

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble JUSTICE RANJIT KUMAR BAG
& The Hon'ble DR. SUBESH KUMAR DAS**

Case No – OA 114 OF 2018

Rabindranath Chakraborty 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 style="text-align: center;">07 <hr/>10.06.2019</p>	<p><i>For the Applicant : Mr. S. Ghosh, Mr. R.K. Mondal, Learned Advocates.</i></p> <p><i>For the State Respondents : Mrs. M. Mallick, Learned Advocate.</i></p> <p><i>For A.G.(A&E), W.B. : Mr. B. Mitra, Departmental Representative.</i></p> <p><i>The applicant has prayed for direction upon the respondents for re-fixation of pay in the scale no. 18 (Rs.1100/-1900/-) notionally till the date of retirement and for revision of pension and other retirement benefit.</i></p> <p><i>The applicant joined in the post of Sub-Assistant Engineer on March 23, 1973 in the Directorate of Irrigation and Water Ways, Government of West Bengal. He got promotion to the post of Assistant Engineer on August 16, 2001. The applicant retired from service on February 19, 2008. The present application is filed by the applicant on February 19, 2018 praying for grant of scale no. 18 after 10 years of his retirement from service. The grievance of the applicant is that he was eligible for getting scale no. 18 on August 16, 2007 though he did not pass departmental and professional examination in terms</i></p>	

ORDER SHEET*Rabindranath Chakraborty*

Form No.

Vs.**The State of West Bengal & Ors.**Case No. **OA 114 OF 2018**
.....

of memorandum no. 8555-F dated September 18, 1985 by which the applicant was governed at the time of his appointment in the post of Assistant Engineer. The exemption from appearing in the departmental and professional examination came into force by way of amended notification no. 834 PAR (Trg) dated August 20, 2004. The contention of the applicant is that the representation submitted by him for exemption from appearing in the departmental and professional examination on November 21, 2007 has not been considered by the respondent no. 1 till date.

Apparently, it appears that the applicant has approached the Tribunal for re-fixation of pay after 10 years of his retirement from service. By an interim order dated March 15, 2019, we gave liberty to the applicant to file an application under section 21(3) of the Administrative Tribunals Act, 1985 for condonation of delay in approaching the Tribunal, but the applicant chose not to invoke the provisions of Section 21(3) of the Administrative Tribunals Act, 1985 for condonation of delay.

Mr. S. Ghosh, Learned Counsel for the applicant has relied on the decision of the Hon'ble Supreme Court in "Union of India and Others v Tarsem Singh" reported in (2008) 8 SCC 648 and submitted that the delay in

Form No.

Vs.**The State of West Bengal & Ors.**Case No. **OA 114 OF 2018**
.....

approaching the Tribunal in the instant case is not fatal. On the other hand, Learned Counsel representing the state respondents submits that the decision cited by Mr. Ghosh has no relevance in the present case.

In “Union of India and Others v Tarsem Singh” (supra), an officer of Indian Army who was declared invalid on medical ground on November 13, 1983 approached the Hon’ble High Court for disability pension in the year 1999. His writ application was allowed by Learned Single Judge of the Hon’ble High Court, but granted arrears of pension only for three years prior to the date of approaching the Hon’ble High Court. The Division Bench of the Hon’ble High Court granted arrears of disability pension to the Army Officer with effect from the date on which pension was due. The Hon’ble Supreme Court had set aside the order passed by the Division Bench of the Hon’ble High Court and restored the order of Learned Single Judge of the Hon’ble High Court. The question for consideration of before the Hon’ble Supreme Court was whether the Division Bench of the Hon’ble High Court was justified in directing payment of arrears of pension for last 16 years instead of restricting the arrears to the period of three years prior to the approaching of the Hon’ble High Court.

ORDER SHEET

Rabindranath Chakraborty

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA 114 OF 2018**

.....

In the reported case of “Tarsem Singh” (Supra) the Hon’ble Supreme Court has had no opportunity to deal with the issue of limitation prescribed under Section 21 of Administrative Tribunals Act, 1985. The Army Officer had to approach the Hon’ble High Court by invoking writ jurisdiction under Article 226 of the Constitution of India for claiming disability pension, as the Armed Forces Tribunal did not come into existence at the relevant point of time. However, the Apex Court has observed in paragraph 7 of the judgment of “Tarsem Singh” (Supra) that the belated claim for benefit of service is liable to be rejected on the ground of limitation, when remedy is sought by filing an application before the Administrative Tribunal. The Apex Court has further observed that service related claim cannot be turned down on the ground of limitation, if the cause of action is continuing one. It has also been pointed out by the Apex Court in the said paragraph of the judgment that the law of limitation will be applied in service related claim if the reopening of the issue would affect the settled rights of third party, when the grievance is ventilated against the decision of the Administration.

In the instant case, the applicant has claimed re-fixation of pay in scale no. 18 in terms of Memorandum

ORDER SHEET*Rabindranath Chakraborty*

Form No.

Vs.**The State of West Bengal & Ors.**Case No. **OA 114 OF 2018**
.....

No. 8555-F dated September 18, 1985 issued by the Finance Department, Audit Branch, Government of West Bengal. The cause of action for claiming benefit of scale no. 18 arose when the applicant was in service. The preconditions for getting scale no. 18 in terms of Memorandum dated September 18, 1985 are that the applicant must render satisfactory service as Assistant Engineer for six years and that he must pass departmental and professional examination and that he must come within the ratio 60:40 cadre strength of Assistant Engineers under the Directorate. The cause of action for claiming scale no. 18 arising to the applicant while in service may be continuing so long the applicant was in service, but the same came to the holt on the date of his retirement on February 29, 2008, whereas in “Tarsem Singh” the cause of action for getting disability pension was continuing till the date of filing of writ application. That apart, if the grievance of the applicant for not granting scale no. 18 is entertained after long lapse of 10 years from the date of his retirement, the settled rights of the third parties, who have already been granted scale no. 18 on the basis of the ratio of 60:40 strength of cadre of Assistant Engineers, will be unsettled. By following the dictum of “Tarsem Singh” (Supra) as laid down in the paragraph 7 of the judgment, we would like to hold that

ORDER SHEET

Rabindranath Chakraborty

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA 114 OF 2018**

.....

the settled issue of granting pay scale to the Assistant Engineers of the concerned directorate cannot be unsettled to the prejudice of the rights of the parties long after 10 years of retirement of the applicant from service. Since we are exercising jurisdiction under the Administrative Tribunals Act, 1985 and since the cause of action of the applicant is not continuing one till date, we are constrained to hold that the present application filed after long 10 years of retirement from service is clearly barred under Section 21 of the Administrative Tribunals Act, 1985.

In view of our above findings, we would like to hold that the original application is liable to be dismissed as the same is barred under Section 21 of the Administrative Tribunals Act, 1985.

As a result, the original application is dismissed.

Let a plain copy of this order be supplied to both parties.

**(S.K.DAS)
Member (A)**

**(R.K.BAG)
Member (J)**

H.S

ORDER SHEET

Rabindranath Chakraborty

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA 114 OF 2018**

.....