

ORDER SHEET
WEST BENGAL ADMINISTRATIVE TRIBUNAL
Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present : **HON'BLE JUSTICE SOUMITRA PAL,** **HON'BLE CHAIRMAN.**

Case No. – OA 740 of 2021.

CHANDRA SEKHAR SINHA MAHAPATRA – VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mrs. S. Mitra, Advocate.
<u>5</u> 15.2.2022	For the State Respondents	: Mr. M.N. Roy, Advocate.
	For the Principal Accountant General (A & E) West Bengal	: Mr. B. Mitra, Departmental representative.

The matter is taken up by the single Bench pursuant to the order contained in the Notification No. 118-WBAT/1E-08/2003 (Pt.-II) dated 11th February, 2022 issued in exercise of the powers conferred under section 6(5) of the Administrative Tribunals Act, 1985.

In the application Chandra Sekhar Sinha Mahapatra, the applicant, who had superannuated on 31st October, 2016 as Constable has prayed for a direction upon the respondents to condone the deficiency of service of one year fifteen days to enable him to draw minimum pension. Incidentally, rules provide that an employee is entitled to pension upon completion of ten years of service. Rules also provide condonation of six months in case there is a short fall of ten years of service. In the instant case, the applicant, who was a member of National Volunteer Force had applied for the post of Constable. In the selection process, he was successful and he was appointed as Constable with fresh terms and conditions on 16th November, 2007.

It is submitted by Mrs. S. Mitra, learned advocate for the applicant that in view of the judgement passed in WPST 366 of 2012 (Mahendra Nath Mahato – vs- State of West Bengal & Others) and in WPST No.31 of 2014 (Pastu Deb Singha – vs- State of West Bengal &

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Others) both delivered on 30th April, 2014, the applicant is entitled to the reliefs as prayed for.

Mr. M.N. Roy, learned advocate appearing on behalf of the State respondents relying on the judgements delivered on 18th January, 2022 in WPST No. 91 of 2019 (Sudhansu Karmakar and others –Vs- State of West Bengal and others) submits that since rules empowered the authorities to relax the qualifying service for pension with an outer cap of six months, the applicant is not entitled to the reliefs as prayed for. With regard to the judgement in Mahendra Nath Mahato (supra), it is submitted therein it was a case of relaxation of service of the applicants, who were already working and their services were regularised during the actual service, which means there was a continuation of service, unlike the case in hand, wherein the applicant, who was a member of the National Volunteer Force had participated in the selection process and had joined the post of Constable after availing of certain relaxation and was given a fresh appointment. According to him in the facts and circumstances of the case, the applicant is not entitled to the reliefs as prayed for.

There is no dispute that the applicant was a member of National Volunteer Force. The applicant applied for the post of constable after availing relaxation and admittedly he was given a fresh appointment to the post of constable. Since it was a case of fresh appointment in view of the judgement delivered in Sudhansu Karmakar (supra), the applicant is not entitled to the reliefs as prayed for. In this regard, it is appropriate to refer to the law laid down in Sudhansu Karmakar (supra) , wherein it has been held as under :-

“....Admittedly, the power to relax the period for the purpose of qualifying service is provided in DCRB Rules, 1971 but with

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an outer cap of six months. The authorities cannot act in contravention to the statutory provisions nor the Writ Court should issue a Mandamus commanding the authorities to act in clear violation of the statutory provisions. Once the power of relaxation is brindled with an outer cap, the authorities are denuded of power to extend such relaxation, who do not come within the purview thereof..”.

Therefore since the appointment of the applicant as a Constable was a fresh appointment under the relevant rules, the applicant is not entitled for condonation of the short fall of one year fifteen days for having pension, which provides that an employee should have ten years of qualifying service to be entitled to pension with six months relaxation. Hence, no order is passed on the application. The application is disposed of.

(SOUMITRA PAL)
CHAIRMAN.

Skg.