

ORDER SHEET
West Bengal Administrative Tribunal

Present.-
The Hon'ble Justice Ranjit Kumar Bag,
&
The Hon'ble Dr. Subesh Kumar Das

Case No. **OA 746 of 2018**

Dr. Anup Kumar Sarkar

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.

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3

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27/02/2020

For the Applicant : Mr. M.N. Roy,
Learned Advocate.

For the State Respondent : N O N E.

For the Respondent No. 4 (Health Deptt.) : Mr. S. Ghosh,
Learned Advocate.

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

The applicant has prayed for direction upon the respondents for grant of benefit of pre-revised scale no. 19 w.e.f. December 01, 2012 after setting aside order communicated under letter dated April 27, 2015 issued by the Deputy Secretary to the Government of West Bengal, Directorate of Women & Child Development and Social Welfare (Annexure 'E' to the original application) and refixation of pay of the applicant for enhancement of pension and other retirement benefits.

The applicant joined in the government service as Medical Officer under the Directorate of Vagrancy, Government of West Bengal in terms of order dated September 27, 1985 issued by the Controller of Vagrancy, West Bengal. The applicant joined in the post of Medical Officer after obtaining M.B.B.S. Degree and his pay was fixed in the scale of pay of ₹ 660-₹ 1600/- plus allowances admissible under the rules. The contention of the applicant is that he was granted the pay-scale applicable to the Medical Officer of West

ORDER SHEET – (Continuation)

Form No.

Dr. Anup Kumar Sarkar
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 746 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>Bengal Health Service not only in terms of West Bengal Services (Revision of Pay and Allowances) Rules, 1981 (in short, the ROPA Rules, 1981), but also in terms of the subsequent ROPA Rules framed by the Government of West Bengal. The further contention of the applicant is that he got the benefit of higher scale of pay on completion of 10 years and 16 years of service in terms of Memorandum No. 6075-F dated June 21, 1990 and Memorandum No. 3015-F dated March 13, 2001 issued by the Finance Department, Audit Branch, Government of West Bengal. However, he was denied the benefit of pre-revised scale no. 19 on completion of 25 years of service at par with the Medical Officers of West Bengal Health Service on the ground that the service of the applicant does not belong to West Bengal State Constituted Service. Ultimately he retired from service on September 30, 2015. The fact of denial of pre-revised scale no. 19 to the applicant was communicated under letter dated April 27, 2015 (Annexure 'E' to the original application), which is under challenge in the present application.</p> <p>With the above factual matrix, Mr. M.N. Roy, Learned Counsel for the applicant has referred to scale of pay of Medical Officer having M.B.B.S. Degree of West Bengal Health Services (₹ 660-₹ 1600/-) as laid down in the ROPA Rules, 1981 and the pay-scale of the Medical Officer having M.B.B.S. Degree in the Directorate of</p>	

ORDER SHEET – (Continuation)

Form No.

Dr. Anup Kumar Sarkar
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 746 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>Vagrancy (₹ 660-₹ 1600) and submitted that the State Government has treated the applicant at par with the Medical Officer of West Bengal Health Service by granting the same scale of pay to the applicant as Medical Officer of the Directorate of Vagrancy, which was given to the Medical Officer of West Bengal Health Service. Mr. Roy further contends that the applicant was granted corresponding revised pay-scale applicable to the Medical Officer of West Bengal Health Service in terms of the subsequent ROPA Rules. The applicant was also granted benefit of higher scale of pay for completion of 10 years and 16 years of service at par with the Medical Officer of West Bengal Health Service. Mr. Roy submits that the pre-revised scale no. 19 was granted to the Medical Officer of West Bengal Health Service on completion of 25 years of service in terms of memorandum dated December 28, 2012 issued by the Finance Department, Audit Branch, Government of West Bengal, which came into force w.e.f. December 01, 2012, but the said benefit of pre-revised scale no. 19 was denied to the applicant inspite of completion of about 27 years of service on December 01, 2012 in an arbitrary and whimsical manner. According to Mr. Roy, the denial of pre-revised scale no. 19 to the applicant after completion of 25 years of service is arbitrary and violative of Article 14 of the Constitution of India, when the said benefit of pre-revised scale no. 19 is given to the</p>	

ORDER SHEET – (Continuation)

Form No.

Dr. Anup Kumar Sarkar
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.....Case No. **OA 746 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>Medical Officers of West Bengal Health Service.</p> <p>None appears on behalf of the state respondents except Mr. Ghosh, Learned Counsel who has represented the Respondent No. 4, Additional Chief Secretary to the Government of West Bengal, Department of Health & Family Welfare. Mr. Ghosh submits that the Respondent No. 4 has no role to play in either granting or denying pre-revised scale no. 19 to the applicant.</p> <p>We have heard Mr. Mitra, the Departmental Representative of Respondent No.5, who submits that the Respondent No. 5 has no role to play in either granting or denying pre-revised scale no. 19 to the applicant.</p> <p>Now the issue for our consideration is whether the applicant is entitled to get pre-revised scale No. 19 at par with the Medical Officer of West Bengal Health Service. There is no dispute that the applicant joined as Medical Officer in the Directorate of Vagrancy in the scale of pay which was applicable to the Medical Officer of West Bengal Health Service in terms of the provisions of the ROPA Rules, 1981. There is nothing on record to deny the contention of the applicant that he was granted the same scale of pay which was granted to the Medical Officer of West Bengal Health Service in terms of the</p>	

ORDER SHEET – (Continuation)

Form No.

Dr. Anup Kumar Sarkar
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.....Case No. **OA 746 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>provisions of subsequent ROPA Rules framed by the Government of West Bengal from time to time. It is not disputed that the applicant got the benefit of Career Advancement Scheme (in short, CAS) and Modified Career Advancement Scheme (in short, MCAS) for completion of 10 years and 16 years of service in terms of Memorandum No. 6075-F dated June 21, 1990 and Memorandum No. 3015-F dated March 13, 2001 respectively issued by the Finance Department, Audit Branch, Government of West Bengal at par with the Medical Officer of West Bengal Health Service. On perusal of Memorandum No. 3015-F dated March 13, 2001 of the Finance Department, we find that pre-revised scale no. 19 was given to 55 Medical Officers of West Bengal Health Service on fulfillment of the conditions laid down in the said memorandum and earlier Memorandum dated June 21, 1990 issued by the Finance Department, Audit Branch, Government of West Bengal. Subsequently, Memorandum No. 10581-F(P) dated December 28, 2012 was issued by the Finance Department, Audit Branch, Government of West Bengal for giving benefit of pre-revised scale no. 19 to the Officers belonging to West Bengal State Constituted Service other than the West Bengal Secretariat Service after completion of 25 years of service on condition that they completed at least 3 years of service in pre-revised scale no. 18, as those Officers could not be</p>	

ORDER SHEET – (Continuation)

Form No.

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The State of West Bengal & Others.
.....Case No. **OA 746 of 2018**

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	<p>accommodated for grant of pre-revised scale no. 19 within the ambit of number of posts indicated in Memorandum No. 3015-F dated March 13, 2001 of the Finance Department. The said Memorandum dated December 28, 2012, which came into force w.e.f. December 01, 2012 was made applicable to the Medical Officer of West Bengal Health Service in terms of the subsequent Memorandum dated April 30, 2013 issued by the Deputy Secretary to the Government of West Bengal, Department of Health & Family Welfare. Admittedly, the applicant was denied the pre-revised scale no. 19 after completion of 25 years of service even after fulfillment of the conditions of his serving in scale no. 18 as contended by Learned Counsel for the applicant on the ground that the service of the applicant is not State Constituted Service.</p> <p>On joint reading of Memorandum dated December 28, 2012 and Memorandum dated April 30, 2013, it appears that the State Government intended to grant benefit of pre-revised Scale No. 19 to the all Medical Officers of West Bengal Health Service on completion of satisfactory service of 25 years, provided they served for 3 years in pre-revised Scale No. 18 on the following two grounds: first, these Medical Officers did not get any promotion to the post having higher scale of pay during last 25 years and secondly, they could not be accommodated within the number of posts (55) indicated</p>	

ORDER SHEET – (Continuation)

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Dr. Anup Kumar Sarkar
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	<p>in Memorandum No. 3015-F dated March 13, 2001 for grant of pre-revised Scale No. 19. Since the applicant has all along been treated at par with the Medical Officer of West Bengal Health Service for grant of scale of pay and other financial benefits of service, he cannot be discriminated at the fag end of his career by denying pre-revised Scale No. 19 only on the ground that his service is not State Constituted Service.</p> <p>On consideration of the object of granting pre-revised Scale No. 19 to the Medical Officer of West Bengal Health Service, we are constrained to hold that the applicant has fulfilled all conditions for grant of pre-revised Scale No. 19 at par with the Medical Officer of West Bengal Health Service. The promotional avenue was not made available to the applicant even after completion of 25 years of service and he served in pre-revised scale no. 18 for 3 years as contended by Learned Counsel for the applicant and as such denial of the benefit of pre-revised scale no. 19 to the applicant at par with the Medical Officer of West Bengal Health Service is arbitrary, discriminatory and violative of Article 14 of the Constitution of India.</p> <p>In view of our above findings, the impugned order communicated under letter dated April 27, 2015 issued by the Deputy Secretary to the Government of West Bengal, Department of Women & Child Development and</p>	

ORDER SHEET – (Continuation)

Form No.

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Csm	<p>Social Welfare (Annexure 'E' to the original application) is set aside. The Respondent No. 1, Principal Secretary to the Government of West Bengal, Department of Women and Child Development and Social Welfare is directed to re-consider the entitlement of the applicant to get pre-revised scale no. 19 at par with the Medical Officer of West Bengal Health Service in terms of Memorandum No. 10581-F(P) dated December 28, 2012 issued by the Finance Department, Audit Branch, Government of West Bengal by passing a reasoned order after obtaining necessary approval from the Finance Department, Government of West Bengal, if necessary, within a period of 12 (twelve) weeks from the date of communication of the order and take necessary follow-up action within a period of 08 (eight) weeks thereafter.</p> <p>With the above direction, the original application stands disposed of.</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>	