

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 395 OF 2017

Chheodorjee Sherpa 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
14 10.01.2020	<p>For the Applicant : Mr. P. Roy, Learned Advocate.</p> <p>For the Respondents No. 2, 4, 5, 6 & 7 : Mr. S.N. Ray, Learned Advocate.</p> <p>For the Respondent No. 3 : Mr. S. Ghosh, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents for permitting the applicant to join back in the service after quashing of Memo No. 36/5-PF dated March 11, 2016 issued by the Manager, Government Cinchona Plantation, Mungsong. The applicant has also prayed for direction upon the respondents for disbursement of retiral benefits and for not refunding of the excess salary drawn by him and other consequential reliefs.</p> <p>The applicant joined Mazdoor/Labourer in the Directorate of Cinchona and other Medicinal Plants, Government of West Bengal on February 1, 1966. He was appointed as Daffadar (Contingency Menial) in the office of the Director of Cinchona and other Medicinal Plants, West Bengal by order dated August 6, 1979 issued by the Director of Cinchona and other Medicinal Plants, West Bengal. He was subsequently appointed as Junior Clerk by virtue of the order dated May 1, 1987 issued by the respondent No. 4. He was confirmed in the said post of Junior</p>	

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Clerk w.e.f. May 1, 1990. Subsequently, the applicant got promotion to the post of Lower Division Clerk by virtue of the order issued by the respondent No. 3 on April 7, 1999. The applicant also got promotion to the post of Upper Division Clerk w.e.f. October 4, 2009 by virtue of order dated October 15, 2009 issued by the respondent No. 4. The contention of the applicant is that he passed Madhyamik Examination as a private candidate in the year 1984 and got his date of birth recorded in the service roll as February 12, 1960. The respondents asked the applicant to retire from service w.e.f. August 31, 2012 by treating his date of birth as August 1, 1952. The further contention of the applicant is that the respondents were not justified in issuing order for recovery of excess salary paid to the applicant during the period from September 1, 2012 to February 29, 2016. The applicant is aggrieved for not permitting him to resume duty by treating his date of birth as on February 12, 1960. The applicant has also made alternative prayer for release of retirement benefits.

The State respondents have specifically stated in the reply that the applicant disclosed his date of birth as on August 1, 1952 when he joined as Mazdoor/Labourer on February 1, 1966. The stand taken by the State respondents is that the date of birth of the applicant was never recorded in the service roll as on February 12, 1960. The enquiry was conducted against the applicant for destroying first page of the service book and for

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keeping the service book in his custody till the year 2016 when he was asked to retire from service w.e.f. August 31, 2012 by issuance of the impugned order dated March 11, 2016 (annexure I to the original application). The State respondents have also taken the stand that the applicant rendered service in an unauthorised manner during the period from September 1, 2012 to February 29, 2016 and thereby he is bound to refund the amount of money received by him in excess of salary and for which the impugned order dated April 1, 2016 was issued by the Manager, Government Cinchona Plantation, Munsong (annexure I to the original application).

Learned Counsel for the applicant contends that the date of birth of the applicant recorded in the admit card of Madhyamik Examination should be recorded in the service roll of the applicant, particularly when affidavit submitted by the applicant for recording his date of birth as on February 12, 1960 was approved by the respondent No. 4 by making endorsement on the said affidavit on May 18, 1992. Learned Counsel further submits that the date of birth disclosed in the service roll of the applicant at the time of initial joining as Mazdoor/Labourer was recorded on the basis of verbal submission of the applicant before the authority concerned. He further submits that the applicant has been paid for the service rendered by him till February 29, 2016 and as such the salary paid to him for the aforesaid period should not be realised by the impugned order

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dated April 1, 2016 issued by the respondent No. 5.

On the other hand, Learned Counsel for the State respondents contends that the applicant personally disclosed in the letter submitted on February 20, 2016 that his date of birth was recorded as August 1, 1952 when he initially joined as daily rated worker on February 1, 1966. He further contends that the applicant disclosed his date of birth as on August 1, 1952 at the time of submission of declaration form under Employees' Family Pension Scheme, 1971 on May 2, 1974. The gist of submission of Learned Counsel for the State respondents is that the date of birth of the applicant was rightly recorded in the service roll as on August 1, 1952 and as such he was due to retire from service w.e.f. August 31, 2012.

Having heard Learned Counsel representing both parties and on consideration of pleadings and materials on record, the following issues emerge for our consideration : first, whether the date of birth of the applicant was recorded in the service book as August 01, 1952 or as February 12, 1960 and secondly, whether the impugned order dated March 11, 2016 issued by the respondent No. 5 and the impugned order dated April 1, 2016 issued by the respondent No. 5 are justified under the law or liable to be set aside.

There is no dispute that the applicant joined as Mazdoor/Labourer on February 1, 1966. While the applicant

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	<p>contends that his date of birth is February 12, 1960, the State respondents have taken the stand that the date of birth of the applicant is August 1, 1952. If we accept the date of birth of the applicant as February 12, 1960, we have to accept that the applicant started working as Mazdoor in the Directorate at the age of six (06) years, which is absurd and unacceptable to any sane person. The admitted position is that the first page of the service book where the date of birth is recorded was destroyed while the service book was kept in the custody of the applicant. Moreover, when the enquiry was conducted against the applicant for destroying the first page of the service book and for keeping the service book in his custody, the applicant submitted one application dated February 20, 2016 before the respondent No. 5 (annexure R2 to the reply of the State respondents), wherefrom it appears that the applicant categorically disclosed his date of birth as August 1, 1952 when he joined as daily rated worker on February 1, 1966. The declaration form for the purpose of Employees' Family Pension Scheme, 1971 filled up by the applicant was produced before the respondent No. 5 (annexure R4 to the reply of the State respondents). It appears from the said declaration form that the applicant not only declared his date of birth as on August 1, 1952 but also declared the particulars of members of his family including his son who was seven years old on the date of submission of said declaration form on May 2, 1974. If we accept the date of birth of the applicant as February 12, 1960, we have to accept that</p>	
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the applicant gave birth to his son at the age of seven (07) years, which is also absurd and unacceptable to any sane person.

In view of our above findings, we are constrained to hold that the date of birth of the applicant was recorded in the service book as August 1, 1952 and the said date of birth was never changed by the respondents in the service record in spite of swearing of an affidavit by the applicant in the year 1987. It is relevant to point out that the admit card on the basis of which the applicant claimed his date of birth as February 12, 1960 is not only a duplicate admit card, but the same was issued on November 16, 1987 after issuance of the mark sheet of his Madhyamik Examination on July 2, 1987. Nothing is on record to indicate that the applicant submitted any application for changing his date of birth from August 1, 1952 to February 12, 1960 after passing out Madhyamik Examination in 1984. The fact of production of duplicate admit card coupled with fact of recording of date of birth of the applicant in the service record as August 01, 1952 at the time of initial joining as Mazdoor/Labourer on February 1, 1966 and subsequent submission of declaration form under Employees' Family Pension Scheme, 1971 disclosing date of birth as August 01, 1952 and destruction of 1st page of Service Book where date of birth of the applicant was recorded lead us to hold that the date of birth of the applicant was rightly recorded in the service book

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as August 1, 1952. The logical inference of our above observation is that the retirement of the applicant from service w.e.f. August 31, 2012 on completion of sixty years of age by issuing impugned order dated March 11, 2016 is justified under the law.

Now, the question for consideration of the Tribunal is whether the applicant should refund the excess payment of salary during the period from September 1, 2012 to February 29, 2016 disclosed under the impugned letter dated April 1, 2016 issued by the respondent No. 5. It was the duty of the respondents to issue notice of superannuation to the applicant before the due date of retirement on August 31, 2012, but the respondents did not issue any notice of superannuation to the applicant before August 31, 2012. Since the applicant served by discharging duty from September 1, 2012 to February 29, 2016 and had drawn salary during the aforesaid period of time, we are of the view that the State respondents should not be permitted to recover the excess payment of salary from the applicant for discharge of duty during the period from September 1, 2012 to February 29, 2016. Accordingly, we are inclined to quash the impugned letter dated April 1, 2016 issued by the respondent No. 5 (annexure I to the original application) but we uphold the impugned letter dated March 11, 2016 issued by the respondent No. 5 (annexure I to the original application).

The applicant has prayed for release of retirement

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benefits as the applicant has not received any pension or retirement benefit after his retirement from service. Since no disciplinary action is pending against the applicant and since the applicant retired on superannuation w.e.f. August 31, 2012, we are of the view that the applicant is entitled to get pension and other retirement benefits like gratuity, group insurance, leave encashment, if any, by taking into consideration the last pay drawn by him on August 31, 2012. The pension of the applicant should be given with effect from March 01, 2016, as he had drawn salary till February 29, 2016.

As a result of our above findings, we direct respondent No. 4, Director, Chinchona and other Medicinal Plants, Government of West Bengal to take necessary steps for release of pension, gratuity, group insurance and leave encashment, if any, in favour of the applicant as mentioned above within a period of twelve weeks from the date of communication of the order. The respondents No. 4 and 5 are directed not to recover excess payment of salary from the applicant during the period from September 1, 2012 to February 29, 2016. The impugned letter dated April 1, 2016 issued by the respondent No. 5, Manager, Government Cinchona Plantation, Mungsong (annexure I to the original application) is quashed.

With the above directions, the original application is disposed of.

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Rajib	Let a plain copy of the order be supplied to both the parties. (S.K. DAS) MEMBER(A)	(R. K. BAG) MEMBER (J)
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