

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 770 OF 2018

Md. Asaduzzaman 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
02 03.04.2019	<p>For the Applicant : Mr. G. Halder, Learned Advocate.</p> <p>For the Respondent : Mr. S. Ghosh, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents for granting higher initial pay in the scale of pay of Rs.300-600/- after setting aside order dated July 30, 2018 issued by the Principal Secretary to the Government of West Bengal, Department of Water Resource and Development.</p> <p>The contention of the applicant is that he joined in the post of Operator-cum-Mechanic in the pay scale of Rs.230-425/- in the office of the Executive Engineer, Berhampore Agri-Mech. Division, Department of Agriculture and Community Development, Government of West Bengal on May 19, 1973. Admittedly, the applicant retired from service on July 31, 2006. The further contention of the applicant is that the employees who are similarly circumstanced with the applicant approached the Hon'ble High Court for revision of pay scale by filing C.R. No. 9167 (W) of 1980 and C.R. No. 11202 (W) of 1981. The said writ applications were disposed of by the Hon'ble High Court on August 25, 1989 and on March 25, 1991 respectively by granting relief of revised pay scale to the petitioners of the said writ</p>	

ORDER SHEET

Md. Asaduzzaman

Form No.

Vs.

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

Case No. **OA 770 of 2018**

applications. By citing the above decisions of the Hon'ble High Court, the petitioner approached the Tribunal after almost nine years of his retirement from service for getting benefit of revised pay scale by filing OA-1116 of 2015. On March 29, 2017, the Tribunal disposed of OA-1116 of 2015 by directing the Secretary to the Government of West Bengal, Department of Water Resources Investigation and Development to take a decision on the basis of the representation made by the applicant on April 18, 2016 for revision of pay scale of the applicant and for refixation of pension of the applicant. The respondent no. 1, Principal Secretary to the Government of West Bengal, Department of Water Resources and Development disposed of the representation submitted by the applicant on July 30, 2018 in compliance with the direction given by the Tribunal in OA-1116 of 2015. The said reasoned order is now under challenge in the present application.

The issue for consideration of the Bench is whether the reasoned order dated July 30, 2018 is liable to be set aside as illegal and arbitrary. Mr. Halder, Learned Counsel for the applicant, contends that the applicant is similarly circumstanced with the petitioners of C.R. No. 9167 (W) of 1980 and the petitioners of C.R. No. 11202 (W) of 1981 by which the Hon'ble High Court granted relief to the said petitioners for revision of pay scale by passing order on August 25, 1989 and on March 25, 1991 respectively. Mr. Halder has urged this Bench to

ORDER SHEET

Md. Asaduzzaman

Form No.

Vs.

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

Case No. **OA 770 of 2018**

consider that the Principal Secretary to the Government of West Bengal was not justified in refusing to grant revised pay scale to the applicant on the ground of delay in approaching the authority concerned for revision of pay scale after almost 25 years of the relief granted by the Hon'ble High Court. According to Mr. Halder, the applicant is entitled to get benefit of revision of pay scale as the cause of action for revision of pay scale is still continuing. Mr. Halder has relief on "Union of India and Others v. Tarsem Singh" reported in (2008) 8 SCC 648 and "Maharaj Krishan Bhatt and Another v. State of Jammu and Kashmir and Others" reported in (2008) 9 SCC 24 in support of his above contention.

Mr. Ghosh, Learned Counsel representing the state respondents, submits that the reasoned order passed on July 30, 2018 is justified under the law as the applicant cannot get benefit of revision of pay scale without approaching the authority concerned for a period of 15 years while the applicant was in service and thereafter for a period of almost 10 years after his retirement from service. Mr. Ghosh has also pointed out from the reasoned order that the applicant approached the Hon'ble High Court praying for revision of his pay scale after his retirement from service, but the applicant did not pursue the said case as reflected from the submission made by the applicant before the Principal Secretary to the Government of West Bengal at the time of hearing of the applicant.

ORDER SHEET

Md. Asaduzzaman

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 770 of 2018**

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the Principal Secretary to the Government of West Bengal rejected the claim of the applicant for revision of pay scale on the following grounds : first, the applicant was not a party to C.R. No. 9167 (W) of 1980 and in C.R. No. 11202 (W) of 1981 whereby the Hon'ble High Court granted relief for revision of pay scale to the petitioners of the said writ applications on August 25, 1989 and on March 25, 1991 respectively; secondly, there is delay of almost 25 years in filing the representation for revision of pay scale of the applicant after passing of order by the Hon'ble High Court in C.R. No. 9167 (W) of 1980 and in C.R. No. 11202 (W) of 1981 and the said delay includes delay of almost 9 years after retirement of the applicant from service and thirdly, the applicant already approached the Hon'ble High Court for grant of revised pay scale by filing appropriate application after his retirement from service, but did not pursue the said case before the Hon'ble High Court.

We would like to discuss on the decisions relied on by Learned Counsel for the applicant before giving our views on the grounds put forward by the Principal Secretary to the Government of West Bengal in rejecting the claim of the applicant for grant of revision of pay. In "Maharaj Krishan Bhatt and Another v. State of Jammu and Kashmir and Others" (supra), the appellants approached the Hon'ble High Court of

ORDER SHEET

Md. Asaduzzaman

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 770 of 2018**

Jammu and Kashmir in the year 1987 for rejecting their prayer for appointment to the post of PSI under 50 % quota of direct recruitment in relaxation of rules on the ground that another Constable of Police similarly circumstanced with the appellants got appointment to the post of PSI against 50 % quota of direct recruitment by relaxation of rules. There was no delay on the part of the appellants for approaching the Hon'ble High Court and the appellants themselves moved the Hon'ble High Court for getting the relief of appointment to the post of PSI against 50 % quota of direct recruitment by relaxation of rules. The Hon'ble High Court granted relief in favour of the appellants which was ultimately affirmed by the Hon'ble Supreme Court. The facts of the reported case are clearly distinguishable from the facts of the present case where the applicant was not a party to the writ petitions disposed of by the Hon'ble High Court in the year 1989 and in the year 1991 and the applicant approached the Administration by filing a representation after 25 years from the order granting relief by the Hon'ble High Court in C.R. No. 9167 (W) of 1980 and in C.R. No. 11202 (W) of 1981 and that too after almost 9 years of retirement of the applicant from service. Accordingly, the ratio of the reported case has no manner of application in the facts of the present case.

In "Union of India and Others v. Tarsem Singh" (supra), one army personnel who was declared invalid from service on November 13, 1983 approached the Hon'ble High Court in the

ORDER SHEET

Md. Asaduzzaman

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 770 of 2018**

year 1999 for grant of disability pension. While Learned Single Judge of the Hon'ble High Court granted arrears of pension in favour of the applicant during the period of only 3 years before approaching the Hon'ble High Court by the army personnel, the Division Bench of the Hon'ble High Court granted arrears of pension to the army personnel with effect from the date of declaring him invalid from service on November 13, 1983. The Hon'ble Supreme Court had set aside the order passed by the Division Bench of the Hon'ble High Court and restored the order passed by Learned Single Judge of the Hon'ble High Court for grant of arrears for only 3 years before the date of filing of the writ petition by the army personnel. The ratio of this reported case is that if a person approaches the writ jurisdiction of the Hon'ble High Court for granting financial benefit beyond the period of 3 years of approaching the Court, the Court should grant financial benefit only for a period of 3 years before the date of filing the writ application. The inordinate delay in approaching the Writ Court can be condoned by the Hon'le High Court depending on the facts and circumstances of the particular case as the law of limitation or bar under any statute for approaching the Court cannot have any overriding effect on the provisions of Article 226 of the Constitution of India. While we are dealing with the present original application under section 19 of the Administrative Tribunals Act, 1985, we cannot be oblivious of the provisions of limitation laid down under section 21 of the Administrative Tribunals Act, 1985 by which we are governed.

ORDER SHEET

Md. Asaduzzaman

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 770 of 2018**

In the present case, the applicant has not prayed for pension or retirement benefits. The applicant has challenged the reasoned order dated July 30, 2018 by which claim of the applicant for revision of pay scale in terms of the orders passed by the Hon'ble High Court in two writ applicants to which the applicant was not a party, was rejected on the ground of approaching the authority long after 25 years of the order passed by the Hon'ble High Court in the said two writ applications. In our view, the ratio of "Union of India and Others v. Tarsem Singh" (supra) is not applicable in the facts of the present case. In view of our above observations, we do not find any merit in the submission made on behalf of the applicant.

The grounds put forward by the Principal Secretary to the Government of West Bengal in passing the reasoned order on July 30, 2018 are found to be legal and valid. We cannot persuade ourselves to hold that the reasoned order is vitiated by illegality and arbitrariness as contended on behalf of the applicant. The logical inference of our above findings is that the reasoned order is not liable to be set aside and the applicant is not entitled to get revised pay scale to get benefit of revision of pay scale by approaching the authority long after 25 years of arising of cause of action and long after 9 years of retirement of the applicant from service.

As a result, the original application is **dismissed**.

ORDER SHEET

Md. Asaduzzaman

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 770 of 2018**

Sanjib	Let urgent xerox certified copy of the order be supplied to the parties, if applied for, on priority basis after observance of all necessary formalities. (S.K. DAS) MEMBER(A)	(R. K. BAG) MEMBER (J)
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