

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 524 OF 2019

BATA KRISHNA MANDAL - Vs - THE STATE OF WEST BENGAL & OTHERS

Serial No. and
Date of order

For the Applicant : Mr.S.Bhattacharya
Advocate

19

19.11.2024

For the State respondents : Mrs.Sunita Agarwal
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 applicant has filed this application before this Tribunal for a direction to the respondent authorities to give benefits under Memo. 9008-F dated 16.09.2011 and amended Notifications thereafter.

The applicant was a daily rated worker whose services were renewed from time to time by the Birbhum Collectorate. In terms of the Tribunal's order in OA-629 of 2016 dated 29.11.2018, the District Magistrate, Birbhum passed the reasoned order on 15.02.2019.

In the reasoned order, the respondent considered the matter and came to the conclusion that the applicant was neither engaged against any sanctioned post of Group-D nor completed ten years of continuous service. Therefore, the applicant is not entitled to get the benefits under the Memo. No. 9008-F dated 16.09.2011.

Challenging this impugned order, the applicant has filed this application and contested that the reason for rejection by the District Magistrate, Birbhum, is erroneous and did not consider his past service.

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According to Mr.A.Maity, learned counsel for the applicant, the applicant has been working since 2003, which is evident from page 18 of the application. This is a certificate issued by the Nezarath Deputy Collector, Birbhum stating that the applicant has been working in the Collectorate as a daily rated worker for the past five years. However, there is no mention of any year.

Further, Mr.Maity draws attention to several documents in this application which appears to have been written by the applicant and endorsed by a District Officer, as “Work done certificate” as a daily rated worker. Such certificates appear to have been issued on several different months during the period 2009-2010.

In her submissions on behalf of the State respondents, Mrs.Agarwal, draws attention to paragraph 4 of the reasoned order dated 15.02.2019 passed by the District Magistrate and Collector, Birbhum. Her submission is, as is evident from the reasoned order, the applicant himself during the hearing has admitted that he had been working as a daily rated worker since 2008. Therefore, it is not a fact that his services were engaged since 2003. However, Mrs.Agarwal relying on the ground given in the reasoned order states that the benefits of Notification No. 9008-F(P) dated September 16, 2011 cannot be covered in this case for the reason that the applicant was never engaged against any sanctioned post. Further submission is that as admitted by the applicant himself that his services were engaged since 2008, the benefits under this notification is not applicable to him since such benefits are extended only to those employees who had completed ten (10) years service as on 01.08.2011 in the case of this applicant as on this cut off date, he had completed only around three (3) years service.

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From the submissions of the learned counsel representing both the sides and after thorough examination of the records, it is clear to this Tribunal that the applicant had indeed worked as a daily rated worker under the office of District Magistrate, Birbhum. However, the dates of his engagement as varied from the reasoned order passed by the District Magistrate and claimed by the applicant. The reasoned order quoting the applicant himself records that he had been working as a daily rated worker since 2008. It also records that from 2008 till 2013, the applicant had worked more than 240 days in a year, but later from 2013 till 2018 his services were received for less than 240 days in a year. It is also observed that the applicant's services were discontinued as a daily rated worker since 01.09.2019. The reason given for such discontinuation as recorded in the reasoned order is that his services were no longer required. On the other hand, the applicant has shown copies of work done certificates issued by the District Officials of his having served as a DRW during the years 2009 and 2010. However, these certificates do not certify that he has been working more than 240 days in a year since 2003. As argued by the learned counsel for the applicant, the applicant is entitled to get all the benefits under Notification No. 9008-F(P) dated 16.09.2011. A careful reading of the Notification No. 9008-F(P) dated 16.09.2011 makes it clear that such a daily rated worker who have rendered 10 years continuously with at least 240 days attendance each year are entitled to the benefits under this Notification.

From the submissions and the records perused, the Tribunal cannot satisfy itself that the applicant had indeed performed his services as daily rated worker for continuous 10 years with at least 240 days in a year without any break. Further, the Tribunal's attention is also drawn to para (x) of the said Notification. The relevant part is as follows:

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The provisions of this Order will not be applicable where contractual engagement has been made without any sanctioned post.

From the submissions and the records, it is clear that the engagement of this applicant as daily rated worker was not against any sanctioned post. From this Notification, it is to be accepted that a daily rated worker will be entitled to get the benefits of this Notification, if following two primary conditions are fulfilled.

- (i) 10 years and more continuous service without a break and having performed his duties for more than 240 days in a year.
- (ii) That such worker should have been appointed in a sanctioned post.

The Tribunal is not satisfied that this applicant had fulfilled both the conditions as mentioned above. Therefore, the Tribunal does not find a prayer in this application to have any merit and deserves consideration of the District Magistrate by a direction of this Tribunal. This application is disposed of without passing any orders.

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

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