

ORDER SHEET – (Continuation)

Form No.

Dulal Kumar Basu & Ors, Asish
Kumar Bhowmik & Ors.
.....

Vs

The State of West Bengal & Others.
.....Case No. **OA 888 of 2017 and OA 889 of 2017**

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>applicants of OA-889/2017 are same, we would like to dispose of both the original applications by passing this common order.</p> <p>The contention of the applicants is that they were initially appointed in different posts of various offices of different Directorates under Department of Food and Supplies, Government of West Bengal. By virtue of an agreement dated November 26, 1966 executed by and between the Food Corporation of India (in short, F.C.I.) and Department of Food and Supplies, Government of West Bengal (in short, State Government), the work pertaining to procurement, transportation, storage and distribution of foodgrains under the rationing system, (presently known as Public Distribution System) in West Bengal were taken over by F.C.I. By virtue of the terms of the said agreement, the employees were transferred from their respective offices under the State Government to F.C.I. initially on deputation and ultimately got themselves absorbed in regular employment under F.C.I. A committee comprising officials of State Government and F.C.I. were formed to examine the issue of absorption of the deputationist in the regular employment of F.C.I. and by recommendation of the said committee and in pursuance of the terms and conditions of agreement between State Government</p>	

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	<p>and F.C.I., the said employees including the applicants were absorbed in F.C.I. on the basis of the order of the State Government issued under memo n. 5814-FS dated August 05, 1985, wherein the procedure and terms and conditions of employment of these deputationists were prescribed.</p> <p>The further contention of the applicants is that the present applicants retired from service on different dates during the period from 2002 to 2007. The applicants were given benefit of pension including terminal benefits in terms of the provisions contained in Rule 189A of the West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 (herein after referred to as the D.C.R.B. Rules, 1971), by taking into account the length of service of the applicants under the State Government. Some of the employees who were absorbed in F.C.I. were aggrieved by the amount of pension sanctioned in their favour in terms of the provisions of the D.C.R.B. Rules, 1971. Those employees approached this Tribunal by filing three different original applications being OA No. 722/2012 (Susanta Kumar Chakraborty V State of West Bengal & Ors.), OA No. 1012/2012 (Snigdha Majumdar (Sengupta) v State of West Bengal & Ors.), OA No. 1350/2012 (Ranjit Chandra Bardhan & Ors. v State of West Bengal & Ors.) and OA No. 1433 of 2012</p>	

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	<p>(Prabhat Bandopadhaya v State of West Bengal & Ors.) These original applications were disposed of by the Tribunal by passing a common Judgment on June 21, 2013, whereby the Tribunal gave direction to the State Government for giving pensionary benefits to those applicants by treating them as normal pensioners, though the claim for family pension was turned down by the Tribunal. The said Judgment of the Tribunal dated June 21, 2013 was challenged by the State of West Bengal by filing different Writ applications namely viz. W.P.S.T. No. 278/2014, W.P.S.T. No. 279/2014, W.P.S.T. No. 280/2014 and W.P.S.T. No. 281/2014. The Division Bench of the Hon'ble High Court disposed of all the above Writ applications by a common Judgment on August 01, 2016, whereby the Judgment and order of the Tribunal was affirmed and Writ applications were dismissed. Ultimately, in pursuance of the Judgment and order dated June 21, 2013 passed in OA-722/2012, OA-1012/2012, OA-1350/2012 and OA-1433/2012 being affirmed by the Division Bench of the Hon'ble High Court, the necessary order was issued on June 05, 2017 by the Principal Secretary to the Government of West Bengal, Department of Food & Supplies after obtaining concurrence from the Department of Finance (Pension Branch), Government of West Bengal.</p>	

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	<p>Mr. Chakraborty, Learned Counsel for the applicants contends that the applicants are similarly circumstanced with the applicants of OA-722/2012, OA-1012/2012 and OA-1350/2012 and as such they are entitled to get benefit of pension as natural pensioners of the State Government in terms of the order dated June 05, 2017 issued by the Principal Secretary to the Government of West Bengal, Department of Food & Supplies. On the other hand, Mr. Banerjee, Learned Counsel representing the state respondents submits that the present applicants have approached the Tribunal long after 10 (ten) to 15 (fifteen) years of their retirement from service without submitting a single representation before the State Government and as such the present application is barred u/s 21 of the Administrative Tribunals Act, 1985. We have also heard Mr. Mitra, the Departmental Representative of the respondent A.G., W.B., who submits that the A.G. will comply with the order issued by the State Government in general and the pension sanctioning authority in particular.</p> <p>Having heard all the parties, we would like to decide whether the present applications are barred u/s 21 of the Administrative Tribunals Act, 1985. In this regard, we would like to rely on the decision of the</p>	

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	<p>Hon'ble Supreme Court in "Union of India v Tarsem Singh" reported in (2008) 8 SCC 648 wherein the respondent, a Member of Indian Army was declared invalid in rendering service on November 13, 1983. He approached the Hon'ble High Court almost after 16 (sixteen) years in the year 1999 for grant of disability pension by filing a Writ application. Learned Single Judge of the Hon'ble High Court gave direction for grant of disability pension along with arrears, though grant of arrears was restricted to a period of 03 (three) years and 02 (two) months prior to the filing of the Writ application. The Division Bench of the Hon'ble High Court modified the said order of Learned Single Judge and granted arrears of invalid pension in favour of the Army Man with effect from the date he was declared invalid on November 13, 1983. The Union of India preferred an appeal before the Hon'ble Supreme Court challenging the order passed by the Division Bench of the Hon'ble High Court. The issue for consideration before the Apex Court was whether the claim of the respondent (Army Man) is barred u/s 21 of the Administrative Tribunals Act, 1985 and whether the order passed by the Division Bench of the Hon'ble High Court for grating arrears of pension with effect from the date the Army Man was declared invalid in the year 1983 was justified under the Law.</p>	

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	<p>It is relevant to quote paragraph 7 of the Judgment of “Tarsem Singh” (Supra), which is as follows:</p> <p>“(7) To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years</p>	

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	<p>prior to the date of filing of the writ petition”.</p> <p>In the instant case, the applicants retired on different dates during the period from 2002 to 2007 and approached the Tribunal in the year 2017. According to Mr. Chakraborty, the applicants came to know about the existence of their rights to get normal pension in the year 2016 and as such there was no delay in approaching the Tribunal in the year 2017. Be that as it may, we consider the cause of action of the applicants as a continuing one from the date of retirement from service till this date. By following the proposition laid down in paragraph 7 of the Judgment of “Union of India v Tarsem Singh” (Supra), we would like to observe that the law of limitation as laid down in Section 21 of the Administrative Tribunals Act, 1985 will be applicable in the facts of a case where the applicants have prayed for seniority or promotion, as the same may affect the rights of third parties and the settled position cannot be re-opened long after the period of limitation. In other situations like payment of pension and retirement benefits, the law of limitation may not have application in case of continuing cause of action. However, when the applicants have prayed for arrears of pension by way of consequential relief, the Court will normally restrict arrears to a period of 03 (three) years prior to the date of filing of the</p>	

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	<p>application. Thus, by following the proposition laid down in paragraph 7 of the judgment of “Tarsem Singh” (Supra), we would like to hold that the present two applications are not barred u/s 21 of the Administrative Tribunals Act, 1985. However, the claim of the applicants for arrears of pension and retirement benefits, if any, must be restricted to a period of 03 (three) years prior to the date of filing of the original applications before this Tribunal on September 18, 2017.</p> <p>In the absence of production of sufficient materials about the previous service of each of the applicants, we are not in a position to decide whether the present applicants are similarly circumstanced with the applicants of OA-722/2012, OA-1012/2012 and OA-1350/2012. If the applicants are similarly circumstanced with the applicants of the above original applications, they are entitled to get the same benefit which the applicants of the above original applications (OA-722/2012, OA-2012/2012 and OA-1350/2012) have already received in terms of order dated June 05, 2017 issued by the Principal Secretary to the Government of West Bengal, Department of Food & Supplies.</p> <p>Accordingly, the respondent no. 2, Principal</p>	

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Csm	<p>Secretary to the Government of West Bengal, Department of Food & Supplies is directed to consider whether the applicants of OA-888/2017 and OA-889/2017 are similarly circumstanced with the applicants of OA-722/2012, OA-1012/2012 and OA-1350/2012 by passing a reasoned order within a period of 16 (sixteen) weeks from the date of communication of the order and to take necessary follow-up action in terms of the said reasoned order and in the light of observations made by us in this order within a period of 08 (eight) weeks thereafter.</p> <p>With the above direction, both the original applications stand disposed of.</p> <p>Let a Plain Copy of the order be supplied to all the parties.</p> <p style="text-align: center;">S. K. DAS MEMBER(A)</p> <p style="text-align: center;">R. K. BAG MEMBER(J)</p>	