

**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 741 OF 2018

**SUKUMAR GHOSH 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&amp;E), West Bengal, the matter is taken up for hearing.</p> <p>In this application, the applicant, Sukumar Ghosh, a Constable (K-619) of the West Bengal Police, who had superannuated on 31<sup>st</sup> July, 2017 after attaining the age of 60 years, has challenged the order dated 16<sup>th</sup> July, 2018, passed by the Superintendent of Police, Hooghly Rural Police District, Hooghly, the respondent</p>	

**ORDER SHEET**

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>no.6, whereby his prayer for condoning the deficiency of service of three months 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;">“As per the Rules of business of Government of West Bengal, Finance Department, Government of West Bengal is the nodal Department for determination of the principles of recruitment, conditions of service and discipline of the servants of the State. Power to relax any provision or condone any shortfall, thus rests with the Finance Department, Government of West Bengal. When the relevant Rule regarding prescription of minimum qualifying service for grant of pension has not undergone any change, as on date, I don’t find it prudent to condone the shortfall of 03 months and 15 days in qualifying service or consideration of pension in favour of the applicant.</p> <p style="text-align: center;">In view of the above position, I am not inclined to refer the instant</p>	

**ORDER SHEET**

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>matter to the Principal Secretary, Department of Home Affairs, Government of West Bengal for condonation of deficiency in qualifying service for pension of the applicant under Rule 36 of West Bengal Services (Death-cum-Retirement) Rules, 1971. With this observation, the matter is disposed of.”</p> <p>It is submitted by Mr. Halдар that since the applicant, after superannuation, had made an application dated 14<sup>th</sup> February, 2018 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 16<sup>th</sup> February, 2015 passed in W.P.S.T. No. 81 of 2014 (Sk. Golam Zikria vs. The State of West Bengal &amp; Ors.) and as the SLP preferred by the State of West Bengal from the said judgement was dismissed by the Supreme Court, order may be passed 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</p>	

**ORDER SHEET**

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>making authority.</p> <p>Heard learned advocates for the parties and Mr. Mitra, Departmental Representative. Admittedly, the applicant has a shortfall of three months and fifteen days for completing ten years of service for consequent grant of pensionary benefits. The applicant on 14<sup>th</sup> February, 2018 had applied for condoning the shortfall, that is, before the impugned order was passed.</p> <p>In our view, since the issue is covered by the judgement of High Court dated 16<sup>th</sup> February, 2015 passed in W.P.S.T. No. 81 of 2014 (Sk. Golam Zikria vs. The State of West Bengal &amp; 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 14<sup>th</sup> February, 2018, had applied for condoning the shortfall, the order dated 16<sup>th</sup> July, 2018, passed by the Superintendent of Police, Hooghly Rural Police District, Hooghly, the respondent No.6, 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</p>	

**ORDER SHEET**

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
SCN.	<p>consideration the judgement passed in W.P.S.T. No. 81 of 2014 (Sk. Golam Zikria vs. The State of West Bengal &amp; Ors.) and the order of dismissal of the SLP dated 17<sup>th</sup> July, 2017 passed by the Hon'ble Supreme Court.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	