

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Justice Soumitra Pal (Chairman)
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No –OA 738 OF 2018

SK. ABDUL HAQUE Vs **The State of West Bengal & Ors.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p>1</p> <hr/> <p>30.11.2018</p>	<p>For the Applicant : Mr. R. Haldar Mr. T. Pal. Chowdhury Mr. C. Sarkar Advocate</p> <p>For the State Respondent: Mr. G.P. Banerjee Advocate</p> <p>For the A.G., West Bengal : Mr. B. Mitra Departmental Representative</p> <p>Though the matter has appeared in the list under the heading “To Be Mentioned”, by consent of Mr. R. Haldar, learned Advocate for the applicant, Mr. G.P. Banerjee, learned advocate for the State respondent and Mr. B. Mitra, Departmental Representative of Principal Accountant General(A&E), West Bengal, the matter is taken up for hearing.</p> <p>In this application, the applicant, a Constable of the West Bengal Police, who had superannuated on 31st August, 2017 after attaining the age of 60 years, has challenged the order dated 2nd July, 2018, passed by the Commissioner of Police, Chandannagar Police Commissionerate, the respondent no.5, whereby his prayer for condoning the deficiency of service of two months</p>	

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	<p>.....</p> <p>fifteen days for counting his permanent service under the West Bengal Services (Death-cum-Retirement) Rules, 1971 was rejected and accordingly release of pensionary benefits was refused. The relevant portion of the said order is as under :</p> <p style="text-align: center;">“The Constable 1446 Sk. Abdul Haque retired from service on superannuation on 31.08.2017 after attaining the age of 60 years. The petitioner was appointed in the rank of Constable 16.11.2007 from West Bengal National Volunteer force.</p> <p style="text-align: center;">On scrutiny of his Service Books it is found that the petitioner retired from service on superannuation before completion of 10 years. His service period was from 16.11.2007 to 31.08.2017 i.e. 09 years 09 months 15 days.</p> <p style="text-align: center;">In view of D.C.R.B. Rules 27 and G.O. No. 2255-F dated 22.03.1973, it is mentioned that the pension is not admissible to any such officers unless his actual qualifying service at the time of quitting Government Service is not less than 10 years. In this regard, the service of the</p>	

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	<p>above noted petitioner is less than 10 years at the time of his superannuation. It is also to be mentioned here that as per Rule 36 of West Bengal Services (Death-cum-Retirement) Rules, 1971 Government may condone a deficiency of six months in the qualifying service of Government Servant.</p> <p>The petitioner retired from service on 31.08.2017. At the time of retirement or before that he had not submitted any prayer for condonation of the deficiency period of two months fifteen days. It is only after passage of more than two months post retirement he had prayed for condonation on 13.11.2017.</p> <p>At this juncture, I am not in a position to condone this deficiency period on a post facto prayer.</p> <p>Hence, in view of the facts and circumstances the petition dated 13.11.17 of the applicant is hereby rejected in compliance with Rules 27 and G.O.No. 2255-F dated 22.03.1973.”</p>	

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	<p>It is submitted by Mr. Halдар that since the applicant, after superannuation, had made an application dated 13th November, 2017 to the respondent no.5 for condoning the delay and to grant pension and since the issue is covered by the judgement of High Court dated 16th February, 2015 passed in W.P.S.T. No. 81 of 2014 (Sk. Golam Zikria vs. The State of West Bengal & Ors.) and as the SLP preferred by the State of West Bengal from the said judgement was dismissed by the Supreme Court, the order may be issued setting aside the impugned order and for grant of pensionary benefits.</p> <p>Mr. Banerjee submits that under the law the applicant should have filed an application for condoning the delay for counting the deficiency of service prior to his retirement. In the instant case, the application was filed after he had retired. Moreover, the State is the decision making authority.</p> <p>Heard learned advocates for the parties and Mr. Mitra, Departmental Representative. Admittedly, the applicant has a shortfall of two months and fifteen days for completing ten years of service for consequent grant of pensionary benefits. The applicant on 13th November, 2017 had applied for condoning the shortfall, that is, before the impugned order was passed.</p>	

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SCN.	<p>In our view, since the issue is covered by the judgement of High Court dated 16th February, 2015 passed in W.P.S.T. No. 81 of 2014 (Sk. Golam Zikria vs. The State of West Bengal & Ors.) and as the SLP preferred by the State of West Bengal from the said judgement was dismissed by the Supreme Court, and as the applicant, on 13th November, 2017, had applied for condoning the shortfall, the order dated 2nd July, 2018, passed by the Commissioner of Police, Chandannagar Police Commissionerate, respondent no.5, cannot be sustained and is, thus, set aside and quashed. The application is allowed. Accordingly the Principal Secretary, Department of Home Affairs, Government of West Bengal, respondent no. 2, is directed to consider the matter and shall pass a reasoned order within eight weeks from the date of presentation of a copy of this order after giving an opportunity of hearing and after verifying the records and after taking into consideration the judgement passed in W.P.S.T. No. 81 of 2014 (Sk. Golam Zikria vs. The State of West Bengal & Ors.) and the order of dismissal of the SLP dated 17th July, 2017 passed by the Hon'ble Supreme Court.</p> <p>(S.K. Das) MEMBER (A)</p>	<p>(Soumitra Pal) CHAIRMAN</p>