

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-****The Hon'ble Mrs. Urmita Datta (Sen), Member (J)****The Hon'ble Dr. Subesh Kumar Das, Member (A)****Case No – OA- 968 of 2019.****Shri Ashis Kumar Sinha & Ors. Vs The State of West Bengal & Others.**

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<p>04</p> <hr/> <p>18/11/2020</p>	<p>For the Applicant : Mr. M.N. Roy, Mr. G. Halder, Ld. Advocates.</p> <p>For the State Respondents: Mr. G.P. Banerjee, Ld. Advocate.</p> <p>The instant application has been filed praying for following relief;</p> <p>“(a) An order do issue directing the respondent authorities to allow scale no.19 in favour of the applicants herein notionally with effect from 01.10.2013 and actual from the date of assumption of charge and confer them with the status of Joint Secretary within a stipulated time period.</p> <p>(b) An order do issue thereby setting aside/quashing the communication letter No.1762-PAR(WBCS)/1D-159/18 dated, the 19<sup>th</sup> December, 2018 addressed to the applicant No.1, whereby the Finance Department has not aged to allow Scale no.19 with the status of Joint Secretary in his favour within a stipulated time period.</p> <p>(c) An order do issue directing the respondent authorities to condone the shortfall</p>	

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	<p>in length of service of the petitioners to the extent of the difference between 14.09.1993 and the actual dates of joining of the petitioners in WBCS(Exe) for the purpose of elevation to scale no.19 and conferment of the status of Joint Secretary by invoking the power of the Government to relax rules as condoned in similarly circumstanced applicants of O.A.No.177 of 2013 (Petitioners being the batch of 1991).</p> <p>(d) An order do issue directing the concerned respondent authorities, each of them, to pass necessary identical orders in favour of the present applicants herein as has been passed with regard to the applicants in O.A.954 of 2016 (petitioners are of 1992 batch) within a stipulated time period as the applicants herein are also similarly circumstanced.</p> <p>(e) An order do issue commanding the respondents, each of them, to pass necessary orders for awarding Scale No.19 with the status of Joint Secretary to the applicants ahead of their inter se juniors that is from 01.10.2013.</p> <p>(f) An order do issue directing the respondent authorities to pay arrear enhanced pension and other benefits and further interest</p>	

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	<p>on the arrear amount @ 18% P.A. till the actual realization.</p> <p>(g) An order do issue directing the concerned respondent authorities to re-fix the scale of pay of the applicants at scale No.19 with effect from 01.10.2013 within a stipulated time period, taking into consideration of the fact that all the applicants herein have already superannuated from service.</p> <p>(h) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper in the interest of justice.</p> <p>(i) Leave be granted under Rule 4 (5)(a) of the West Bengal Administrative Tribunal (Procedure) Rules, 1994 to file a single application by more than one applicant having regard to the cause of action and nature of relief prayed for, being the same.”</p> <p>As per the applicants, they were promoted from the feeder post (which includes Joint Development Officer) to the post of West Bengal Civil Services (Executive) against 1992 year vacancies. However, due to the latches on the part of the respondents, they could have joined to the cadre of West Bengal Civil Service (Exe) in the year</p>	

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	<p>1997 by virtue of Notification dated 29.01.1997 being 1992 batch. Whereas, in the year 1992 simultaneously direct recruitment process, in the vacancy of 1992, was initiated for direct recruitees, who were appointed and joined in the year 1992. Though, applicants en-block senior to the special recruitees and the direct recruitees of the same allotment year, as per the gradation list dated 07.02.2013, the name of the applicants were placed against serial No.290, 283, 287 and 282 respectively (Annexure C). In the meantime vide Memo dated 21.06.1990, the Government of West Bengal decided to implement a Career Advancement Scheme allowing the State Government employees in the revised pay scale Nos. 1 to 16 to move to the next higher scales on completion of ten years of continuous and satisfactory service in their respective revised scales and their corresponding unrevised scales. The eligibility condition for WBCS (Exe) for elevation of scale No.19 has been prescribed as 20 years of total service in revised scale Nos. 16, 17 and 18 and their unrevised counterparts and 3 years in the revised pay scale of 18, subject to the availability of vacancies in the post of Joint Secretary. The said scheme was effective from</p>	

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	<p>01.04.1989. The above CAS was further modified vide memorandum dated 13.03.2001 and effective from 01.01.2001 as MCAS.</p> <p>Unfortunately, though they were senior to the direct recruitees of the said allotment year, however, the benefit of scale 19 was granted to the junior direct recruitees by depriving the applicants and other similarly circumstances officers of 1992 batch. In the meantime, some similarly circumstance Officers approached this Tribunal by OA 177 of 2013 (Sri Sukumar Das &amp; Others – Versus- The State of West Bengal &amp; Others) which was disposed of vide Order dated 07.02.2014 holding inter alia;</p> <p>“.....Having regard to our findings and decisions on the relevant issues, as discussed in detail in the foregoing paragraphs, we hold that the petitioners are to be considered senior to the private respondents and we direct the State respondents to condone the shortfall in length of service of the petitioners to the extent of the difference between 01.09.1992 and the actual dates of joining of the petitioners in WBCS for the purpose of elevation to scale No.19 and conferment of the status of Joint Secretary by invoking the power of the</p>	

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	<p>Government to relax rules. If upon such condonation, the petitioners are eligible for elevation to scale No.19 and conferment of the status of Joint Secretary, then they should be elevated to scale No.19 and conferred upon the status of Joint Secretary with effect from the date of availability of vacancies in scale No.19 without taking into account the promotion of the private respondents given in the meanwhile. If on such dates, the petitioners have not completed the prescribed length of service on the basis of their actual dates of joining in the WBCS, then the elevation/conferment of status referred to above will be notional and actual financial benefit will be available from the date of completion of the prescribed length of service on the basis of the actual dates of joining. If, however, any of the petitioners retires/has retired before completion of the prescribed length of service, his retirement benefits including pension shall be fixed/revised on the basis of notional pay on the date of retirement. We leave it to the Government to decide how the private respondents who have already got elevation/promotion of any officer junior to the</p>	

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	<p>petitioners to scale no.19 before exhausting the case of petitioners. The entire exercise shall have to be completed within a period of three months from the date of communication of this judgement.</p> <p>It is needless to say that in terms of the direction of the Tribunal in its order dated 19.06.2013, the elevation to scale No.19 already allowed to some of the respondents will have to be dealt with in accordance with this judgement.</p> <p>In the result, the Application succeeds to the extent as aforesaid. There will, however, be no order as to cost.”</p> <p>However, the state respondents had challenged the said order before the Hon’ble High Court at Calcutta in WPST No.227 of 2014, which was disposed of vide judgement dated 05.05.2015 (Annexure F) holding inter alia;</p> <p>“.....38. In the given facts and circumstances of the present case, and in light of the aforesaid decisions cited before it, we find absolutely no illegality in the conclusion arrived at by the Ld. Tribunal that the Government is possessed of the power to relax the eligibility criteria regarding</p>	

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	<p>minimum length of service, and that this is a fit case for exercising that power.</p> <p>39. ....</p> <p>40. ....</p> <p>41. ....</p> <p>42. ....</p> <p>43. ....</p> <p>44. ....</p> <p>45. ....</p> <p>46.....In view of the observations and reasons put on record in ..... As a considerable time has already lapsed, so the State/Petitioners are directed to implement the directions passed by the Ld. Tribunal within a period of six weeks from date.”</p> <p>Being the similar circumstances, other officers from 1992 batch moved one OA being No.954 of 2016 (Tapas Ranjan Kar &amp; Others – versus- State of West Bengal &amp; Others), which was disposed of vide order dated 17.02.2018 holding inter alia;</p> <p>“ Accordingly, we direct the respondent No.2, Principal Secretary to the Government of West Bengal, Personnel and Administrative Department to consider the entitlement of the applicants to get scale</p>	



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	<p>no.19 along with status of Joint Secretary to the Government of West Bengal On relaxation of rules in respect of shortfall in the length of service of the applicants on consideration of the judgement passed by this Tribunal in OA-177 of 2013 being affirmed by Hon'ble High Court in WPST No.227 of 2014 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 4(four) weeks thereafter.</p> <p>With the above direction, the original application stands disposed of.”</p> <p>According to the applicants, some of the applicants of the aforesaid OA were also junior in the gradation list of 1992 batch.</p> <p>As per the applicant No.1, 2, 3, they have made representations before the respondent authority and applicant No.4 made representation before the respondents seeking partial modification to the notification dated 19.01.2018 to the extent of granting him benefit of scale No.19 with effect from 01.10.2013 (Annexure I).</p> <p>According to the applicants, since they are promotee officers of 1992 batch and similarly circumstances with the applicants of OA 954 of</p>	

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	<p>2016 also, they should be granted benefit of the order dated 17.12.2018.</p> <p>No reply has been filed. During the course of hearing, the counsel for the applicant had submitted that it would suffice his purpose if the respondents would be directed to consider the entitlement of the applicants for scale No.19 as per the aforesaid judgement.</p> <p>The respondents have no objection to such proposition.</p> <p>Accordingly, we direct the respondents to consider the entitlement of the applicants for the purpose of getting scale No.19 along with status of Joint Secretary to the Government of West Bengal on relaxation of rules in respect of shortfall in the length of service of the applicants by way of considering the judgement passed by this Tribunal in OA 177 of 2013 being affirmed by the Hon'ble High Court vide their judgement dated 05.05.2015 passed in WPST No.227 of 2014. Since the applicants are also similarly circumstances with regard to the petitioners in OA 954 of 2016 as all of them are promotee officers of 1992 batch, the respondents are further directed to pass a reasoned and speaking order after considering their case within a period of 12 weeks from the date</p>	

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GM	<p>communication of the order and take necessary and follow up action within a period of 4 weeks thereafter.</p> <p>With the above direction the OA stands disposed of with no order as to cost.</p> <p><b>(SUBESH KUMAR DAS)</b> <b>MEMBER(A)</b></p> <p><b>(URMITA DUTTA SEN)</b> <b>MEMBER(J)</b></p>	