

**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 832 of 2022.

SRI ANUP KUMAR MUKHOPADHYAY - VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No. and  
Date of order

3  
11.5.2023

For the Applicant : Mr. N.K. Singh,  
Advocate.

For the State respondent Nos. 1,4,5,6 & 7 : Mrs. R. Sarkar,  
Mr. S. Deb Roy,  
Mrs. A. Bhattacharya,  
Departmental representatives,  
L & LR Department.

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 23<sup>rd</sup> 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 31.03.2017. Submission is that despite clear direction from the department to the DLR & S dated 18.08.2018, the pension has not been disbursed till now. The correspondence above also states that the shortfall of 4 (four) months and 8(eight) days has already been condoned by the LRC and Principal Secretary, L & LR Department under Rule 36 of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971. Mr. N.K. Singh also relies on WPST 81 of 2014 which according to him was upheld by the Hon'ble Apex Court.

Mrs. R. Sarkar, Departmental Representative appearing on behalf of the

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Department explains that the proposal was submitted to the Principal Accountant General (A & E) West Bengal on 21.12.2018. However, certain remarks were made by the Principal Accountant General (A & E) West Bengal, particularly that such proposal should have been forwarded through the Finance Department, Government of West Bengal.

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 on the ground that Rule 36 of the WBST 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 caes 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

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observed the followings :-

- (i) From the correspondences of Additional Secretary to the Government of West Bengal addressed to the D.L.R. & S. West Bengal dated 28.8.2018 it is evident that the applicant's prayer for condonation of short fall of four months 7 days was condoned by the Principal Secretary of the Department under rule 36 of WBS(D.C.R.B.) Rules, 1971. Therefore, a direction was given to initiate a pension proposal from the date of superannuation of the applicant.
- (ii) In the pension proposal submitted dated 21.12.2018, the Office of the Principal Accountant General (A & E) West Bengal in para 3 has advised the respondent authority to obtain approval of the Finance Department in this instant case.
- (iii) Since the approval of the Finance Department was not obtained earlier, therefore, a proposal was submitted before the Finance Department by the Respondent department on 13<sup>th</sup> April, 2022. However, the Finance Department turned down the proposal citing that rule 36 is limited only to invalid and compensation 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. 1 – the Secretary, Department of Land & Land Reforms & Refugee Relief & Rehabilitation is directed to submit a fresh proposal for condonation of short fall of four months 8 days in qualifying service for pension before the Department of Finance within a period of eight weeks from the date of communication of this order. If such a proposal is submitted by the Respondent no. 1, the Respondent no. 2 – the ACS, Department of Finance, is directed to reconsider the

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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).

Sk.

WEST BENGAL ADMINISTRATIVE TRIBUNAL