

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 584 OF 2019**

*Kalpana Dubey 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
05 <hr/> 05.03.2020	<p><i>For the Applicant : Mr. S.N. Ray, Learned Advocate.</i></p> <p><i>For the State Respondents : Mr. B.K. Roy, Learned Advocate.</i></p> <p><i>For respondent no. 4 : Mr. M.N. Roy, Learned Advocate.</i></p> <p style="text-align: center;"><i>Reply filed on behalf of the state respondents today is kept on record.</i></p> <p style="text-align: center;"><i>The applicant has prayed for direction upon the respondents for counting of the period from August 22, 2008 till the date of her joining in the government service as Lady Constable for the purpose of computation of the period of qualifying service for grant of pension.</i></p> <p style="text-align: center;"><i>The applicant joined in the government service as Lady Constable on February 22, 2014 and retired from service on October 31, 2018. She rendered less than 5 years of service as Lady Constable and thereby she was not entitled to get any pension for not rendering 10 years of qualifying service in terms of the provisions of Rule 67 of West Bengal Services (Death-cum-Retirement Benefit) Rules, 1971 (in short, the DCRB Rules, 1971). The contention of the applicant is that she was selected for the post of Lady Constable in the year 2008, but her appointment for the post of Lady Constable was withheld</i></p>	

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*for her failure to submit certificate of passing Class VIII Examination of the school. She approached the Tribunal by filing OA 971 of 2009 which was disposed of on contest on January 19, 2011. On perusal of order dated January 19, 2011 passed in OA 971 of 2009 (Smt. Kalpna Dubey vs State of West Bengal and others), we find that the State Government declared the applicant un-suitable for the job of Lady Constable for not passing Class VIII Examination of the school, which is minimum educational qualification required for appointment in the post of Lady Constable. With regard to the un-suitability of the applicant to get appointment in the post of Lady Constable in spite of her selection for the said post in the year 2008, the Tribunal upheld the stand of the State Government, as the applicant admitted that she did not possess any document to show that she passed Class VIII Examination. The Tribunal did not interfere with the order by which the applicant was declared un-suitable for the job of Lady Constable by the Government. However, by the same order dated January 19, 2011 passed in OA 971 of 2009, the Tribunal observed that if the applicant can produce any such document of passing Class VIII Examination, the same should be considered as the applicant is otherwise found eligible for appointment to the post of Lady Constable, particularly when no adverse report is forthcoming in connection with her antecedent.*

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*In view of the above observation passed by the Tribunal on January 19, 2011 in OA 971 of 2009, the applicant again produced the certificate of passing Class VIII Examination from the school which was considered by the concerned authority and the order of appointment was issued in favour of the applicant for joining in the post of Lady Constable on February 14, 2014. Ultimately, she could join in the post of Lady Constable on February 22, 2014.*

*With the above factual matrix, Mr. S.N. Ray, Learned Counsel for the applicant contends that the appointment letter was not issued in favour of the applicant on the basis of selection in the year 2008 in an illegal and unjustified manner without considering properly the certificate of passing Class VIII Examination of the school by the applicant. He further contends that the applicant could have served in a permanent post of Lady Constable during the period for which appointment was withheld in spite of her selection in the year 2008 till the date of her actual joining in the post of Lady Constable on February 22, 2014 and thereby the said period should have been counted for computation of total period of qualifying service for grant of pension. The gist of submission of Mr. S.N. Ray is that the period for which the applicant was deprived of rendering service in the post of Lady Constable on the basis of her selection in the year 2008*

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*till the date of her actual joining in the post of Lady Constable on February 22, 2014 should be taken into consideration along with actual service rendered by her from February 22, 2014 to October 31, 2018 for the purpose of computation of qualifying service for grant of pension.*

*Learned Counsel representing the respondent no. 3 has not filed any reply but submits that the previous certificate of passing Class VIII Examination by the applicant after her selection for the post of Lady Constable in the year 2008 was fake and as such the same was not accepted by the authority concerned.*

*Mr. M.N. Roy, Learned Counsel representing the State respondents (except respondent no. 3) contends that the applicant could not produce any valid document of passing Class VIII Examination from any school after her selection in the post of Lady Constable in the year 2008 and thereby appointment letter could not be issued in her favour in spite of her selection in the post of Lady Constable in the year 2008. He further submits that the stand taken by the state respondents by declaring the applicant un-suitable for the post of Lady Constable for not acquiring minimum educational qualification in spite of her selection for the said post in the year 2008 was upheld by the Tribunal in the order dated January 19, 2011 passed in OA 971 of 2009. According to Mr. M.N.*

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*Roy, the period for which the applicant did not render any service for not getting appointment in the post of Lady Constable for not acquiring minimum educational qualification, cannot be considered for computation of total period of qualifying service for grant of pension.*

*Having heard Learned Counsel representing all the parties and on consideration of the order dated January 19, 2011 passed by this Tribunal in OA 971 of 2009 ((Smt. Kalpana Dubey vs State of West Bengal and others), we find that the Tribunal upheld the stand taken by the State Government by declaring the applicant un-suitable for the post of Lady Constable in spite of her selection for the said post in the year 2008 for not acquiring minimum educational qualification of passing Class VIII Examination from any school. It is relevant to point out that the Tribunal observed in the order dated January 19, 2011 that the applicant did not possess any document to show that she passed Class VIII Examination of the school, which is minimum educational qualification for appointment to the post of Lady Constable. However, the Tribunal gave the applicant opportunity to produce any document of passing Class VIII Examination before authority concerned. As a result, the applicant subsequently produced documents of passing Class VIII Examination and got appointment in the post of Lady Constable on February 14, 2014. Admittedly, the*

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*applicant rendered service in the post of Lady Constable for a period of little less than 5 years i.e. from February 22, 2014 to October 31, 2018. Since the applicant could not produce any valid document of passing Class VIII Examination of the school for her appointment in the post of Lady Constable in spite of her selection for the said post in the year 2008, we cannot persuade ourselves to give any direction to the state respondents to consider the period during which the applicant was not appointed as Lady Constable for not acquiring minimum educational qualification for appointment to the said post of Lady Constable for computation of total period of qualifying service for grant of promotion. The natural corollary is that the applicant rendered service for a period of less than 5 years only for which she is not entitled to get pension in terms of the provisions of Rule 67 of DCRB Rules, 1971.*

*As a result, the original application is dismissed.*

*The Urgent Xerox certified copy of the order, if applied for, be given to either of the parties on prior basis, on fulfilment of necessary formalities.*

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

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

*H.S*