

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

**The Hon'ble JUSTICE RANJIT KUMAR BAG  
& The Hon'ble DR. SUBESH KUMAR DAS**

**Case No – OA 973 OF 2017**

*Prasanta Kumar Jana* 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
<p style="text-align: center;">07 <hr/>25.09.2019</p>	<p><i>For the Applicant : Mst. S. Hasin, Learned Advocate.</i></p> <p><i>For the State Respondents : Mr. S. Ghosh, Learned Advocate.</i></p> <p>The applicant has prayed for direction upon the respondents for granting him benefit of pay protection in terms of Rule 55(4) of West Bengal Service Rules, Part I after cancellation of order communicated under Memorandum Dated November 25, 2016 issued by the Deputy Secretary, Government of West Bengal, Department of Fisheries, Aquaculture, Aquatic Resources &amp; Fishing Harbours (Annexure P11 to the original application).</p> <p>The applicant joined the post of Deputy Director of Fisheries (ME&amp;MS) under the Directorate of Fisheries, Government of West Bengal in terms of Notification dated February 21, 2002 issued by the Deputy Secretary to the Government of West Bengal, Department of Fisheries. He was subsequently appointed as Joint Director of Fisheries (ME&amp;MS) in the Director of Fisheries w.e.f. March 01, 2010 in terms of Notification dated February 24, 2010. The contention of the applicant is that he was</p>	

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placed in the serial no. 35 in the gradation list of Deputy Director of Fisheries published on November 25, 2016, while the private respondent was placed in serial no. 39 of the said gradation list. The further contention of the applicant is that the private respondent is getting higher pay though he is junior to the applicant in the gradation list, while the application is getting lesser pay being senior to the private respondent. The grievance of the applicant is that he is entitled to get pay protection in terms of Rule 55(4) of West Bengal Service Rules, Part I, but his claim was turned down by the Department of Fisheries, Aquaculture, Aquatic Resources & Fishing Harbours by issuing Memorandum dated November 25, 2016 which is under challenge in the present application.

Mst. S. Hasin, Learned Counsel for the applicant contends that the applicant joined in the post of Deputy Director in the Directorate of Fisheries as directly recruited candidate on April 19, 2002, while the private respondent joined in the post of Deputy Director in the Directorate of Fisheries on promotion on June 07, 2004. She further submits that the applicant is senior to the private respondent as per entries made in the gradation list published on June 16, 2011. According to the Learned Counsel, the private respondent being junior to the applicant is getting higher pay and as such the applicant is

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entitled to get pay protection in terms of the provision of Rule 55(4) of West Bengal Service Rules, Part I.

On the other hand, Mr. Ghosh, Learned Counsel for the state respondents submits that the private respondent joined in the service of the Directorate of Fisheries on April 12, 1984 and got promotion to the post of Deputy Director on June 07, 2004. He further submits that the private respondent got the benefit of Modified Career Advancement Scheme and served for considerable period of almost 20 years before joining the post of Deputy Director on promotion on June 7, 2004 while the applicant joined in the post of Deputy Director in the Directorate of Fisheries as a directly recruited candidate on April 19, 2002 and as such the private respondent was placed in higher scale than the applicant who was placed in a lower scale of pay as directly recruited candidate, inspite of the fact that the applicant is senior to the private respondent.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the applicant joined the post of Deputy Director as a directly recruited candidate on April 19, 2002, while the private respondent joined in the post of Deputy Director on promotion on June 07, 2004. Admittedly at present both the applicant and the private respondent got promotion to the post of Joint Director in the Directorate

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of Fisheries. The further admitted position is that the applicant is senior to the private respondent in terms of the entries made in the gradation list published by the Directorate of Fisheries, Government of West Bengal. It is not disputed that the applicant is getting scale no. 18 while the private respondent is placed in the scale no. 19. Now the issue for consideration of the Tribunal is whether the applicant is entitled to get pay protection in terms of the pay of the private respondent by invoking the provision of Rule 55(4) of West Bengal Service Rules, Part I, which is as follows :-

*“ (4) If a Government employee while officiating in a higher post draws pay at a rate higher than his Senior Officer either due to fixation of his pay in the higher post under the normal rules, or due to revision of pay scales, the pay of the Government employees senior to him shall be re-fixed at the same stage and from the same date his junior draws the higher rate of pay irrespective of whether the lien in the lower post held by the Senior Officer is terminated at the time of re-fixation of pay, subject to the conditions that both the Senior and Junior Officers should belong to the same cadre and the pay*

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*scale of the posts in which they have been promoted are also identical.*

*The benefit of this rule shall not be admissible in case where a senior Government employee exercises his option to retain un-revised scale of pay, or where the pay drawn by the senior officer in the lower post before promotion to the higher post was also less than of his junior.”*

On a plain reading provision 55(4) of West Bengal Service Rules, Part I, we find that the issue of pay protection under the above rule can be considered when a junior Government employee is posted in higher post on officiating basis and getting more pay than his senior in the same cadre and having same scale of pay, the provisions of the above rule can be invoked for giving pay protection to the senior. In the instant case the private respondent is not working in a higher post in officiating capacity. Nor are the applicant and the private respondent getting the same scale of pay. The difference in pay of the applicant and the private respondent has not arisen because of fixation of pay of a junior officer on account of his officiating in a higher post, but the higher pay is drawn by the private respondents due to greater length of service

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and for getting benefit of career Advancement Scheme in terms of the Memorandums issued in this regard from time to time by the Finance Department, Audit Branch, Government of West Bengal.

In view of our above findings, we can safely hold that the applicant is not entitled to get pay protection in terms of the provision of Rule 55(4) of West Bengal Service Rules, Part I. The logical inference is that the claim of the applicant has been rightly turned down by the Department of Fisheries, Aquaculture, Aquatic Resources & Fishing Harbours, Government of West Bengal under Memorandum dated November 25, 2016.

The original application is, thus, dismissed.

Let a plain copy of the order be supplied to both parties.

( S.K.DAS)  
Member ( A)

( R.K.BAG)  
Member (J)

*H.S*