

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 613 of 2023

Tapan Kumar Mondal -- **VERSUS** – The State of West Bengal & Ors.

Serial No. and Date of order	For the Applicant	: Ms. A. Shaw, Ld. Advocate.
	For the State respondent	: None.
<u>02</u> 11.01.2024	For the Pr.AG (A&E), WB	: Mr. B. Mitra, Ld. Depttl. Rep.

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 counsel, the case is taken up for consideration sitting singly.

Affidavit of service filed be kept on record.

In terms of this Tribunal's direction in OA 667 of 2022, the respondent, Chief Engineer (Headquarter) passed a reasoned order dated 14.07.2023. The direction was for consideration of the prayer of the applicant for condonation of the shortfall in the minimum qualifying service. The applicant who had retired on 31.08.2021 as a Work Assistant under the Public Works Department could not qualify for full pension due to the shortfall in his service. He had served just 9 years 8 months and 20 days leaving behind a shortfall of around 3 months. For condonation of such shortfall, the respondent department submitted a proposal before the Finance Department under Rule 36 of West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971. The said proposal was considered but regretted by the Finance Department. It is understood that the discretionary power under Rule 36 of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971, the authority can condone the deficiency of 6 months in the qualifying service, but such condonation is not to enable a Government employee to qualify for Death Gratuity or family pension. Further, the reasoned order observes that such condonation is limited only to an employee who draws salary not exceeding Rs.425/- per month. Ms. Shaw, however, disagrees and refers to several orders of the Hon'ble High Court, one in particular WPST 37 of 2022 in which a similar case of the same department a shortfall of 35 days was condoned and

Form No.

Case No. **OA 613 of 2023.**

Vs.

The State of West Bengal & Ors.

the respondents were directed to complete the process of qualifying service and allow all benefits admissible thereupon .

In response to the prayer and submission of Ms. Shaw, Mr. Sourav Bhattacharjee, learned counsel representing on behalf of Mr. S. Ghosh submits that the orders cited in WPST 37 of 2022 was an order in person and the same cannot be applicable in this matter. Since Rule 36 of West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 empowers the Government authority to exercise its discretion on the basis of merits of a case, this particular case was considered and was not found suitable for condonation.

Having heard the submissions of the learned counsel and perusing the records, the Tribunal comes to the finding that as directed earlier, the respondent authority had considered the matter and passed the reasoned order. It is also clear that there are limitations even on Government to condone such shortfalls to enable the Government employee to qualify for pension. Though the Rule 36 of West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 was exercised but in its wisdom , the competent authority did not find this particular case as suitable for such condonation.

In view of the above findings, the Tribunal comes to the conclusion that the reasoned order passed in consultation with the competent authority – Finance Department for exercise of Rule 36 of West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971, was on merit of the case, therefore, no further direction is required to be given.

Accordingly, this application is **disposed of** without passing any order.

HS/SS

SAYEED AHMED BABA
Officiating Chairperson & Member (A)