

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

**THE HON'BLE SAYEED AHMED BABA, OFFICIATING CHAIRPERSON AND ADMINISTRATIVE MEMBER,
Case No. – OA 1323 OF 2016**

NIRANJAN BISAI - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	:	Mr. Debabrata Karan Advocate
<u>27</u> 24.08.2023	For the State respondents	:	Mr. Soumendra Narayan Ray Advocate

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5 (6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for setting aside the impugned order dated 12.05.2016. This impugned order actually appears to be a communication from the Principal Accountant General (A&E) West Bengal to the counsel of the applicant, in which it is informed that his pension papers have been returned back to Block Medical Officer of Health with the observation that the qualifying service was found to be less than 10 years. Attention has been drawn to the representations filed by the applicant and his legal counsel addressed to the respondent authorities. Upon being asked whether such representation was considered by the respondent, Mr. D. Karan, learned counsel replies in negative.

Attention is also drawn to page 29 of this application which appears to be an order of Director of Health Services dated 29.12.2008 relating to absorptions of Spray Workers in Group-D post as per direction of the Hon'ble Supreme Court of India arising in SLP (Civil) No. 2481 of 2007 with other SLPs. The relevant parts of this order of Director of Health Services is as under:

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“Since, the Hon’ble Supreme Court of India dismissed the SLP..... and on scrutiny of the lists furnished by the CMOHs of different districts regarding the eligible candidates amongst DDT Spray Workers for absorption in Group-D post, the candidates mentioned in the annexed list of the respective districts are found eligible having fulfilled the criteria for absorption.

Accordingly, the CMOHs of concerned districts are directed to absorb them in the existing vacancies of the districts by maintaining the seriality in the strict order after observing the necessary formalities and maintaining the 100 point roster.”

On being asked by the Tribunal whether the applicant’s name Niranjn Bisai, features in any of the list as mentioned in the order of DHS, Mr.Karan, prefers to show the appointment letter issued by the CMOH dated 16.01.2009. However, he has not been able to show the list as mentioned in the order of DHS dated 29.12.2008.

In response, Mr.S.N.Ray, learned counsel appearing on behalf of the respondents draws the Tribunal’s attention to para 4, 5, 6, 7 and 9 of their reply. From a close reading of these paras, it appears that the respondents have denied that the applicant worked for more than five consecutive years. Mr.Ray relying on the reply, submits that the applicant had worked only 2 to 3 months in a year as a seasonal worker from 1976 to 1991. As regards the claim of the applicant having worked continuously from 1991 to 2015, the reply states that the certificates so produced by the applicant does not substantiate this fact. Mr.Ray, further refers to para 7, in which the respondent has replied that the applicant was absorbed in regular Government establishment on 16.01.2009 and retired on 31.08.2015, thus rendering only 6 years, 7 months and 61 days of Government service as a regular Government employee. Para 9 of the reply

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states that the applicant along with other Spray Workers were absorbed in permanent Group-D post with effect from 16.01.2009 as per the order of DHS dated 29.12.2008.

Mr.Ray also submits that it is a fact that the applicant along with others were engaged in 1974 as a temporary worker, but his absorption into regular establishment was done only on 16.01.2009. Therefore, the past service of the applicant since 1974 cannot be counted for the purpose of qualifying service as a regular worker. In conclusion, Mr.Ray submits that the applicants claim for pension by taking into consideration his work as a seasonal worker with effect from 01.01.2002 cannot be granted under the Pension Rules.

Heard the leaned counsels.

Let the matter appear under the heading "Further Hearing" on 20th March, 2024.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON AND MEMBER (A)

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