

**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 914 of 2015.  
SMT. APARNA KUNDU –VS-THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. G. F. Hossain, Advocate.
<u>25</u> 19.7.2022	For the State Respondents	: Mrs. S. Agarwal, Advocate.
	For the Principal Accountant General (A & E) W.B.	: 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.

Let supplementary affidavit affirmed on 5<sup>th</sup> July, 2022, filed on behalf of the applicant, be kept on record.

In the application Smt. Aparna Kundu, the applicant has prayed for certain reliefs, the relevant portion of which is as under :-

*“A. An order by setting aside the impugned letter dated 03.03.2015 under Memo No. 203/AD/E issued by the concerned Authority being Respondent No.2 hereof;*

*B. An Order directing the Respondents their agents subordinates and successors to release the pension and other retirement benefit to the Applicant and other retirement benefit as per last pay drawn as Assistant Project Officer forthwith...”.*

The applicant was initially appointed as Lady Extension Officer on 4<sup>th</sup> November, 1970 in the office of the Social Education at Midnapore, Tamruk Development Block. Subsequently, she was posted on deputation as Assistant Project Officer under Bhangar I & II, R.F.L. Project, South 24-Parganas pursuant to the memo dated 7<sup>th</sup> April, 1989 issued by the Director of

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Adult Education and the applicant had joined the post as Assistant Project Officer on 12<sup>th</sup> June, 1989. The applicant continued to be on deputation till she superannuated on 31<sup>st</sup> March, 2011. It has been stated that pursuant to the insistence of the applicant, the District Mass Education Extension Officer, - the respondent no. 3 submitted the original service book of the applicant in the office of the Accountant General (A & E), the respondent no. 4 for grant of superannuation benefits prior to the date of retirement of the applicant.

The Senior Accounts Officer of the Accountant General (A & E) West Bengal along with intimation dated 18<sup>th</sup> March, 2011 returned the service book to the District Mass Education Extension Officer, South 24-Parganas, the respondent no. 3 intimating that the terms and conditions of deputation of the applicant is to be furnished and the case may be resubmitted after compliance of the same. Thereafter, the respondent no. 3 by memo dated 30<sup>th</sup> August, 2011 intimated the Director and Ex-officio Joint Secretary, Mass Education Extension and Library Service department, Government of West Bengal, the respondent no. 2 *"I apply to your kind consideration of the matter the deputation of a post if not withdrawn after a certain period is treated as normal post with admissible pay and allowances, along with retirement benefits of the incumbent.*

*I view of this you are requested to issue a Govt. order allowing the deputation as normal post conferring all benefits along with retirement benefit for sanction of her Service Book from the A.G., West Bengal immediately....".* (Annexure 'C' to the application).

Thereafter, the respondent no. 2 issued a letter dated 23<sup>rd</sup> February, 2012 to the respondent no. 3 regarding post facto approval in connection with the drawal of pensionary benefit in respect of last basic Pay of the applicant as Assistant Project Officer. The respondent no. 3 by memo dated 16<sup>th</sup> April, 2012 submitted necessary particulars of the applicant to the respondent no. 2

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stating inter alia “...it was specifically stated in the Paragraph 3 that “The Pay fixation of Smt. Kundu was done in accordance with the prescribed pay Scale as noted in the Order No. 451/AD/E dt. 7.4.1989 of A.E. Director, West Bengal. As the deputation was not withdrawn after the completion of 3 years or a certain period by the Deptt., so, on completion of 20 and 25 years of continuous Services her service was treated as regular and allowed the above 2 types of CAS benefits as admissible on the prescribed pay scale and ROPA, 98 in normal course of Service Rule. (in terms of CAS benefit G.O. No. 6075-F, dt. 21.6.90 and 3015-F, dt. 13.3.2001)”.

It is submitted by G.F. Hossain, learned advocate for the applicant that the file was shifted from one office to another and an order was passed on 3<sup>rd</sup> March, 2015 by the respondent no. 2 holding as under :-

“The Director of Adult Education, West Bengal vide his order no. 451/AD/E dated 7.4.89 appointed Smt. Aparna Kundu, Lady Extension Officer, Social Education, on deputation as Assistant Project Officer, Bhangar I & II, Rural Functional Literacy, South 24-Parganas w.e.f. the date on which she joined her duties, i.e. 12.6.1989. The said order was in violation of Finance Department order no. 9326-F dated 12.10.79 read with G.O. No. 1440-F dated 18.2.1982.

Therefore, now in accordance with Finance Department order no. 9326-F dated 12.10.79 read with G.O. no. 1440-F dated 18.2.82 of the same department and in cancellation of order no. 451/AD/E dated 7.4.89 of erstwhile Adult Education Directorate, Smt. Aparna Kundu is hereby reverted back to the post of LEOMEE with effect from 12.6.89 i.e. the date on which she joined the post of APO, Bhangar I & II, RFLP, South 24-Parganas...”.

Submission is since the applicant had continued to serve on deputation from 12<sup>th</sup> June, 1989 till she had superannuated on 31<sup>st</sup> March,

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2011 and in view of the memorandum dated 12<sup>th</sup> October, 1989, particularly paragraph 8 thereof, as the applicant continued on deputation as Assistant Project Officer for twenty-two years of which the State respondents were aware, the respondents may be directed to issue necessary orders for grant of pension in the scale enjoyed by an Assistant Project Officer. Moreover, the impugned order dated 3<sup>rd</sup> March, 2015 is in violation of principles of natural justice as it was after the superannuation of the applicant and was passed without giving the applicant an opportunity of hearing.

Mrs. S. Agarwal, learned advocate appearing on behalf of the State respondents submits that since there was no specific approval of the Finance Department as stipulated under paragraph 8 of the memorandum dated 12<sup>th</sup> October, 1979, no order may be passed. On a query, it is submitted that the applicant is enjoying enhanced pension in the scale enjoyed by an Assistant Project Officer.

Mr. B. Mitra, the departmental representative for the Principal Accountant General (A & E) West Bengal submits that though it is evident from the intimation sent by the Senior Accounts Officer vide no. Pen XII/318(A)/10-11/O/1147 dated 23<sup>rd</sup> March, 2011 that certain queries were sought for from the District Mass Education Extension Officer, South 24-Parganas, being annexure R-6 to the supplementary reply on behalf of the State respondents, it was never answered. The Government order was never produced by the District Mass Education Extension Officer, the respondent no. 3.

Heard learned advocates for the parties.

It is an admitted position that the applicant was posted as Assistant Project Officer on deputation on 12<sup>th</sup> June, 1989. She continued on deputation till she retired on 31<sup>st</sup> March, 2011. After the applicant made certain queries regarding her superannuation benefits, the impugned order dated 3<sup>rd</sup> March,

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2015 was passed.

In my view, since pursuant to the notification dated 23rd March, 2011 issued by the Senior Accounts Officer/Pen XII to the District Mass Education Extension Officer, South 24-Parganas, - the respondent no. 3, the said respondent did not produce the records as sought for on behalf of the Accountant General, the said respondent no. 3 was clearly at fault.

Again looking at paragraph 8 of the memorandum dated 12<sup>th</sup> October, 1979 particularly sub paragraph (b) thereof "*...his extension beyond this 4 years period will require the specific approval of the Finance Department*" and as the applicant continued on deputation with the full knowledge of the respondent no. 2 and 4, she was not at fault. Hence, the applicant should be deemed to have retired from the post of Assistant Project Officer on 31<sup>st</sup> March, 2011.

There is another aspect of the matter.

Since admittedly, the applicant had superannuated on 31<sup>st</sup> March, 2011 and the impugned order dated 3<sup>rd</sup> March, 2015 was passed by the Director and Ex-Officio Joint Secretary Mass Education Extension and Library Services Department, Government of West Bengal, - the respondent no. 2 without giving an opportunity of hearing to the applicant, which is in violation of principles of natural justice, the impugned order dated 3<sup>d</sup> March, 2011 cannot be sustained and thus is set aside and quashed.

A question has arisen whether the applicant is drawing pension as Lady Extension Officer, Social Education or as Assistant Project Officer.

According to learned advocate for the applicant she is drawing pension as Lady Extension Officer, whereas Mrs Agarwal, learned advocate for the State respondents submits that she is drawing pension as Assistant Project Officer.

Since it has been held that the applicant who had continued on

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deputation as Assistant Project Officer should be deemed to have superannuated as Assistant Project Officer, therefore the application is allowed by directing the Director and Ex-officio Joint Secretary Mass Education Extension and Library Services Department, Government of West Bengal and the Principal Secretary, Department of Finance, Government of West Bengal, - the respondent nos. 2 and 5 respectively to issue necessary orders to ensure that the applicant draws pension available to Assistant Project Officer, including the arrears, if any within eight weeks from the date of presentation of a copy of this order downloaded from the website of the Tribunal.

(SOUMITRA PAL)  
CHAIRMAN.

Sk.