

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Administrative Member.

Case No. –OA-276 of 2020

Prasanta Kumar Goswami. - Versus - The State of West Bengal & Others.

Serial No. and Date of order	For the Applicant	: Mrs. S. Agarwal, Advocate.
<u>4</u> 21.02.2022.	For the State Respondents	: Mr. G. P. Banerjee, Mr. B. P. Roy, Advocates.
	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 instant application, Prasanta Kumar Goswami –the applicant who was an Ex-Driver (Retired) of the office of the Principal Chief Conservator of Forests & Head of Forest Force, West Bengal and superannuated on 30th April, 2019. The applicant has claimed to be a Casual Daily Labour since 16th October, 1994 without any interruption and his service was regularised in the post of Driver since 4th May, 2009. His prayer for pension was not allowed by the respondents as he was 2 (two) days short of 10 (ten) years qualifying service. The applicant has submitted an application requesting for condonation of 2 (two) days shortfall in view of the judgment delivered by Hon'ble Justice Nishita Mhatre and Hon'ble Justice Tapash Mookherjee as their Lordships then were in WPST No. 91 of 2019 (Sudhansu Karmakar and others-versus-State of West Bengal and others).

Let reply filed on behalf of the respondent nos. 1, 3 and 4 be kept on record.

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Considering the nature of the case, there is no need to direct the applicant to file rejoinder against the reply filed by the State.

On consent of the parties, the case is heard in full.

Having heard the learned advocates for the parties and considering the fact, it appears that a few days service is the shortfall to qualify for pension.

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 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.....”

In the present case, shortfall is a few day, even not a month. So, the principle laid down in the judgment is squarely applicable in the present case.

The impugned order does not consider the ratio of law decided by the Hon'ble High Court as noted above in rejecting the prayer of condonation of 2 (two) days short for 10 (ten) years qualifying service.

Therefore, the impugned order under challenge of the Finance

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Department, Government of West Bengal communicated to the Deputy Secretary, Government of West Bengal at page-15 of this application on 28.01.2020 rejecting condonation of the shortfall in service is not sustainable in law and fact. Accordingly, the same is set aside.

The respondent no. 4 is directed to reconsider the prayer of the applicant for condonation of shortfall period of the 10 (ten) years qualifying service in the light of the judgment stated above and dispose of the representation within a period of 15 weeks from the date of communication of this order.

The Registry is directed to upload this order on the website of the Tribunal forthwith and parties are directed to act on the copy of the order downloaded from the official website of West Bengal Administrative Tribunal.

(SAYEED AHMED BABA)
MEMBER(A)

S.M.