

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

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

Case No – OA 690 OF 2016

PARIMAL CHANDRA SAMADDAR 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;">10</p> <hr/> <p>09.04.2018</p>	<p>For the Applicant : Mr. Susanta Pal Learned Advocate</p> <p>For the State Respondent: Mrs. Sunita Agarwal Learned Advocate</p> <p>For the Principal Accountant : Mr. Biswanath Mitra General (A&E) West Bengal Departmental Representative</p> <p>The applicant has prayed for direction upon the respondents to release pension and balance amount of gratuity by treating the qualifying service of thirty six years instead of twenty six years and to pay interest on the said amount for the delay in making payment.</p> <p>The applicant joined as Constable of Police on March 2, 1972 and retired from service on October 31, 2008. The applicant was arraigned as an accused in Barasat Police Station Case No. 658 under Sections 407 / 120B and 411 of Indian Penal Code. The contention of the applicant is that the applicant was ultimately acquitted of the charge in the criminal case. However, the departmental enquiry was initiated against the applicant on the charge unauthorised absence and over-stay of</p>	

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	<p>leave. On conclusion of departmental enquiry punishment was imposed on the applicant on October 15, 2008. The copy of order of imposition of punishment on the applicant is enclosed by the State respondents with the reply. It appears from copy of order of imposition of punishment that the applicant was directed to pay fine of Rs. 1,000/- (Rupees one thousand only) and his period of over-stay of leave from November 22, 1996 to January 27, 1997 was treated as Extra Ordinary Leave and the period of suspension of the applicant from January 28, 1997 to January 7, 2008 was confirmed. This order of imposition of punishment was challenged by the applicant by filing O.A. No. 9134 of 2008 before this Tribunal. On September 1, 2009 this Tribunal affirmed the order of punishment imposed on the applicant. The applicant unsuccessfully challenged the order passed by the Tribunal before the Hon'ble High Court by preferring W.P.S.T. No. 615 of 2009. On September 19, 2011, the High Court also affirmed the order passed by the Tribunal. In the absence of challenging the order of the High Court before the Hon'ble Supreme Court of India, we are of the view that the order of imposition of punishment on the applicant by the Disciplinary Authority has attained finality.</p> <p>On April 27, 2016, the applicant submitted an application under Section 6 of the Right to Information</p>	

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	<p>Act, 2005 before the respondent No. 2 praying for furnishing of information why his qualifying service was counted as twenty six years four months ten days instead of thirty six years seven months twenty nine days. On May 4, 2016 the information was supplied to the applicant by disclosing the fact that his period of suspension for more than ten years was not counted as qualifying service for grant of pension. With the above factual matrix we have to decide whether the period of suspension of the applicant from January 28, 1997 to January 7, 2008 can be counted as qualifying service for pension.</p> <p>Relying on the judgement in “Prem Nath Bali v. Registrar, High Court of Delhi and Another” reported in 2016 LAB. I.C. 533, Learned Counsel for the applicant submits that the Hon’ble Supreme Court granted benefit of qualifying service for pension to an employee, who was suspended during pendency of the departmental enquiry for prolonged period of nine years and twenty six days. According to Learned Counsel for the applicant, the ratio of the said reported case is squarely applicable in the facts of the present case. On consideration of the judgement of “Prem Nath Bali v. Registrar, High Court of Delhi & Anr.” (supra) we find that the order of suspension of the employee of this reported case was revoked during pendency of the departmental enquiry. Moreover, in this reported case, the Disciplinary Authority did not decide</p>	

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	<p>whether the period of suspension will be treated as on duty on conclusion of the departmental proceeding. In the present case, the order of suspension of the applicant was not revoked during pendency of the departmental enquiry. Moreover, in the instant case, the Disciplinary Authority has categorically mentioned in the order of punishment on conclusion of Disciplinary Proceedings that the period of suspension of the applicant from January 28, 1997 to January 7, 2008 was confirmed. In other words, the Disciplinary Authority has categorically held that the period of suspension of the applicant will remain as the period of suspension for which the applicant is only entitled to get subsistence allowance. The punishment which was imposed by the Disciplinary Authority has already been affirmed by this Tribunal and also by the Hon'ble High Court. In view of our above observation, we would like to hold that the ratio of the judgement in "Prem Nath Bali v. Registrar, High Court of Delhi & Anr." (Supra) cannot apply in the facts of the present case, as the facts of the present case are clearly distinguishable from the facts of the reported case.</p> <p>Since the period of suspension of the applicant has been treated as the period of suspension only by the Disciplinary Authority and since the said order has already attained finality, we are unable to accept the contention made on behalf of the applicant that the said</p>	

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SCN.	<p>period of suspension from January 28, 1997 to January 7, 2008 will be treated as qualifying service for pension. The upshot of our above observation is that the applicant will not get any relief in the present original application. The original application is, thus, dismissed.</p> <p style="text-align: center;">Let a plain copy of the order be supplied to the respective parties.</p> <p>(S.K. Das) MEMBER (A)</p> <p style="text-align: right;">(R.K. Bag) MEMBER (J)</p>	