

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. – OA 909 of 2018

SWAPAN KUMAR CHOWDHURY – VERSUS- THE STATE OF WEST BENGAL & ORS.

Serial No.

and

Date of
order

For the Applicants : Mr. G.P. Banerjee,
Advocate

For the State Respondents : Mr. S. Ghosh,
Advocate

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20.06.2024

For the Principal Accountant : Mr. Biswanath Mitra,
General (A&E), West Bengal 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.

The prayer in this application is for direction to the respondent authorities for setting aside the impugned order dated 21.02.2018 passed by the Executive Engineer, Murshidabad Highway Division No.I P.W. (Roads), Directorate. This impugned order regrets granting pension to the applicant Swapan Kumar Chowdhury, who had served only for 5 years 11 months. The minimum years of qualifying service to qualify for pension is 10 years. In the meantime, the applicant has deceased and is now represented by his widow, Kalpana Chowdhury. In terms of a direction of the Hon'ble High Court in W.P.S.T. 539 of 2010, dated 23.12.2010, the respondent authorities accepted the prayer of the deceased employee for appointment under compassionate ground and the appointment order was issued to him on 26.08.2011. After serving for only 5 years and 11 months the deceased employee superannuated on 31.07.2017.

The contention of the deceased applicant now being represented by the widow is that due to laches on the part of the respondent authorities his appointment to the post of a Peon under died-in-harness scheme was delayed. Had the respondent authorities accepted such an appointment on time, he would have completed more than 10 years of service and, therefore, entitled for pension / family pension. It appears from the application that his father, due to disability had taken premature retirement and made an application for transfer of his service to his son. Such an application was submitted on 21.06.1990. Since the respondent authorities had not considered such an application, the applicant had

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expressed his grievances before this Tribunal and also before the Hon'ble High Court. Eventually, the Hon'ble High Court directed the respondent authorities by its order in W.P.S.T. 539 of 2010 dated 23.12.2010 to "*issue appropriate order granting appointment to the petitioner on compassionate ground*".

From the submissions of the learned counsels and the records in this application, the Tribunal is not convinced that there was any delay on the part of the respondent authorities to comply with the direction of the Hon'ble High Court in giving such an employment to the applicant. The direction of the Hon'ble High Court was passed on 23.12.2010 and the respondent authorities complied by appointing him to the post of Peon by its order dated 26.08.2011. It is a fact that his service in the post of Peon was borne only after a direction of the Hon'ble High Court. Therefore, it will not be wrong to say that his service life started from the day he was appointed in the post on 26.08.2011. The Tribunal is not satisfied with the argument of the applicant that, had the respondent authorities accepted the prayer of his father then for transfer of his service to him, he would have completed more than ten years of service. The scheme on compassionate employment does not give any vested right on the employee to transfer his service to his legal heir on account of him being medically incapacitated. Therefore, finding no merit in such an application, the respondent authorities did not consider it. It is also to be observed that the applicant accepted his appointment letter and did not protest at that time. Now, having realised at a later date that his limited service would not qualify him for pension, he filed this application. Thus, from the above observations, the Tribunal is not satisfied with the argument for regular pension for having served less than ten years. Therefore, this application is disposed of without passing any orders.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)

SCN.