

ORDER SHEET
West Bengal Administrative Tribunal

Present.-

The Hon'ble Justice Ranjit Kumar Bag

&

The Hon'ble Dr. Subesh Kumar Das

Case No. OA 214 of 2018

Smt. Panna Sengupta & Ors.

Versus

The State of West Bengal & Ors.

Serial No. and
date of order

Order of the Tribunal
with signature

Office action with date
and dated signature of
parties when necessary.

1

2

3

06
11/07/2019

For the Applicants : Mr. A. Hati,
Mr. P. Roy Mishra,

For the State Respondent : Mr. S.N. Ray,
Ld. Advocate.

For the A.G., W.B. : Mr. B. Mitra,
Depttl. Representative.

The applicants have prayed for direction upon the respondents for giving them benefit of Carrier Advancement Scheme for completion of 25 years of service in terms of memorandum no. 10581-F (P) dated December 28, 2012 after setting aside order dated November 21, 2017 issued by the Additional Chief Secretary to the Government of West Bengal, Department of Agriculture and other ancillary reliefs.

All the applicants joined in various posts under West Bengal Agriculture Services on different dates and retired from service before December 01, 2012. The applicants previously approached the Tribunal by filing OA No. 1202 of 2015 praying for grant of Pre-revised Scale No. 19 in terms of Memorandum No. 10581-F (P) dated December 28, 2012 issued by the Finance Department, Audit Branch, Government of West Bengal. On July 13, 2017 the Tribunal disposed of OA-1202 of 2012 by directing the Principal

ORDER SHEET – (Continuation)

Form No.

Smt. Panna Sengupta & Ors.
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 214 of 2018**

Serial No. and date of order 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary. 3
	<p>Secretary to the Government of West Bengal, Department of Agriculture to treat the entire original application of the applicants as a representation and take a decision in respect of the prayer made by the applicants in the said original application after giving the applicant an opportunity of hearing within stipulated period of 04 (four) weeks from the date of communication of the order. The respondent no. 1, the Additional Chief Secretary to the Government of West Bengal, Department of Agriculture passed a reasoned order on November 21, 2017 in compliance with the direction given by the Tribunal in OA-1202 of 2015 after giving the applicants an opportunity of hearing. The said reasoned order dated November 21, 2017 is under challenge in the present application.</p> <p>Mr. A. Hati, Learned Counsel appearing on behalf of the applicants contends that the reasoned order passed by the respondent no. 1 is not justified under the law, as the cut-off date for giving benefit of memorandum dated December 28, 2012 is fixed in an arbitrary manner. He further submits that all the applicants have completed 25 years of service before their retirement and as such they should have been given the benefit of memorandum dated December 28, 2012 in as much as the said memorandum was</p>	

ORDER SHEET – (Continuation)

Form No.

Smt. Panna Sengupta & Ors.
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 214 of 2018**

Serial No. and date of order 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary. 3
	<p>issued by the Finance Department, Audit Branch, Government of West Bengal in terms of recommendation of 5th Pay Commission whose effect was given notionally from 01.01.2006 and actually on 01.04.2008. Mr. Hati has tried to justify his submission by referring to some other memorandums issued by the Finance Department, Audit Branch, Government of West Bengal and also by referring to Rule 55(4) of West Bengal Service Rules, Part I, which are not found to be relevant by us.</p> <p>Mr. S.N. Ray, Learned Counsel representing the state respondents submits that the applicants retired from service when the benefit of memorandum dated December 28, 2012 was given to the Officers belonging to West Bengal State Constituted Service on fulfillment of some conditions. The gist of submission of Mr. Ray is that the applicants were not in government service when memorandum dated December 28, 2012 came into force and as such they are not entitled to get benefit under the said memorandum.</p> <p>Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that all the applicants retired from</p>	

ORDER SHEET – (Continuation)

Form No.

Smt. Panna Sengupta & Ors.
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 214 of 2018**

Serial No. and date of order 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary. 3
	<p>service before December 01, 2012. It is relevant to quote memorandum no. 10581-F (P) dated December 28, 2012 issued by the Finance Department, Audit Branch, Government of West Bengal, which is as follows:</p> <p style="text-align: center;">“Government of West Bengal Finance Department Audit Branch Writers Buildings, Kolkata-700001</p> <p>No. 10581-F(P) Dated : 28.12.2012</p> <p style="text-align: center;"><u>Memorandum</u></p> <p>The question of movement to pre-revised scale no. 19 for the Officers belonging to State Constituted Services other than West Bengal Secretariat Service has been under active consideration of the Government for sometime past.</p> <p>2. After careful consideration of the matter, the Governor has been pleased to decide to allow to move the Officers belonging to West Bengal State Constituted Services other than West Bengal Secretariat Service borne in scale no. 16 to move to pre-revised scale no. 19 i.e. ₹ 14300-400-18300/- (PB No. 5 with GP of ₹ 8700/- as per ROPA, 2009) after completion of 25 years of</p>	

ORDER SHEET – (Continuation)

Form No.

Smt. Panna Sengupta & Ors.
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 214 of 2018**

Serial No. and date of order 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary. 3
	<p>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 and also subject to the following condition</p> <p>a) Such movement will be purely non-functional.</p> <p>b) The eligible Officers may hold the same as personnel to them without any change of designation and nature of duties.</p> <p>3. The norms for such movement regarding APR will be as per Para 3.30.6 of the recommendation of the 5th Pay Commission in Part-II of Volume-I. Necessary screening will be done by the Departmental Promotion Committee.</p> <p>4. This order will take effect from 01.12.2012.</p> <p>5. The Accountant General (A&E), West Bengal and Principal Accountant General, West Bengal may be informed accordingly.</p> <p style="text-align: center;">Sd/- A.K. Das OSD & E.O. Joint Secretary to the Government of West Bengal Finance Department”</p>	

ORDER SHEET – (Continuation)

Form No.

Smt. Panna Sengupta & Ors.
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 214 of 2018**

Serial No. and date of order 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary. 3
	<p>On consideration of the above memorandum dated December 28, 2012, we find that Pre-revised Scale No. 19 was given to some officers within the quota even before issuance of memorandum dated December 28, 2012. The Officers of West Bengal State Constituted Service who have completed 25 years of service and fall beyond existing quota and completed at least 3 years of service in Pre-revised Scale No. 18 are entitled to get Pre-revised Scale No. 19 w.e.f. December 01, 2012. The tenor of memorandum dated December 28, 2012 unambiguously points out that the said memorandum is applicable to the Officers who were in government service on December 01, 2012. We are unable to accept the contention made on behalf of the applicants that all financial benefits of the recommendation of the 5th Pay Commission are to be given effect notionally from 01.01.2006 and actually from 01.04.2008, because the State Government has the discretion to give some benefits from a particular date to a class of employees. It is true that fixing a particular cut-off date for giving financial benefit to the serving government employees may be treated as arbitrary, but memorandum dated December 28, 2012 cannot be branded as arbitrary for specifying a cut-off date particularly when the applicants retired from service when the said</p>	

ORDER SHEET – (Continuation)

Form No.

Smt. Panna Sengupta & Ors.
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 214 of 2018**

Serial No. and date of order 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary. 3
Csm	<p>memorandum came into force on December 01, 2012. The respondent no. 1 has rightly turned down claim of the applicants to get the benefit of scale no. 19 in terms of memorandum dated December 28, 2012 after their retirement from service. The said reasoned order, in our view, is justified under the law. In view of our above observation, we cannot persuade ourselves to grant any financial benefit to the applicants as prayed for.</p> <p>As a result, the original application is dismissed.</p> <p>Let a Plain Copy of the order be supplied to both parties.</p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p>	