

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

**The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das**

Case No – OA 339 of 2019

Sabyasachi Patra 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
03 06.08.2019	<p>For the Applicant : Mrs. S. Mitra, Learned Advocate.</p> <p>For the Respondent : Mr. M.N. Roy, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents to pass a specific order regularising the period from the date of discharge of the applicant from service till the date of his reinstatement in service either by treating the said period as spent on duty or by granting any leave in terms of Rule 34 (2) of the West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (in short, DCRB Rules, 1971).</p> <p>The applicant was appointed as Sepoy in Kolkata Armed Police on July 17, 2006. A criminal case under section 420 of IPC was started against the applicant and one departmental proceeding was also initiated against the applicant while he was in service. The applicant was discharged from service by imposition of penalty in the departmental proceeding no. 33 dated March 25, 2010. However, the applicant was subsequently reinstated in the service by Deputy Commissioner of Police, 5th Battalion, Kolkata Armed Police by issuing an order dated November 25, 2013 in compliance with the direction given by the Tribunal in OA 772 of 2013.</p>	

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The applicant joined in the service after getting the order of reinstatement in service. By the order of reinstatement dated November 25, 2013, the Deputy Commissioner of Police, 5th Battalion, Kolkata Armed Police has counted the past service of the applicant in terms of Rule 34 (1) of the DCRB Rules, 1971, but the period between the date of discharge of the applicant from service till the date of his joining following the order of reinstatement was not treated as the period spent on duty or the said period of absence was not regularised by grant of any kind of leave by issuing any specific order in terms of Rule 34 (2) of the DCRB Rules, 1971.

With the above factual matrix, Mrs. Mitra, Learned Counsel for the applicant, contends that the respondent no. 4 should have passed specific order either by treating the period from the date of discharge till the date of reinstatement in service as the period spent on duty or by regularising the said period of absence by grant of leave. The specific submission of Mrs. Mitra is that the said period will be treated as break-in service and thereby the applicant will suffer in computation of the total length of service for retirement benefits. On the other hand, Mr. M.N. Roy, Learned Counsel representing the state respondents, submits that the respondent no. 4 did not think it fit to give the applicant any benefit for the period from the date of his discharge from service till the date of his reinstatement in service and as such no specific order by grant of leave or by treating the

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said period as spent on duty, was passed by the respondent no. 4.

Having heard Learned Counsel representing both parties and on consideration of the order of reinstatement passed by the respondent no. 4, we are of the view that it is entirely the discretion of the respondent no. 4 either to give the applicant benefit of service during the period from the date of discharge till the date of reinstatement by issuing specific order by grant of leave or by treating the period spent on duty or not to give any benefit for the aforesaid period without passing any specific order in this regard in terms of Rule 34 (2) of the DCRB Rules, 1971. Since the respondent no. 4 has used his discretion in terms of Rule 34 (2) of the DCRB Rules, 1971 and since the applicant has failed to establish that the respondent no. 4 has caused any prejudice to the right of the applicant by not passing any specific order in terms of Rule 34 (2) of the DCRB Rules, 1971, we cannot persuade ourselves to intervene in the order of reinstatement passed by the respondent no. 4.

In view of our above observation, the original application is **dismissed**.

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

Sanjib

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

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