

**ORDER SHEET**  
**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

**The Hon'ble Justice Ranjit Kumar Bag  
& The Hon'ble Dr. Subesh Kumar Das**

**Case No – OA 555 of 2017**

Dr. Amal Satpathi vs The State of West Bengal & Ors.

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
10 26.06.2019	<p>For the Applicant : Mr. B.N. Roy, Ms. P. Das, Learned Advocates.</p> <p>For the Respondent : Mrs. S. Agarwal, Learned Advocate.</p> <p>For the PSC, WB : Mr. A.L. Basu, Mr. S. Bhattacharjee, Learned Advocates.</p> <p>The applicant has prayed for direction upon the respondents for granting him promotion to the post of Chief Scientific Officer, Department of Higher Education, Science and Technology and Bio Technology, Government of West Bengal w.e.f. December 29, 2016 and revised retirement benefits on the basis of notional fixation of pay of the applicant on the date of promotion to the Chief Scientific Officer.</p> <p>The applicant joined the post of Senior Scientific Officer in the Department of Higher Education, Science and Technology and Bio Technology, Government of West Bengal (hereinafter referred to as "the Department") on February 11, 1993. He got benefit of Career Advancement Scheme on February 11, 2001 for completion of continuous and satisfactory service of 8 years. On March 24, 2008, the applicant joined the post of Principal Scientific Officer on officiating basis. The contention of the</p>	

# ORDER SHEET

Dr. Amal Satpathi

Form No. ....

**Vs.**

**The State of West Bengal & Ors.**

Case No. OA 555 OF 2017

applicant is that he was eligible for promotion to the post of Chief Scientific Officer after amendment of recruitment rules on January 6, 2016. The Department moved Public Service Commission, West Bengal (in short, "PSC") on April 13, 2016 for filling up the post of Chief Scientific Officer by way of promotion in terms of amended recruitment rules notified on January 6, 2016. The PSC did not receive all the papers required to be considered for promotion to the post of Chief Scientific Officer from the concerned department till December 13, 2016. However, the PSC recommended the name of the applicant for promotion to the post of Chief Scientific Officer on December 29, 2016. The final approval for promotion of the applicant to the post of Chief Scientific Officer was given on January 4, 2017 i.e. after retirement of the applicant on December 31, 2016 and thereby the applicant was deprived of opportunity to join in the promotional post of Chief Scientific Officer. The grievance of the applicant is that he would have got promotion to the post of Chief Scientific Officer long before his retirement from service, had the officers of the Department would have acted promptly to process the case of the applicant for promotion by sending all necessary papers to the PSC more expeditiously.

Mr. Roy, Learned Counsel for the applicant, contends that the applicant has been deprived of promotion to the post of Chief Scientific Officer and consequential financial benefits of the promotional post for no lapse on the part of the applicant.

**ORDER SHEET**

Dr. Amal Satpathi

Form No. ....

**Vs.**

**The State of West Bengal & Ors.**

Case No. **OA 555 OF 2017**

He further contends that there is inordinate delay on the part of the Department in sending necessary papers to PSC for consideration of the case of the applicant for promotion to the post of Chief Scientific Officer. Relying on unreported judgment of “Major General H.M. Singh v Union of India” [Civil Appeal No. 192 of 2014 arising out of SLP (C) No. 2008 of 2010], Mr. Roy submits that the applicant is entitled to get benefit of promotion to the post of Chief Scientific Officer and consequential financial benefits in terms of pension and other retirement benefits by way of notional fixation of pay of the applicant in the promotional post.

Mr. Basu, Learned Counsel representing the respondent PSC submits that there was no lapse or delay on the part of the PSC which received all necessary papers for consideration of the case of the applicant for promotion to the post of Chief Scientific Officer only on December 14, 2016 and recommendation was made by the PSC on December 29, 2016.

Mrs. Agarwal, Learned Counsel representing the state respondents, submits that the final approval for promotion to the post of Chief Scientific Officer was received only on January 4, 2017 in spite of recommendation of PSC on December 29, 2016 and the applicant retired from service on December 31, 2016 and thereby effect of promotion could not be given to the applicant while he was in service. She further contends that

**ORDER SHEET**

Dr. Amal Satpathi

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

.....

Case No. **OA 555 OF 2017**

promotion can never be given to any Government employee in retrospective manner particularly when the employee has already retired from service.

Having heard Learned Counsel representing both parties and on consideration of the materials on record the following issues emerge for our consideration :

- (i) whether the applicant can be granted promotion to the post of Chief Scientific Officer w.e.f. December 29, 2016 as prayed for;
- (ii) whether the applicant can be granted financial benefit of promotional post of Chief Scientific Officer on notional basis on the date of retirement and actual benefit by way of pension and other retirement benefits.

Before dealing the issues formulated by us for consideration, we would like to deal with the unreported judgment of the Hon'ble Supreme Court in "Major General H.M. Singh v Union of India" (supra). In the unreported decision of "Major General H.M. Singh", the claim of the army officer for promotion to the rank of Lieutenant General was rejected by the appointment committee of the Cabinet while the army officer was on extended service. In the instant case, the applicant retired from service when the recommendation of PSC for promotion of the applicant to the post of Chief Scientific Officer was finally

**ORDER SHEET**

Dr. Amal Satpathi

Form No. ....

**Vs.**

**The State of West Bengal & Ors.**

Case No. **OA 555 OF 2017**

approved by the Government of West Bengal. The facts of the unreported case are distinguishable from the facts of the present case and as such the unreported case is not relevant for deciding the issues involved in the present case.

With regard to the issue of granting promotion to the applicant in the post of Chief Scientific Officer w.e.f. December 29, 2016, we would like to refer to the observation of the Finance Department, Government of West Bengal (Annexure-R to the reply of the state respondents), wherein it is laid down that a Government employee shall not draw pay higher than that of his permanent post without assumption of duties and responsibilities of greater importance in terms of Rule 54 (1) (a) of West Bengal Service Rules, Part-I. It is specifically observed in the said note of the Finance Department that the applicant could not join the promotional post of Chief Scientific Officer before his superannuation on December 31, 2016 and thereby he could not discharge the duties of higher responsibilities and importance. It is pertinent to point out that the name of the applicant was duly recommended by the Public Service Commission, West Bengal for promotion to the post of Chief Scientific Officer on December 29, 2016 i.e. two days before his superannuation on December 31, 2016. Had the order of promotion been issued before his superannuation on December 31, 2016, he would have got the opportunity to serve in the post of higher responsibilities and importance and thereby he would have received actual financial

**ORDER SHEET**

Dr. Amal Satpathi

Form No. ....

**Vs.**

**The State of West Bengal & Ors.**

Case No. **OA 555 OF 2017**

benefit of promotional post of Chief Scientific Officer. Unfortunately, the final approval for promotion to the post of Chief Scientific Officer was received after superannuation of the applicant on December 31, 2016 and thereby he was deprived of the opportunity to discharge higher responsibilities and importance in terms of Rule 54 (1) (a) of West Bengal Service Rules, Part-I. It is well settled that promotion can never be given in a retrospective manner, particularly after superannuation of a Government employee.

In view of our above observation, we would like to hold that the applicant is not entitled to get promotion in the post of Chief Scientific Officer w.e.f. December 29, 2016 as prayed for. The first issue formulated by us is, thus, decided against the applicant.

With regard to the issue of granting financial benefit of promotional post to the applicant notionally on the date of retirement and actual benefit by way of pension and other retirement benefits, we would like to point out that the applicant was not eligible to be considered for promotion to the post of Chief Scientific Officer for not completion of 10 years of continuous service in the rank of Principal Scientific Officer in terms of recruitment rules notified on April 23, 2007. However, the recruitment rules were amended by Notification dated

**ORDER SHEET**

Dr. Amal Satpathi

Form No. ....

**Vs.**

**The State of West Bengal & Ors.**

Case No. **OA 555 OF 2017**

<p>January 5, 2016 (published in the Kolkata Gazette on January 6, 2016), whereby the experience of continuous service in the rank of Principal Scientific Officer was reduced from 10 years to 5 years for acquiring eligibility for promotion to the post of Chief Scientific Officer. The applicant, thus, acquired eligibility for promotion to the post of Chief Scientific Officer after publication of amended recruitment rules on January 6, 2016. On April 13, 2016, the Department moved PSC for consideration of three Senior Scientists, one Senior Scientific Officer and the applicant as Principal Scientific Officer for grant of promotion to one post of Chief Scientific Officer. The correspondences made between the Department and PSC go to establish that the Public Service Commission, West Bengal could not consider the case of the applicant and other candidates for promotion to the post of Chief Scientific Officer for non-availability of all necessary papers including ACR. Ultimately, all necessary papers were sent by the Department to PSC only on December 14, 2016 i.e. after lapse of almost 8 months from the date of initiating the proposal for filling up the post of Chief Scientific Officer by way of promotion. We do not find any lapse on the part of the applicant in this process of sending necessary papers to the PSC. On the contrary, the inordinate delay of almost 8 months in sending necessary papers to PSC can be attributed to the conduct of the officials working in the Department. As a sequel to this delay in forwarding necessary papers to PSC, the recommendation for promotion of the applicant was forwarded to the department by</p>	
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**ORDER SHEET**

Dr. Amal Satpathi

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

.....

Case No. **OA 555 OF 2017**

PSC only on December 29, 2016. The final approval of the authority concerned could not be obtained for issuance of the order of promotion of the applicant to the post of Chief Scientific Officer within two days before superannuation of the applicant on December 31, 2016.

We have already observed that the applicant could have got promotion to the post of Chief Scientific Officer had there been no lapse on the part of the Department. In the absence of any lapse on the part of the applicant, he should not be deprived of the financial benefits of the post of promotion to Chief Scientific Officer, though actual promotion could not be granted to him in terms of Rules by which he is governed.

In view of our above findings, we would like to hold that the applicant should be given financial benefits of promotional post of Chief Scientific Officer notionally on the date of his retirement from service on December 31, 2016 and actual financial benefits in terms of pension and other retirement benefits.

The respondent no. 2, Principal Secretary to the Government of West Bengal, Department of Higher Education, Science and Technology and Bio Technology, Government of West Bengal is directed to take necessary steps for fixation of pay of the applicant in the post of Chief Scientific Officer notionally on the date of his superannuation on December 31, 2016 and grant pension and other retirement benefits by revision



**ORDER SHEET**

Dr. Amal Satpathi

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

.....

Case No. **OA 555 OF 2017**

Sanjib	<p>of existing pension and other retirement benefits within a period of 8 (eight) weeks from the date of communication of the order.</p> <p>With the above direction, the original application stands <b>disposed of.</b></p> <p>( S.K. DAS ) MEMBER(A)</p> <p>( R. K. BAG ) MEMBER (J)</p>	
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