

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 551 OF 2019

Biswanath Gayen 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
02 05.09.2019	<p>For the Applicant : Mr. S.N. Ray, Learned Advocate.</p> <p>For the Respondent : Mr. S. Bhattacharjee, Departmental Representative.</p> <p>For the AG (A&E),WB : Mr. B. Mitra, Departmental Representative.</p> <p>Affidavit of service filed on behalf of the applicant today is kept on record.</p> <p>The applicant has prayed for direction upon the respondents to make payment of interest @ 18% per annum on the amount of arrears of pension and gratuity on the ground of delayed payment of pension and gratuity.</p> <p>The applicant retired from the post of Amin on November 30, 2010 after rendering service for 9 years 11 months and 4 days. The applicant did not get pension for not rendering minimum qualifying service of 10 years for grant of pension. The applicant submitted application before the Additional District Magistrate and District Land & Land Reforms Officer, Paschim Medinipur for condonation of deficiency of 26 days in qualifying service for pension. On January 2, 2018, the Additional Secretary to the Government of West Bengal, Department of Land & Land Reforms and Refugee, Relief & Rehabilitation communicated that the Government has considered the</p>	

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application of the applicant for condonation of deficiency of 26 days in qualifying service for grant of pension. During pendency of application for condonation of deficiency in service before the Government of West Bengal, the applicant moved this Tribunal by filing OA 1261 of 2016, which was disposed of on May 10, 2018. By order dated May 10, 2018, this Tribunal gave direction to the Pension Sanctioning Authority of the applicant to take necessary steps for grant of pension to the applicant within a period of twelve weeks from the date of communication of the order. As a result, the pension was sanctioned in favour of the applicant on February 21, 2019.

With the above factual matrix, Mr. S.N. Ray, Learned Counsel for the applicant, contends that the shortfall in qualifying service for grant of pension should have been condoned by the State Government immediately after retirement of the applicant from service in terms of the provisions of Rule 36 of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 [in short, the DCRB Rules, 1971]. The specific submission of Mr. Ray is that the applicant is entitled to get interest for delayed payment of pension during the period from the date of retirement of the applicant till the date of release of pension on February 21, 2019.

On the other hand, Mr. Bhattacharjee, the Departmental Representative of the state respondents, contends that there was no delay on the part of the state respondents in

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consideration of the prayer of the applicant for condonation of deficiency in qualifying service for grant of pension in terms of the provisions of Rule 36 of the DCRB Rules, 1971. He further submits that on August 29, 2011, the applicant received the amount of gratuity to the tune of Rs.1,13,535/- and as such the claim of the applicant for interest on pension and gratuity is not justified under the law.

Having heard both sides and on consideration of the materials on record, we find that the applicant has not disclosed in the present application the fact of receiving the amount of gratuity on August 29, 2011. Admittedly, the shortfall of 26 days in qualifying service for grant of pension was condoned by the State Government on the basis of the prayer of the applicant long after his retirement from service in terms of the provisions of Rule 36 of the DCRB Rules, 1971. The question for consideration of the Tribunal is whether the state respondents are duty bound to condone the shortfall or deficiency in qualifying service for grant of pension of a Government employee in terms of the provisions of Rule 36 of the DCRB Rules, 1971. It is pertinent to quote the provisions of Rule 36 of the DCRB Rules, 1971, which is as follows :

“R.36. Power of Government to condone deficiency in service. – Upon any condition which it may think fit to impose, Government may condone a deficiency of six months in the qualifying service of a Government employee.

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Note. – The deficiency should not be condoned with a view to make up the minimum prescribed qualifying service for the purpose of death gratuity or family pension. In other cases power should be restricted to Government servant drawing pay not exceeding Rs.425 per month at the time of retirement on invalid or compensation pension.”

On perusal of the provisions of Rule 36 of the DCRB Rules, 1971, we find that the Government may condone the deficiency of 6 months in qualifying service of a Government employee, but the said deficiency cannot be condoned only for the purpose of payment of death gratuity or family pension. The use of the term “may” in Rule 36 of the DCRB Rules, 1971 unerringly points out that it is the discretion of the State Government either to condone the deficiency in qualifying service for grant of pension or to refuse to condone the deficiency in qualifying service for grant of pension. We are unable to accept the contention made on behalf of the applicant that the state respondents are duty bound to condone the deficiency in qualifying service of a Government employee for grant of pension.

In the instant case, there is nothing on record to indicate on which date the applicant submitted the application for condonation of deficiency in qualifying service for grant of pension. Since the shortfall of 26 days in qualifying service for grant of pension was condoned by the State Government on January 2, 2018 on the basis of the application submitted by the

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applicant and since the specific date, month and year of submission of application for condonation of shortfall in deficiency of service has not been disclosed by the applicant, we are of the view that there is no delay on the part of the state respondents in exercising discretionary power for condonation of shortfall in qualifying service for grant of pension in terms of the provisions of Rule 36 of the DCRB Rules, 1971. The applicant has got the order of sanction of pension on February 21, 2019 after passing of the order of the Tribunal on May 10, 2018 in OA 1261 of 2016 and as such we do not find any delay in grant of pension as contended on behalf of the applicant. Nor can we persuade ourselves to hold that there was any delay to release of the amount of gratuity in favour of the applicant after his retirement from service.

In view of our above findings, we do not find any merit in the present application and as such the application is **dismissed.**

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib