

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

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

Case No –OA-708 of 2019

Alok Kumar Sarkar 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>03 29.11.2019</p>	<p>For the Applicant : Mr. K.K. Lahiri, Mr. N.N. Maity, Learned Advocates.</p> <p>For the Respondents: Mr. G.P. Banerjee, Learned Advocate.</p> <p>Liberty is given to the applicant to amend the prayer portion of the original application for incorporation of the correct date of the impugned order sought to be set aside in course of this day.</p> <p>The applicant has prayed for direction upon the respondents for grant of balance amount of revised leave encashment after setting aside the order issued by the Principal Secretary to the Government of West Bengal, Department of Labour on December 15, 2017.</p> <p>The applicant retired from the post of Assistant Secretary, Labour Department, Government of West Bengal on October 31, 2006. 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. The fixation of pay of the Government employees was done in terms of ROPA, 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 was revised in terms of last pay notionally fixed on the</p>	

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	<p>date of his retirement in terms of ROPA, 2009, but leave encashment was not revised on the basis of notional fixation of pay on the date of his retirement.</p> <p>Previously, the applicant approached the Tribunal by filing OA 405 of 2017 which was disposed of on 16.05.2017 and subsequently clarified on May 19, 2017, whereby direction was given to the Additional Chief Secretary to the Government of West Bengal, Labour Department to consider about release of leave encashment in favour of the applicant as admissible under the rules keeping in view the previous order of the Tribunal dated August 16, 2012 passed in OA 684 of 2010. The Principal Secretary to the Government of West Bengal, Labour Department refused to grant revised leave encashment in favour of the applicant by passing a reasoned order on December 15, 2017 in terms of direction given in OA 405 of 2017, which is under challenge in the present application.</p> <p>With the above factual matrix, Learned Counsel for the applicant submits that the refusal of the balance amount of revised leave encashment on the basis of notional fixation of pay of the applicant on the date of retirement is unjustified as the applicant has already been given all other retirement benefits like pension, gratuity and commuted value of pension on the basis of notional fixation of pay on the date of retirement. He has also cited the previous order of the Tribunal passed in the case of "Amalendu Bikas Mahapatra –v. State of West Bengal & Others (OA 1366 of 2014, decided on April 3, 2019), whereby this Tribunal gave direction to the Director of Agriculture, Government of West Bengal to take necessary action</p>	

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	<p>for revision of leave encashment on the basis of notional fixation of pay in terms of ROPA, 2009 within specific period of 12 weeks from the date of communication of the order. On the other hand, Mr. Banerjee, Learned Counsel for the State respondents submits that the State respondents cannot revise leave encashment of the applicant who retired from service on October 31, 2006 in terms of provisions of Memorandum No. 3950-F dated May 27, 2009 issued by the Finance Department, Audit Branch, Government of West Bengal. The further submission of Mr. Banerjee is that the reasoned order is passed by the Principal Secretary on December 15, 2017 relying on the said Memorandum No. 3950-F dated May 27, 2009 and as such the reasoned order is justified under the law.</p> <p>Having heard Learned Counsel representing both parties and on consideration of the Memo No. 201-F(Pen) dated December 25, 2009 issued by the Finance Department, Government of West Bengal, we find that the Government employees who retired during the period from January 1, 2006 to March 31, 2008 are entitled to have their pensionary benefit revised notionally in terms of the provisions of ROPA, 2009 for the period prior to April 1, 2008, though they have no 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 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</p>	

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	<p>Memo dated February 25, 2009 lays down that the said Government employees will have the option to commute revised pension after notional fixation of pay in terms of ROPA, 2009. However, the provisions for payment of leave encashment is conspicuously absent from Memo dated February 25, 2009 issued by the Finance Department, Government of West Bengal. The impugned order dated December 15, 2017 passed in terms of direction in OA 405 of 2017 indicates that the applicant is not entitled to get revised leave encashment on the basis of notional fixation of pay on the date of retirement in terms of Memorandum No. 3950-F dated May 27, 2009 issued by the Finance Department, Audit Branch, Government of West Bengal.</p> <p>On consideration of Memorandum No. 3950-F dated May 27, 2009 issued by the Finance Department, Government of West Bengal, we find that the Government of West Bengal has clarified that the cash equivalent to leave salary of a Government employee retiring after January 1, 2006 and before April 1, 2008 will not be revised on the basis of notional fixation of pay on the date of retirement. We do not find any logic in denying enhanced / revised cash equivalent to leave salary to the Government employees retiring after January 1, 2006 and before April 1, 2008 on the basis of notional fixation of pay, while they are entitled to all other revised retirement benefits like pension, gratuity, family pension and commuted value of pension on the basis of notional fixation of pay on the date of retirement. Since all retirement benefits are payable to the Government employees retiring between January 1, 2006 and March 31, 2008 on the basis of notional fixation of pay in</p>	

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	<p>terms of ROPA, 2009 on the date of retirement and since we have already decided in the case of “Amalendu Bikas Mahapatra-v- State of West Bengal & Others (supra) that the Government employee retiring on August 31, 2007 after obtaining notional fixation of pay on the date of retirement is entitled to get revised leave encashment on the basis of notional fixation of pay on the date of retirement in terms of ROPA, 2009, we would like to hold that the present applicant is also entitled to get revised leave encashment on the basis of notional fixation of pay on the date of retirement in terms of ROPA, 2009. The provision for non-payment of revised leave encashment on the basis of notional fixation of pay on the date of retirement of the employee laid down in Memo No. 3950-F dated May 27, 2009 is not in conformity with the previous Memo No. 201-F (Pen) dated February 25, 2009 and the same is thus struck down to the extent of benefit of revised leave encashment on the basis of notional fixation of pay on the date of retirement.</p> <p>In view of our above observations, the impugned reasoned order dated December 15, 2017 issued by the Principal Secretary to the Government of West Bengal, Department of Labour (annexure C to the original application) is set aside. The respondent No. 2, Principal Secretary to the Government of West Bengal, Department of Labour is directed to take necessary action for revision of leave encashment of the applicant on the basis of notional fixation of pay on the date of retirement in terms of ROPA, 2009 within a period of twelve weeks from the date of communication of the order.</p>	

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Rajib	<p>With the above direction, the original application is disposed of.</p> <p>Let a plain copy of the order be supplied to both parties.</p> <p style="text-align: center;">S. K. DAS MEMBER(A)</p> <p style="text-align: center;">R. K. BAG MEMBER(J)</p>	

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