

ORDER SHEET
West Bengal Administrative Tribunal

Present.-
The Hon'ble Justice Ranjit Kumar Bag,
&
The Hon'ble Dr. Subesh Kumar Das

Case No. OA 101 of 2018

Kanika Dasgupta

Versus

The State of West Bengal & Ors.

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<u>07</u> 14/03/2019	<p>For the Applicant : Mr. S. Ahmed, Mr. A. Singh, Ld. Advocates.</p> <p>For the State Respondent : N O N E.</p> <p>The applicant has prayed for direction upon the respondents for grant of leave during the period from September 2016 to February 13, 2016 after cancellation of letter dated July 14, 2017 and letter dated September 11, 2017 issued by the Director of ICDS, West Bengal and Child Development Project Officer, Mangolkot, ICDS Project respectively.</p> <p>It appears from the materials on record that the applicant has been working as Supervisor under Integrated Child Development Scheme in the establishment of the Respondent No. 4, Child Development Project Officer, Mangolkot, ICDS Project, Purba Bardhaman. The contention of the applicant is that she was absent from duty for looking after her child aged about 10 years. The further contention of the applicant is that she submitted applications through proper channel for grant of Child Care Leave, but the said applications were not considered by the</p>	

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	<p>authority concerned. The grievance of the applicant is that her period of absence from duty from September 2016 to February 13, 2017 has been treated as unauthorised leave and the said period is treated as “Dies Non” by invoking the provisions of Rule 34 of West Bengal Service Rules, Part I without giving the applicant an opportunity of hearing and without initiating any disciplinary proceeding against her.</p> <p>Learned Counsel for the applicant submits that the respondents cannot treat the period of absence of the applicant from duty as “Dies Non” by invoking the provisions of Rule 34 of W.B.S.R., Part I without initiating any disciplinary action, as the same amounts to punishment and the period of absence will not be counted for retirement benefit and other service benefits of the applicant.</p> <p>None appears on behalf of the state respondents inspite of service of notice as reflected from the affidavit of service filed on behalf of the applicant.</p> <p>On consideration of the materials on record, we find that the period of absence of the applicant from duty from September 2016 to February 13, 2017 has been treated as unauthorised leave without giving any</p>	

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	<p>increment for the said period by the Director of ICDS, West Bengal by invoking the provisions of Rule 34, W.B.S.R., Part I. By following the said order dated July 14, 2017 issued by the Director of I.C.D.S, West Bengal, the respondent no. 4 has also passed order on September 11, 2017 by treating the aforesaid period of absence of the applicant from duty as unauthorised resulting in break-in service of the applicant as laid down in Rule 34 of W.B.S.R., Part I. On consideration of the provisions of Rule 34 of W.B.S.R., Part I, we are of the view that unauthorised absence of any government employee resulting in break-in service amounts to punishment as the said period of unauthorised absence will not be counted for future benefit of service and for retirement benefit of the concerned employee. The unauthorised absence of any government employee may amount to misconduct for which disciplinary authority is entitled to take disciplinary action against the concerned government employee. However, the disciplinary authority cannot invoke the provisions of Rule 34 of W.B.S.R., Part I by treating the absence of the applicant from duty as unauthorised for the purpose of depriving the said employee from benefit of service without initiating disciplinary proceeding and without giving the concerned employee an opportunity of hearing. It is</p>	

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	<p>relevant to point out that before invoking the provisions of Rule 34 of W.B.S.R., Part I, it is the obligation on the part of the disciplinary authority to consider whether the government employee is entitled to leave of any kind to the credit of the employee or extra-ordinary leave, if no leave is available to the credit of the said employee. The disciplinary authority has also the discretion to initiate disciplinary proceeding against the government employee for the misconduct of unauthorised absence from duty. However, the disciplinary authority cannot treat the period of unauthorised absence of the employee as break-in service or “dies non” by invoking provisions of Rule 34 of W.B.S.R., Part I without giving the applicant an opportunity of hearing. In the instant case, nothing is on record to indicate that the applicant was given an opportunity of hearing before treating her period of absence from duty as unauthorised by invoking provisions of Rule 34 of W.B.S.R., Part I. Accordingly, we are inclined to set aside order communicated under letter dated July 14, 2017 issued by Director of ICDS, West Bengal and letter dated September 11, 2017 issued by the Respondent No. 4, Child Development Project Officer, Mangolkot, ICDS Project.</p>	

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Csm	<p>The applicant is directed to submit fresh applications for grant of leave during the period of her absence from duty from September 2016 to February 13, 2017 before the respondent no. 2 through proper channel within a period of 4 (four) weeks from this date. If such application is submitted by the applicant within the stipulated period of time, the respondent no. 2, Director of I.C.D.S., West Bengal is directed to consider the said application in accordance with the provisions of W.B.S.R., Part I and in terms of the observation made by us in this order after giving the applicant an opportunity of hearing within a period of 12 (twelve) weeks from the date of submission of the application by the applicant and take necessary follow up action, if any, within a period of 08 (eight) weeks thereafter.</p> <p>With the above direction, the original application stands disposed of.</p> <p>Let a Plain Copy of the order be supplied to both parties.</p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p>	

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