

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 1304 OF 2014**

Nani Gopal Chakraborty 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
20 15.11.2018	<p>For the Applicant : Mrs. S. Mitra, Learned Advocate.</p> <p>For the Respondent : Mr. B.P. Roy, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents to give effect to the order dated February 5, 2009 passed by the respondent no. 3 on cancellation of order communicated under letter dated September 11, 2014 to the applicant by the respondent no. 2.</p> <p>The applicant retired from the post of Head Clerk-cum-Accountant on September 30, 1992 from the office of Superintendent of Agricultural Marketing, Cooch Behar. The contention of the applicant is that he served as Demonstrator at the Weaving Training Centre, Mongalkot, Burdwan under Block Development Officer, Mongalkot during the period from December 26, 1959 to March 31, 1963. The further contention of the applicant is that he served as Health Assistant under the Chief Medical Officer of Health, Bankura during the period from November 2, 1964 to October 14, 1965. It is also contended on behalf of the applicant that he joined as Clerk-cum-Complier in the office of Sub-Divisional Agricultural Marketing Officer, Bankura on October 15, 1965 and subsequently retired from the</p>	

# ORDER SHEET

Nani Gopal Chakraborty

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

.....

Case No. **OA 1304 OF 2014**

office of Superintendent of Agricultural Marketing, Cooch Behar on September 30, 1992. The grievance of the applicant is that his past service for 3 years 3 months and 6 days (from December 26, 1959 to March 31, 1963) and service for 11 months and 13 days (from November 2, 1964 to October 14, 1965) was not counted for pensionary benefits of the applicant.

The issue for determination of the Tribunal is whether the past service of the applicant in two different spells for 3 years 3 months and 6 days and for 11 months and 13 days will be counted for pensionary benefits of the applicant.

The respondent no. 3, Secretary to the Government of West Bengal, Department of Agriculture Marketing has passed one reasoned order in compliance with the direction given by this Tribunal in OA-2542 of 2006, which indicates that the past service of the applicant should be counted for pensionary benefits. On perusal of the said reasoned order, we find that the said respondent no. 3 did not take into consideration whether the past service of the applicant in two different spells was continuous and the temporary service was followed by confirmation as laid down in Rule 22 of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (hereinafter referred to as the "DCRB Rules, 1971"). Accordingly, we are of the view that the reasoned order passed by the respondent no. 3 is not in conformity with the provisions

**ORDER SHEET**

Nani Gopal Chakraborty

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

.....

Case No. **OA 1304 OF 2014**

	<p>of Rule 22 of the DCRB Rules, 1971.</p> <p>The criteria for counting of past service for getting pensionary benefits are laid down in Rule 22 of the DCRB Rules, 1971, which is as follows :</p> <p><b>“ Rule 22 (1) Any temporary or officiating service under Government followed without interruption by confirmation or by declaration as quasi-permanent or permanent in status in the same or another post shall however count in full as qualifying service except that –</b></p> <p><b>(a) the period of temporary or officiating service in an establishment where contributory provident fund benefits are allowed shall not count unless the Government contribution including interest is refunded in full to Government;</b></p> <p><b>*(b) the period of service paid from contingencies shall not count.”</b></p> <p>On perusal of the provisions of Rule 22 (1) of the DCRB Rules, 1971, it is crystal clear that any temporary service rendered by a Government employee followed without interruption and by confirmation can be counted for pensionary benefits of the said Government employee, when the said</p>	
--	--	--

**ORDER SHEET**

Nani Gopal Chakraborty

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

Case No. **OA 1304 OF 2014**

.....

<p>Government employee joined the new assignment after serving in the temporary capacity. In the instant case, the first spell of service of the applicant as Demonstrator of Weaving Training Centre, Mongalkot, Burdwan was interrupted when he joined as Health Assistant under the Chief Medical Officer of Health, Bankura, as the first spell of service ended on March 31, 1963 and the second spell of service started on November 2, 1964. Naturally, the first spell of service of the applicant cannot be counted for pensionary benefit as per provisions of Rule 22 (1) of the DCRB Rules, 1971. With regard to the second spell of service of the applicant, we would like to observe that the applicant resigned from the temporary post of Health Assistant on October 14, 1965 but his resignation was accepted by the District Health Officer, Bankura on November 27, 1965 w.e.f. October 14, 1965 (Annexure-C to the original application). This document for acceptance of resignation of the applicant from the temporary service of Health Assistant indicates that he did not obtain prior permission for resigning from the post of Health Assistant in order to join his new assignment as Clerk-cum-Complier in the office of Sub-Divisional Agricultural Marketing Officer, Bankura on October 15, 1965. Moreover, the temporary service rendered by the applicant as Health Assistant under Chief Medical Officer of Health, Bankura was not followed by confirmation as laid down in Rule 22 (1) of the DCRB Rules, 1971. The natural corollary of our above observation is that the applicant is not entitled to count past service as qualifying</p>	
--	--

**ORDER SHEET**

Nani Gopal Chakraborty

Form No.

.....

**Vs.**

**The State of West Bengal & Ors.**

.....

Case No. **OA 1304 OF 2014**

service for getting pensionary benefits. As a result, the order communicated to the applicant by the respondent no. 2 under letter dated September 11, 2014 is legal and valid. The applicant is, thus, not entitled to get any relief as prayed for. The original application is, thus, **dismissed**.

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

**( S.K. DAS )**  
**MEMBER(A)**

**( R. K. BAG )**  
**MEMBER (J)**

Sanjib