriminatory in view of revision of pay structure under the ROPA, 2009.

It is to be noted that in view of ROPA, 2009 there has to be a cut off date regarding entitlement of higher pay and in the instant case by the memorandum concerned a fixed period has been determined as noted herein- - before.

Since it is the prerogative of the State to frame financial policy, accordingly ROPA, 2009 has been introduced by replacing the old pay structure and consequently the memorandum dated 25th February, 2009 has been issued. So, the memorandum cannot be said to be applicable to all employees irrespective of their dates of retirement. Accordingly, considering the aforesaid facts, the judgements in D. S. Nakara (supra) and Deoki Nandan Aggarwal (supra) are not applicable and there is no issue of discrimination and violation of Article 14 of the Constitution of India.

There is another aspect which needs to be considered. The memorandum under challenge was issued on 25th February, 2009 and the applicant has challenged the memorandum by filing the application on 22nd April, 2015, which is beyond the period of limitation as stipulated in Section 21 of the Administrative Tribunals Act, 1985. Therefore, the application is also not maintainable and hence dismissed.

Skg./SCN.

(SAYEED AHMED BABA)
MEMBER(A)

(SOUMITRA PAL)
CHAIRMAN.

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