

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 433 of 2020**

**Shibendra Kumar Sarkar -- VERSUS – The State of West Bengal & Others**

Serial No. and Date of order	For the Applicant	: None.
<u>18</u> 19.11.2024	For the State Respondents	: Mr. G. P. Banerjee, Advocate.
	For the Principal Accountant General (A&E), West Bengal	: Mr. B. Mitra, Department Representative.

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 23<sup>rd</sup> November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

The primary prayer in this application is for a direction to the respondent authorities to sanction and release his retiral benefits. The applicant had reached the age of superannuation working as a Warder under the Department of Correctional Services on 30.06.2017. The order no. 466 dated 30.06.2017 passed by the Superintendent, Berhampore Central Correctional Home is allowed to the applicant to retire on superannuation after attaining the age of 60 years. The order also records that his date of birth as per service book and records is 30.06.1957. Strangely enough, the same order in the next paragraph citing the Intelligence Branch its Memo. No. 463 dated 04.02.2015 finds the applicant as “UNSUITABLE for employment to the post of Warder”.

Submitting on behalf of the applicant, Dr. S. Goswami, learned counsel had argued that by this order not only the image of the applicant as an employee has been tarnished but his retiral benefits have also been stopped.

From the submissions of the learned counsels and the records in this application, it is evident that the applicant had joined to the post of Warder in permanent capacity on 15.02.1978. His date of birth as per records being 30.06.1957, he had joined the employment at the age of 20 years 07 months

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and 16 days. Thus, till date he superannuated a total service length of 39 years 04 months and 15 days was made. The normal minimum age for recruitment of government service is 20 years and for uniform services it is 18 years. The post of Warder being uniform service, it can be accepted that the applicant had joined the service after fulfilling the requirements of minimum age. The controversy appears to be a blanket portion of the service book in which the entry no. 3 recorded for his date of birth is not properly visible anymore. It is also not in dispute that during the entire service left the applicant neither faced any disciplinary proceedings nor any case of vigilance against him. It has also been submitted that in absence of any date of birth certificate or school leaving certificate mentioning his date of birth the applicant had presented copy of his Aadhaar Card. From the copy of the Aadhaar Card, it is clearly noted the date of birth as on 30.06.1957. The Tribunal also observes that the Superintendent while passing the order of his superannuation had noted his date of birth being 30.06.1957. The important issue in this matter as to why he was declared 'unsuitable' by the order which also allowed him to superannuate has not been explained by the respondent's side. Further, it is strange that by using a single word, 'unsuitable' the respondent authority stopped his retiral benefits.

After examining the reply filed by the State respondents, the Tribunal fails to find any relevant reason for such action in declaring the applicant 'unsuitable'. The para 7 of the reply only states that the applicant had failed to submit documents in support of his date of birth. As observed earlier the applicant had submitted copy of his Aadhaar Card in which his date of birth has been shown as 30.06.1957. The reply of the State respondents at page 6 without giving any reasons states that "the applicant is not eligible for any type of disbursement of Government money arising out of his service as he is found to be unsuitable for Government service as per existing Rules". The

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Tribunal is shocked to read such statements in the reply of the State respondents and such statements are not only grave injustice to the employee but is really draconian in nature. The only question which is left from such reply is whether an employee's pension and other retiral benefits can be stopped for failing to submit a document in support of his date of birth? Equally important question to be answered is whether an employee who had served unblemished service for 39 years can be declared 'unsuitable' on the day of his superannuation? It is also surprising that the order which declared him 'unsuitable' was on the basis of a report by the Intelligence Branch dated 04.02.2015. The contents of such report have not been made available by the respondent authorities and such report was not acted upon till his superannuation on 30.06.2017, more than two years later.

From the above observations, the Tribunal has come to this conclusion that the action of the respondent authority in declaring the applicant as 'unsuitable' and not sanctioning his retiral benefits are tantamount to grave injustice. Such action has neither been explained nor justified in any manner whatsoever. The Tribunal is compelled to declare this impugned Memo. No. 466 dated 30.06.2017 as untenable and non est in the eyes of law. Therefore, it is quashed and set aside with a direction to the Respondent No. 3(ii), the Superintendent of Central Correctional Home, Berhampore Central Correctional Home, Berhampore to sanction and release all his admissible pension and other retiral benefits accepting his superannuation date on 30.06.2017 within a period of four months from the date of communication of this order.

Accordingly, the application is disposed of.

**SAYEED AHMED BABA**  
Officiating Chairperson & Member (A)

S.M.