

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – **OA 787 OF 2015**

Dukhiram Singh 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;">08 19.03.2018</p>	<p>For the Applicant : Mr. D. Karan, Ms. S. Khutia, Mr. D. Karan, Learned Advocates,</p> <p>For the Respondent Nos. 1-4 : Mr. M.N. Roy, Learned Advocate,</p> <p>For the Respondent No. 5 : Mr. S. Ghosh, Learned Advocate,</p> <p>For the AG (A&E), WB : None.</p> <p>The applicant has filed this original application under section 19 of the Administrative Tribunals Act, 1985 challenging the letter dated August 14, 2014 issued by the OSD & Ex-Officio Deputy Secretary to the Government of West Bengal, Department of Irrigation & Waterways (Annexure-I to the original application) as arbitrary and illegal and praying for direction upon the respondents to condone deficiency of service of the applicant under Rule 36 of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 (hereinafter referred to as DCRB Rules, 1971) for the purpose of granting pension to the applicant.</p> <p>The applicant claims to have worked as Seasonal Khalashi under the establishment of Kangsabati Canals Division No. I, District – Paschim Medinipur from July 1, 1984 and his service was regularised under Kangsabati Canal Sub-Division No. I on April 19, 1996.</p>	

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The applicant superannuated on December 31, 2005. The applicant did not get pension as he did not serve for 10 years of qualifying service. The applicant approached the Tribunal by filing OA-900 of 2011 but failed to obtain any favourable order from the Tribunal. The order of the Tribunal was challenged before the Hon'ble Division Bench of the High Court at Calcutta by filing WPST No. 494 of 2013. On January 15, 2014, the Hon'ble Division Bench of the High Court at Calcutta disposed of WPST No. 494 of 2013 with direction to the respondents of the said writ petition to consider whether the petitioner can be paid pension by invoking power to condone the shortfall required in the qualifying service. The Hon'ble Division Bench further gave direction to treat the original application filed before the Tribunal as the application of the applicant for payment of pension. The case of the applicant for grant of pension was rejected and the rejection order was communicated to the respondent no. 2 by OSD & Ex-Officio Deputy Secretary, Department of Irrigation & Waterways, Government of West Bengal by the impugned order dated August 14, 2014 which is under challenge in the present original application.

Learned Counsel representing the applicant submits that the respondents have not considered whether shortfall in the qualifying service for pension can be condoned as per Rule 36 of DCRB Rules, 1971. Learned Counsel representing the state respondents

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has not disputed the above aspect of submission made on behalf of the applicant.

On consideration of the order passed by the Hon'ble Division Bench of the High Court at Calcutta in WPST No. 494 of 2013, we find that the State Government was directed to consider whether the applicant can be paid pension by condoning the shortfall of the period of qualifying service on the basis of application submitted by the applicant before the Tribunal. On perusal of the impugned letter dated August 14, 2014, we do not find that the Department of Irrigation & Waterways, Government of West Bengal has considered the issue of condoning shortfall of the period of qualifying service in order to grant pension to the applicant. It is clearly laid down in Rule 36 of DCRB Rules, 1971 that the Government may condone deficiency of 6 (six) months in qualifying service of Government employee for granting pension on imposition of any condition which the Government may deem fit and proper. The provision has not been invoked by the Department of Irrigation & Waterways, Government of West Bengal in spite of clear direction to do so by the Hon'ble Division Bench of the High Court at Calcutta. Accordingly, the order of rejection of the application for grant of pension communicated under impugned letter dated August 14, 2014 (Annexure-I to the original application) is set aside.

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The respondent no. 1, Principal Secretary, Department of Irrigation & Waterways, Government of West Bengal is directed to reconsider the prayer of the applicant for condonation of shortfall in qualifying service for pension of the applicant in accordance with the provision of Rule 36 of DCRB Rules, 1971 after giving the applicant an opportunity of hearing within a period of 12 (twelve) weeks from the date of communication of the order and communicate the result of the same to the applicant within a period of 2 (two) weeks thereafter.

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

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

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib