

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

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – O.A. 168 of 2019

PRADIP KUMAR BHATTACHARYA 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>4 23.04.2019</p>	<p>For the Applicant : Mr. R.K. Ray, Advocate</p> <p>For the State Respondent: Mr. A.L. Basu, Advocate</p> <p>For the Principal Accountant : Mr. B. Mitra, General (A&E) West Bengal Departmental Representative</p> <p>As prayed for by Mr. R.K. Ray, learned advocate for the applicant, leave granted to amend the cause title so far as it relates to respondent no.1.</p> <p>In this application the applicant, - an Executive Assistant, who had joined the services on 1st October, 2003 under the Proadhan Salap-1 Grampanchayet, Salap, Howrah and had absented from 6th September, 2005 till 31st December, 2011 and thereafter resumed duties and superannuated on 31st October, 2017, - has prayed for certain reliefs, the relevant portion of which is as under :</p> <p>“(a) To pass an order by directing the respondents particularly the respondent nos. 2,4 and 8 to give</p>	

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	<p>his pension with all other retirement benefits.</p> <p>(b) To pass an order thereby directing the authorities / respondents specially the respondent nos, 2, 4, 7 and 8 for clearance of payment relating to attains age of superannuation with unpaid salaries from December 2005 to December 2011 with the approval of the governor.</p> <p>(c) To pass an order by directing the respondent authorities to disburse all other admissible and consequential benefits in favour of the applicant including the arrears forthwith;”</p> <p>It appears that earlier the applicant had filed an application, being O.A. 652 of 2013, which was disposed of on 23rd March, 2015 by passing an order, the relevant portion of which is as under:</p> <p>“It is admitted position that no disciplinary proceeding has been initiated against the petitioner for unauthorised absence which is more or less about a period of six years. It is</p>	

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	<p>also admitted position that he is now working in the Office of Pradhan Salap-I Gram Panchayet and thereafter, transferred to Ghoraberia Chitnan G.P. under Amta-II. Therefore, it is necessary for the respondents to regularise the period of his absence in accordance with Rules.</p> <p>In the circumstances above, we do not like to drag this matter any further and dispose of this application, upon the hearing of the respondents in particular the B.D.O., Amta – II and Pradhan Ghoraberia Chitnan G.P. to take up the representation of the petitioner dated 14.08.2012 in the matter of regularisation of his period of absence in accordance with Rules and take a decision within a period of six months hence and convey the decision to the petitioner within one month thereafter.”</p> <p>Since the directions, according to the applicant, were not complied with, he filed a contempt application, being CCP -85 of 2016, which was disposed of by passing</p>	

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	<p>an order dated 20th September, 2017. It appears from the said order passed in contempt proceedings that pursuant to the order dated 23rd March, 2015</p> <p style="text-align: center;">“.....The Block Development Officer under his dated signature of 21.08.2017 clearly held :</p> <p style="text-align: center;">“The other paragraphs of the written argument and rest submission of the letter dated 14.08.2012 does not justify his prolonged absence for 6 years as case of exceptional circumstances.</p> <p style="text-align: center;">In view of the above, I am of the opinion that, Sri Bhattacharya has failed to justify his continuous absence for almost 6 years [from December, 2005 to December, 2011] as an exceptional case. As such I am unable to say that his case is fit for regularisation under Rule 34 (1) of WBSR Part I, and as a result of that he is not entitled to get any arrear salary.”</p> <p style="text-align: center;">Thereafter the Tribunal held that:</p> <p style="text-align: center;">“The said subjective finding of the Block Development Officer cannot be gone into by the Tribunal in its present jurisdiction in the absence of any manifest error by way</p>	

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	<p>of non-compliance of the direction passed by the Tribunal in the Original Application. Whatever was required of him, the Block Development Officer has done the same observing necessary Rules and the Tribunal can never go beyond the same.</p> <p>However, if the Tribunal leaves the issue at that it will not be just justice. Reason being the applicant is due to superannuate on and from October, 2017 and a decision in respect of his dues are required to be taken. It has been shown that the Applicant has served for more than 30 years in Government Service. It would now be appropriate to dispose of the Application to the effect that it is left to the discretion of the Government to seek an approval of the Governor under Rule 34(1) in respect of the absence of the Applicant beyond the period of 5 years, if so desired.</p> <p>So far as the payments that have no bearing with the unauthorized absence are concerned, they should be cleared before the Applicant attains his age of superannuation.”</p> <p>Heard Mr. Ray, Mr. A.L. Basu, learned advocate for the State respondents and Mr. B. Mitra, the</p>	

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SCN.	<p>departmental representative. Since we find that the government has not taken any decision regarding the regularisation of the unauthorised absence of the applicant from 6th September, 2005 till 31st December, 2011, this application is disposed of by directing the Principal Secretary, Department of Panchayets and Rural Development, Kolkata, the respondent no.1, to pass a reasoned order for regularisation /non-regularisation of his absence for the period from 6th September, 2005 till 31st December, 2011 within a period of twelve weeks from the date of presentation of a copy of this order. After a decision is taken and communicated, the pension sanctioning authority shall look into the issue and shall do the needful in accordance with law within a period of twelve weeks.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	