

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. –OA 242 of 2021

Biswajit Saha -- VERSUS – The State of West Bengal & Others

Serial No. and
Date of order

For the Applicant : None.

For the State Respondents : Mrs. S. Agarwal,
Advocate.

17
19.11.2024

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.

By an order dated 01.04.2011, the applicant being a Civil Defence Volunteer was engaged to drive a vehicle of West Bengal Civil Emergency Force for not more than two weeks at a stretch in a month. Having served in such capacity till date, now the applicant has prayed for a direction to the respondent authority to absorb him in a regular post commensurate with his experience. It also appears that the respondent authority through an advertisement had called for willing candidates to participate in a selection process for recruitment to the post of Agragami. But the applicant did not participate. On the other hand, the Commandant, West Bengal Civil Emergency Force had recommended name of this applicant to the competent authority to a vacant post of Driver in permanent service under his command.

Submission of learned counsel for the applicant is that despite such recommendation and furnishing several representations, the respondent authority has not considered his prayer. Submission is that on a similar application, this Tribunal in OA-439 of 2020 had directed the respondent authority to consider their representation and pass a reasoned order as per law.

In response to the submissions of the applicant's counsel, Mrs. Agarwal submits that as per the nature of engagement, he was neither engaged against any sanctioned post nor absorbed subsequently in any

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permanent post. Submission is that the applicant being a Driver was engaged temporarily only for two weeks in a month. As stated in the reply of the respondent, neither the applicant is eligible for absorption under any establishment nor is there any provision in law to absorb the applicant into permanent capacity.

Mr. Rashid, learned counsel for the applicant had submitted that though the applicant has performed his duties for more than 10 years but the respondent side has not yet regularised him in the service. By a notice dated 06.06.2019, the applicant was asked to deposit his driving license. Such driving licence was deposited but no favourable action has been taken. Mr. Rashid had presumed that by such notice for depositing driving license, it was for regularisation of the service. Appearing on behalf of the respondent authorities, Mrs. Agarwal, learned counsel relying on the grounds given in the reply however, disagrees with the argument of Mr. Rashid and submits that, as is clearly evident from the engagement letter, the applicant was engaged as a temporary worker for duties not exceeding two weeks in a month. However, the applicant had an opportunity to appear in the examination for the post of Agragami but decided not to participate. Mr. Rashid had also submitted that despite several recommendations given by the Commandant for being satisfied with the service, respondent authority has not bothered to accept his request for regularisation.

From the above submissions of the learned counsels, it is clear to the Tribunal that this is a case of employee working as a Driver who was engaged on temporary basis and prays for absorption into permanent capacity. It is also clear to the Tribunal that an employee an absorption into permanent capacity is a matter of Recruitment Rules. The respondent authorities do not have such discretionary power to absorb an employee into permanent service without complying with the Recruitment Rules. This applicant could have availed the opportunity of appearing in the

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examination for the post of Agrabami but did not do so. A Driver could be appointed on regular if successful in the examination for the post of Agrabami. Such a Driver like this applicant engaged on temporary basis cannot claim for absorption without going through the recruitment process. The ground taken by the applicant's side that his name was recommended by the Commandant for absorption into regular establishment is not a strong ground. It is well settled norm that mere recommendation neither is a valid ground nor such recommendation in titles a person to be absorbed under regular establishment.

Hence, finding no merit in this application, it is disposed of without passing any orders.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

S.M.