

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

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

**Case No –OA 1366 OF 2014**

**Amalendu Bikas Mahapatra 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>16</p> <hr/> <p>03.04.2019</p>	<p>For the Applicant : Mr. A.B. Mahapatra, In person.</p> <p>For the Respondents : Mrs. S. Agarwal, Learned Advocate</p> <p>The applicant has prayed for direction upon the respondents for grant of balance amount of leave encashment after setting aside the reasoned order passed by the respondent No. 2 on April 23, 2014.</p> <p>It appears from the materials on record that the applicant retired from service as an Assistant Evaluation Officer under the Administrative control of Additional Director of Agriculture (Evaluation), Department of Agriculture, West Bengal on August 31, 2007. The provisions of West Bengal Services (Revision of Pay and Allowances) Rules, 2009 (in short ROPA, 2009) came into force on and from January 1, 2006, but actual financial benefit after fixation of pay was given to the Government employees w.e.f. April 1, 2008. In other words, fixation of pay of the Government employees was done in terms of ROPA Rules, 2009 notionally w.e.f. January 1, 2006 and actual financial benefit was given from April 1, 2008. The contention of the applicant is that his pension, gratuity and commuted value of pension were revised in terms of last pay notionally fixed on the date of his retirement in terms of ROPA, 2009, but leave encashment of the applicant was not revised on the basis of notional fixation of his pay on the date of his retirement.</p>	

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	<p>Previously the applicant approached this Tribunal by filing OA 1377 of 2011 praying for issuance of direction upon the respondents for granting him balance amount of leave encashment. Without getting favourable order from the Tribunal, the applicant approached the Hon'ble High Court by challenging the order of the Tribunal by filing WPST 413 of 2013. On November 25, 2013, the Hon'ble Court disposed of WPST 413 of 2013 by directing the Principal Secretary to the Government of West Bengal, Department of Finance to take appropriate decision with regard to the claim of the applicant for grant of revised leave encashment within specific period of time by passing a reasoned order. On April 23, 2014, the Principal Secretary to the Government of West Bengal, Department of Finance passed the reasoned order in compliance with the direction of the Hon'ble High Court which is under challenge in the present application.</p> <p>With the above factual matrix, the applicant appearing in person submits that the reasoned order dated April 23, 2014 is not justified under the law as the leave encashment of the applicant was not revised on the basis of notional fixation of pay of the applicant on the date of retirement in terms of ROPA, 2009, while other retirement benefits of the applicant like pension, gratuity and commuted value of pension have already been revised and paid on the basis of notional fixation of pay of the applicant on the date of retirement in terms of ROPA, 2009. On the other Mrs. Agarwal, Learned Counsel representing the State respondents has supported the reasoned order dated April 23, 2014 and submitted that the reasoned order has been passed in accordance with</p>	

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	<p>Memo No. 201-F(Pen) dated February 25, 2009 issued by the Finance Department, Government of West Bengal.</p> <p>Having heard both the parties and on consideration of Memo No.201-F(Pen) dated February 25, 2009 issued by the Finance Department, Government of West Bengal, we find that the Government employees who retire during the period from January 1, 2006 to March 31, 2008 are entitled to have their pensionary benefit revised notionally in terms of ROPA, 2009 for the period prior to April 1, 2008, though they are not entitled to get difference between revised pensionary benefit and existing pensionary benefit on the basis of notional fixation upto March 31, 2008. It appears from paragraph D of the said Memorandum No. 201-F(Pen) dated February 25, 2009 that the said retired Government employees will get actual revised pensionary benefits like pension, gratuity and family pension on the basis of emoluments allowed notionally in terms of ROPA, 2009. Similarly, the provisions of paragraph E of the said Memo dated February 25, 2009 lays down that the said Government employees will have the option to commute revised amount of pension after notional fixation of pay in terms of ROPA, 2009. However, the provision for payment of revised leave encashment is conspicuously absent from Memorandum No.201-F(Pen) dated February 25, 2009 issued by the Finance Department, Audit Branch, Government of West Bengal and as such the Principal Secretary to the Government of West Bengal did not accept the claim of the applicant for grant of revised leave encashment on the basis of notional fixation of pay on the date of retirement in terms of ROPA, 2009. Since all pensionary</p>	

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Rajib	<p>benefits are payable to the Government employees retiring between January 1, 2006 and March 31, 2008 after notional fixation of pay in terms of ROPA, 2009 on the date of retirement, we are of the view that the Government employees are also entitled to get revised leave encashment on the basis of notional fixation of pay in terms of ROPA, 2009 on the date of retirement.</p> <p>In view of our above observation, we are constrained to hold that the reasoned order passed on April 23, 2014 is not justified under the law. The said reasoned order dated April 23, 2014 passed by the Principal Secretary to the Government of West Bengal, Department of Finance is, thus, set aside. The respondent No. 3, Director of Agriculture, Government of West Bengal is directed to take necessary action for revision of leave encashment of the applicant on the basis of notional fixation of pay in terms of ROPA, 2009 on the date of retirement of the applicant within a period of twelve weeks from the date of communication of the order.</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 the parties.</p> <p style="text-align: center;"><b>S. K. DAS</b> <b>MEMBER(A)</b></p> <p style="text-align: center;"><b>R. K. BAG</b> <b>MEMBER(J)</b></p>	

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