

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 92 OF 2016

Biswanath Das 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
16 12.09.2019	<p>For the Applicant : Mrs. S. Mitra, Learned Advocate.</p> <p>For the Respondents : Mr. R.A. Chowdhury, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents for granting him benefit of retirement after taking into consideration the service rendered by him before his absorption permanently in the post of Field Worker on August 7, 2009.</p> <p>The applicant was engaged from time to time on daily rated basis for a period of 2½ months to 6 months in a year from the year 1977. Ultimately, he was appointed as a Group-D employee in the establishment of the Chief Medial Officer of Health, Paschim Medinipur on the basis of order issued by the Chief Medial Officer of Health, Paschim Medinipur on August 7, 2009. The applicant retired from service on February 28, 2014 after rendering service for 4 years 6 months and 20 days.</p> <p>With the above factual matrix, Mrs. Mitra, Learned Counsel for the applicant, contends that the applicant rendered service continuously as seasonal worker from the year 1977 till the date of his appointment in the permanent Group-D post on August 7, 2009 and as such the past service rendered by the applicant prior to his appointment in the Group-D post must be counted for granting him retirement benefits. Mrs. Mitra has cited unreported judgment in the case of "Nemai Chandra Chatterjee & Others v. The State of</p>	

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West Bengal & Others” (WPST No. 532 of 2010 decided on April 30, 2014) in support of her contention that the past service of the applicant must be considered as qualifying service for grant of pension and other retirement benefits.

Per contra, Mr. Chowdhury, Learned Counsel for the state respondents, submits that the service rendered by the applicant on daily rated basis was not continuous service followed by permanent service and as such the said service cannot be counted for grant of pension and other retirement benefits in terms of the provisions of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (in short, DCRB Rules, 1971).

Having heard Learned Counsel representing both parties and on consideration of the material on record, we find that the applicant rendered service on daily rated basis for a period of 2½ months to 6 months in a year. The said service rendered by the applicant can by no stretch of imagination be construed as the temporary service of a Government employee. Nor can we persuade ourselves to hold that the service rendered by the applicant is uninterrupted due to his engagement on daily rated basis for a fixed period of 2½ months to 6 months in a calendar year. The service rendered by the applicant in permanent Group-D post is only for a period of 4 years 6 months and 20 days. In “Nemai Chandra Chatterjee & Others v. The State of West Bengal & Others” (supra), the Division Bench of the Hon’ble High Court at Calcutta has held that the period of service rendered by a

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Government employee on temporary basis must be reckoned for the purpose of qualifying service for grant of pension in terms of the provisions of DCRB Rules, 1971 provided the said temporary service is followed by permanent service without any break. In the instant case, the service rendered by the applicant is neither temporary service, nor is the said service rendered uninterruptedly and continuously till his appointment in Group-D post. Accordingly, the facts of the present case are clearly distinguishable from the facts of "Nemai Chandra Chatterjee & Others v. The State of West Bengal & Others" (supra) and as such the ratio of the said unreported case cannot be applied in the facts of the present case.

In view of our above findings, we cannot persuade ourselves to count the past service rendered by the applicant for computation of the period of qualifying service for grant of pension or for counting of the said service along with permanent service of the applicant for grant of pension and retirement benefits. As a result, the original application is **dismissed**.

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

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib