

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

**Present-**

**The Hon'ble Mrs. Urmita Datta (Sen), Member (J),**

**Case No. OA – 49 of 2019**

**Prasanta Sarkar - VERSUS - THE STATE OF WEST BENGAL & ORS.**

Serial No.  
and  
Date of order  
16  
28.07.2022

For the Applicant : Mr. M.N. Roy,  
Mr. G. Halder,  
Advocates

For the State Respondents : Mr. S. Ghosh,  
Advocate

For the Pr. A.G. (A & E),  
West Bengal : Mr. B. Mitra,  
Departmental Representative

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 354 – WBAT / 2J-15/2016 dated 18<sup>th</sup> May, 2022 issued in exercise of the powers conferred under Section 6(5) of the Administrative Tribunals Act, 1985.

The instant application has been filed basically praying for implementation of the order dated 20.03.2014 passed in O.A. 418/2011 as well as Memo dated 24.09.2015 followed by one corrigendum dated 16.10.2015 and to disburse the arrear salary for the period from 01.01.1990 to 31.01.2004 and thereafter arrear revised pension from 01.02.2004 to 31.12.2008 taking into account that the applicant had already refunded an amount of Rs. 3146/- as per the order dated 04.07.2018 vide T.R. Form 7, challan dated 31.08.2018. As per the applicant, in pursuance of order dated 28.11.1989 passed by the Hon'ble High Court, Calcutta in C.O. No. 11734(W) of 1987, the Director, Health Services vide his Memo dated 27.03.2009 had communicated that with regard to post of computers in the D.E. Cell of different blocks/units a single cadre group consists of Grade I and Grade II were formed with prospective effect, wherein the name of the applicant was reflecting against serial No. 59. As per the applicant, he joined as Computers on 17.03.1966 and retired from service on 31.01.2004. Being partially aggrieved with the said order, the applicant approached this Tribunal in

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O.A. No. 418 of 2011, which was disposed of vide order dated 20.03.2014 holding that the denial of actual benefit of placement in Grade I and Grade II with retrospective effect is not sustainable and the respondents were directed to grant actual financial benefit with arrear dues to the petitioner with effect from the date of their placement in Grade I or Grade II as the case may be.

In pursuance to that Order dated 24.09.2015 as well as vide corrigendum dated 16.10.2015 issued by the Director of Health Services, West Bengal, the actual date of effect to the post of Grade I was fixed as 17.03.1986 and subsequently by the corrigendum dated 16.10.2015, it was fixed from 01.01.1990. Subsequently, as per the observation of the A.G. dated 26.02.2018 (Annexure 'E'), the Principal, Health and Family Welfare Training Centre, Kalyani, Nadia vide Memo dated 04.07.2018, directed the applicant to refund the amount of Rs. 3146/- for the period from 01.04.1981 to 01.01.1990 with a copy to Director, Health Services and Ex-officio Secretary, Government of West Bengal as well as Pr. Accountant General (A & E), West Bengal. Subsequently, the applicant had deposited the said amount through T.R. Form No. 7 challan dated 31.08.2018. However, as per the applicant, even after refunding back the said amount and acceptance of the said amount by the department, he has not been paid arrear pay and pension as per the direction of this Tribunal. Therefore, the counsel for the applicant has submitted that respondent authority be directed to implement their own order as well as the order of this Tribunal within a stipulated period of time.

No reply has been filed by the respondent. However, the counsel for the respondent has submitted that the order of refund has been issued by the Principal, Health & Family Welfare Training Centre, who is not the competent authority to pass such order. Further since the applicant had retired in 2004, he

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is not entitled to get any benefit after a long time.

The Departmental Representative for the Pr. A.G. today has submitted one Memo dated 15.05.2019, wherein the Principal, Health and Family Welfare Training Centre had communicated that as the instant application being O.A. No. 49 of 2019 is pending before the Tribunal and documents are lying with the Swastha Bhavan as per the instruction of the higher authority. Therefore, they are not in a position to disburse any revised pay and pension. Let copy of the Memo be kept on record.

I have heard the parties and perused the records. It is noted that this Tribunal vide their judgement dated 20.03.2016 passed in O.A. No. 418 of 2011 had passed the following order:

**“12. The said order of the Director of Health Services, West Bengal dated 27.03.2009 and 04.06.2010 respectively have now been assailed before us on grounds of unequal treatment under equal circumstances in respect of newly constituted cadre. There are no lapses or intentional delay in preferring their claim on the part of the petitioners who approached the Hon’ble High Court, Calcutta as far back as in 1987. Their civil right was recognised by the Hon’ble Court by order dated 28.11.1989 in C.O. No. 11734 (W) of 1987 which was, in fact, materialized long after such direction and the administrative lapses in constituting such cadre and in the matter of fixation of pay of the petitioners or members of the cadres cannot be ascribed upon the writ petitioners. Where there are administrative lapses without any satisfactory explanation in extending financial benefits**

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to the members of a cadre committed in 1994, but directed to be given in 2009, the employee concerned whose service have been profitably utilized by the respondents before constitution of the cadre cannot be deprived of their legitimate claim which was kept in animated suspension for over a decade without any reasonable cause. Therefore, we hold that denial of the actual benefit of placement of Grade-I and Grde-II with retrospective effect is not sustainable in law and from this point of view both the orders of the Driector of Health Services quoted above are opposed public policy, principles of natural justice and as such liable to be set aside. Accordingly, both the aforesaid orders of respondent No. 2 are hereby set aside and respondents are directed to grant the annual financial benefits with arrear dues to the petitioners with effect from the date of their placement in Grade-I or Grade-II, as the case may be within a period of 4 (four) months from the date of communication of this order.

**The application is thus disposed of.”**

However, admittedly no appeal was preferred against the said order. Even the respondent had proceeded to implement the said order by sending the file of the applicant to the A.G. for their appropriate action and on the basis of their observation, Principal, Health and Family Welfare Training Centre, Kalyani, Nadia has issued Memo dated 04.07.2018 asking for depositing amount of Rs. 3146/- with a copy to the Director of Health Services, who is the competent authority. However, though the applicant had deposited such amount by T.R. Form No. 7 to the Treasury on 31<sup>st</sup> August, 2018, who in turn did not take any steps even as per the Memo dated 15.05.2019, the file is lying with the higher

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authority without any subsequent steps. Therefore, the contention of the respondent is not acceptable that the order dated 04.07.2018 is not passed with the approval of the higher authority.

In view of the above, as the respondents have themselves decided to take refund of previous amount for the period from 01.04.1981 to 01.01.1990 and did not prefer any appeal against the order dated 20.03.2016, therefore, the respondent no. 2 is directed to take appropriate steps to make payment of the admissible amount of revised arrear pay and pension to the applicant as per their own order dated 04.07.2018 as well as order dated 20.03.2016 passed in O.A. No. 418 of 2011 within a period of six weeks from the date of receipt of the order. Accordingly, the O.A. is disposed of with no order as to costs.

URMITA DATTA (SEN)  
MEMBER (J)

A.K.P.