

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

Mr. Sayeed Ahmed Baba, Officiating Chairperson and Hon'ble Member (A).

Case No. – OA 69 of 2023.

MOHAN KUMAR HALDER - VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and
Date of order

04
19.02.2024

For the Applicant : Mr. B. Biswas,
Learned Advocate.

For the State respondent : Mr. G. Halder,
Learned Advocate.

For the Principal Accountant : Mr. B. Mitra,
General(A & E) W.B. Departmental 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 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 for the contesting parties, the case is taken up for consideration sitting singly.

The prayer in this application is for a direction to the respondent authorities to release the applicant's pension after he superannuated on 31.5.2020 and there is a short fall of 05 months 27 days in qualifying service for pension.

Mr. G. Halder, Learned counsel for the State respondents explains that the proposal was submitted to the Finance Department for condonation of short fall of 05 months 27 days in service.

It appears from the record shown to the Tribunal that this proposal was not agreed to by the Finance Department on the ground that this case for condonation of deficiency of qualifying service was not considered by the Finance Department as Rule 36 of the West Bengal Services (Death-cum-Retirement Benefit) Rules 1971 is

restricted only to 'Invalid Pension' or 'Compensation Pension'.

The Rule 36 of the West Bengal Services (Death-cum-Retirement Benefits) 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 service.

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 caaes power should be restricted to Government servant drawing pay not exceeding Rs. 425 per month at the time of retirement on invalid or compensation pension...”.

The Hon'ble High Court in this case WPST 81 of 2014 Sk. Golam Zikria – vs- State of West Bengal & Ors passed an order directing the respondent authorities to grant pension by applying rule 36 read with rule 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 Rule cannot and did not take away such right...”.

After hearing the submissions of the learned counsels, the Tribunal has observed the followings :-

- (i) It is evident that the applicant's prayer for condonation of shortfall of four months ten days was considered by the respondents and referred to the Finance Department for condonation of shortfall in service period.
- (ii) However, the Finance Department on 20.10.2022 did not agree to the proposal for condonation of shortfall of qualifying service as the case, being not invalid or compensation pension, had not come under

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the purview of the Rule 36 of the WBS(DCRB) Rules, 1971.

- (iii) Based on the opinion of the Finance Department, the administrative department informed the applicant that the case was not fit for condonation of shortfall of qualifying service for the purpose of sanctioning pension.

It is the opinion of this Tribunal that the Hon'ble High Court has in WPST 81 of 2014 passed an order, which was 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 the 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 WPST 81 of 2014, the respondent no. 3 – the Excise Commissioner, Excise Directorate, West Bengal is directed to submit a fresh proposal for condonation of short fall of five (05) months and 27 (Twenty-seven) days four months ten 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 Respondent no. 3, Respondent No. 2 – the Deputy Secretary Government of West Bengal, Finance Department (Revenue), Pension Cell, Nabanna is directed to reconsider the proposal in the light of the judgement passed by the Hon'ble High Court in WPST No. 81 of 2014 in the matter of Sk. Golam Zikria – vs- State of West Bengal & Ors within a period of eight weeks from submission of such proposal by the respondent. Accordingly the application is disposed of.

(SAYEED AHMED BABA)
Officiating Chairperson and Member (A).

Skg.