

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

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

Case No. – OA-507 of 2021

Pintu Sardar VERSUS – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	:	Mr. M.N. Roy, Mr. G. Halder, Learned Advocates.
<u>07</u> 17.02.2022	For the State Respondent	:	Mrs. S. Agarwal Learned Advocate.

The instant application has been filed basically praying for a direction upon the respondents to refix/revise the pay and allowance of the applicant alongwith annual increment after giving effect of ROPA-2009 & ROPA-2019 and after refixation/revision of pay, arrear pay alongwith increment to be paid to the applicant within a stipulated period of time alongwith interest.

As per the applicant, he was put under suspension vide Memo dated 29.09.2008 w.e.f. 28.07.2008. Thereafter, a charge sheet was served upon him on 29.07.2008. Subsequently his suspension order was revoked w.e.f. 22.05.2009. However, his pay has not been fixed or revised as per ROPA-2009 & ROPA-2019. Even the departmental proceeding and criminal proceeding are still pending. As per the applicant, he is entitled to get the revised pay and increment as he is out of suspension since 22.05.2009.

The respondents have filed their reply and has submitted that as per Last Pay Certificate issued on 06.05.2013, wherein it has been noted that being involved in criminal case and as per Rule 7 Note 2 of ROPA-2009 and Rule 7(4) of ROPA-2019, his pay would be revised subject to the outcome of the departmental proceedings.

During the course of hearing, the counsel for the applicant has drawn my attention to the Rule 7 Note 2 of ROPA-2009 and has submitted that the said provision of Note 2 Rule 7 is applicable for those employees, who are under suspension and deals with the issue of enhancement of subsistence allowances, which would be fixed after completion of disciplinary

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proceeding. However, his suspension order was revoked on and from 22.05.2009. Further it has been submitted that Rule 45 of WBSR Part-I has specifically stipulated that increment can be withheld by passing of final order in departmental proceeding. Since his departmental proceeding is still pending, therefore, increment cannot be withheld. Therefore, as per the applicant, he is entitled to get revised pay scale as well as increment under ROPA-2009 & 2019.

Heard both the parties and perused the records. As per the respondent since the departmental proceedings against the applicant is still pending, therefore, as per Rule 7 Note 2 of ROPA-2009 as well Rule 7(4) of ROPA-2019, his pay would be revised after completion of departmental proceedings.

I have perused the Rule 7 Note 2 of ROPA-2009, which stipulates interalia :-

Fixation of initial pay in revised pay structure

Note 2.”.... A Government employee under suspension, shall continue to draw subsistence allowance based on existing scale of pay and his pay in the revised pay structure shall be subject to the final order of the pending disciplinary proceedings.”

Rule 7(4) of ROPA-2019 stipulates the following :-

Fixation of initial pay in revised pay structure

(4) “....A Government employee under suspension, shall continue to draw subsistence allowance based on existing pay structure and his pay in the revised pay structure shall be subject to the final order on the pending disciplinary proceedings.....”

From the perusal of above, it is noted that Rule 7 Note 2 as

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well as Rule 7(4) deals with the employees who are under suspension and their subsistence allowance would fixed in revised scale or not during the pendency of the departmental proceedings.

In the instant case, the suspension order of the applicant was revoked on 22.05.2009 and the ROPA-2009 came into effect on 23.02.2009. Since the suspension of the applicant was revoked on 23.05.2009, this Note - 2 of Rule 7 is not applicable in the case of the applicant.

Further Rule 45 of WBSR, Part-I stipulates the following :-

Rule 45 - Withholding of increments

An increment shall ordinarily be withdrawn as a matter of course unless it is withheld. When an increment is ordered to be withheld, the authority passing the order shall state the period for which it is to be withheld, and whether the postponement shall have the effect of postponing future increments, and if so, for how long. Where the order fails to specify clearly for what period the officer is to be deprived of his increments, the deprivation shall be held to cease on the expiry of the period during which the officer would have drawn the increment initially withheld. Moreover, unless the order provides otherwise, the officer shall, when the deprivation ceases, be restored in all respects to the same position in the time-scale as he would have occupied had the order not been passed.

From the perusal of the above Rule, it is clear that an employee is entitled to get increment unless it is withheld and the authority only can withhold his increment at the time of passing final order in departmental proceedings. Since the departmental proceeding of the applicant is still pending and no order has been passed for withholding of increment, therefore, the applicant is also entitled to get increment in the

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revised pay scale. Therefore, in my considered opinion, the applicant is entitled to get both the revised pay and allowances and annual increment in the revised pay scale of pay as per ROPA-2009 and ROPA-2019 on and from the date when his suspension was revoked. i.e. from **23.05.2009**.

Accordingly, I direct the competent authority to revise/refix the pay and allowances of the applicant as per ROPA-2009 and ROPA-2019 as per above observations. The entire exercise should be done within a period of eight weeks from the date of receipt of this order with follow up action.

Since the circumstances beyond control, the Registry is unable to furnish plain copies of this order to the learned advocates for the parties, the Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copies of the order downloaded from the website.

sc

URMITA DATTA (SEN)
MEMBER (J)