

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-560 of 2023

Samar Kumar Goswami -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and
Date of order

For the Applicant : Mr. G.P. Banerjee,
Ld. Advocate.
For the State Respondent : Ms. R. Sarkar,
Mr. S. Debray,
Mrs. A. Bhattacharya,
Ld. Depttl. Reps.
For the Pr.AG (A&E), : Mr. B. Mitra,
WB Ld. Depttl. Rep.

02
22.02.2024

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.

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

Affidavit of service and Supplementary Application filed on behalf of the applicant be kept on record.

The prayer in this application is for a direction to the respondent authorities to release the applicant's pension and arrear pension after he superannuated on 28.04.2017.

Subsequently, a supplementary application was filed by Mr. G.P. Banerjee on behalf of the applicant seeking setting aside the letter of the Additional Secretary to the Government of West Bengal, Department of Land & Land Reforms and Refugee Relief and Rehabilitation dated 28.07.2013 wherein the view of the Finance Department (Pension Branch) in rejecting the claim of the applicant for condonation of shortfall of 01 month and 26 days in qualifying service for pension was communicated.

Mr. G.P. Banerjee relies on an order of the Hon'ble High Court, Calcutta passed in WPST 81 of 2014 in the matter Sk. Golam Zikira – vs- The State of West Bengal & Ors. which according to him was upheld by the Hon'ble Apex Court and is applicable to his case also.

Ms. R. Sarkar, Departmental Representative appearing on behalf of the Department explains that a proposal for ratification of superannuation pension and retiring gratuity was submitted to the Principal Accountant General (A&E) West Bengal on 27.06.2022 relying on the Finance Department Memo No. 14971 dated 16.12.1983. But the said proposal was not approved on the ground that the said

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F.D. no. had no applicability for employees rendering service for a period less than ten years. The A.G. had requested to send the proposal to the Finance Department for obtaining their views regarding condonation of shortfall in qualifying service for pension in terms of Rule 36 of the West Bengal Services (Death-cum-Retirement Benefits), 1971. Accordingly the proposal was sent to the Finance Department.

It appears from the Annexure-D of the supplementary application that this proposal was not agreed to by the Finance Department on the ground that consideration for condonation of deficiency in qualifying service under clause 36 of the WBS (DCRB) Rules, 1971 is restricted only to 'Invalid Pension' or 'Compensation Pension'.

The Rule 36 of the WBS (DCRB) Rules, 1971 is as under:-

“Power of Government to condone deficiency in service – Upon any condition which it may think fit to impose, Government may condone a deficiency of six months in the qualifying service of a Government servant.

Note – The deficiency should not be condoned with a view to make up the minimum prescribed qualifying service for the purpose of death gratuity or family pension. In other cases power should be restricted to Government servant drawing pay not exceeding ₹ 425 per month at the time of retirement on invalid or compensation pension...”.

The Hon'ble High Court in WPST 81 of 2014 - Sk. Golam Zikira –vs- State of West Bengal & Ors. passed an order directing the respondent authorities to grant pension by applying Rule 36 read with 4 of DCRB Rules, 1971, the relevant part of the order is as under”-

“.... Rule 36 is very much clear in relation to the power of the Government to condone the deficiency of six months of qualifying service and the Note appended below the said cannot and did not take away such right...”.

After hearing the submissions of the learned counsels, it is the opinion of this Tribunal that the Hon'ble High Court has in WPST 81 of 2014 passed an order, quoted above, that the Notes appended to a Rule cannot take away the right of the applicant. In this case also, it is evident that by relying on Note of Rule 36, the prayer under Rule 36 was rejected by the Finance Department.

In view of the above observation and order of the Hon'ble High Court in

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WPST 81 of 2014, the Secretary, Department of Land & Land Reforms & Refugee Relief & Rehabilitation is directed to submit a fresh proposal for condonation of short fall of one month twenty-six days in qualifying service for pension before the Department of Finance within a period of twelve weeks from the date of communication of this order.

If such a proposal is submitted by the Secretary, Department of Land & Land Reforms & Refugee Relief & Rehabilitation, the Respondent No. 6 – the ACS, Department of Finance, is directed to reconsider the proposal in the light of the judgment passed by the Hon'ble High Court in WPST No. 81 of 2014 in the matter of Sk. Golam Zikira –vs- State of West Bengal & Ors. within a period of eight weeks from the submission of such proposal.

Accordingly, the application is **disposed of**.

SAYEED AHMED BABA
Officiating Chairperson & Member (A)

CSM