

**ORDER SHEET****WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

**The Hon'ble Justice Soumitra Pal,  
& The Hon'ble Dr. Subesh Kumar Das.**

**Case No –OA-1238 of 2016.**

**Asim Kumar Chakrabarti. –Vs- The State of West Bengal & Others.**

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;"><u>7</u> 19.11.2018</p>	<p><b>For the Applicant : Mr. B. Nandy, Advocate.</b></p> <p><b>For the Respondents : Mr. S. N. Ray, Advocate.</b></p> <p><b>For the Principal Accountant : Mr. B. Mitra, General (A&amp;E), West Bengal. (Departmental Representative).</b></p> <p>In this application the applicant has prayed for a direction upon the respondent authorities to disburse pension and all retiral dues to him on notional basis from 1990 or at least from 1999 when the applicant approached the Tribunal for the first time irrespective of the fact about the date of issuance of the letter of appointment. It appears that the name of the applicant had appeared in the panel dated 16<sup>th</sup> November, 1990 for the post of Patrolman. In the application it has been stated that although it was intimated that the panel was cancelled, however, the panel was kept alive and appointments were given even after 8-9 years. The applicant has stated that the applicant preferred an Application before the Tribunal, being OA-1937 of 1999, which was disposed of by an order dated 6<sup>th</sup> June, 2000 directing the respondents to consider the claim of the applicant for appointment. It appears that</p>	

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	<p>the claim of the applicant was negated by the respondents. Subsequently the applicant had filed an Application, being OA-1468 of 2002, challenging the said order and the Tribunal by order dated 8<sup>th</sup> February, 2007 directed the respondents to accommodate the applicant in the post. Aggrieved, the State respondents preferred a writ petition before the Hon'ble High Court, being WPST No. 755 of 2008. The High Court by order dated 30<sup>th</sup> April, 2009 directed the state respondents to implement the order dated 8<sup>th</sup> February, 2007 passed by the Tribunal. It has been stated that on 4<sup>th</sup> August, 2009 the applicant was appointed in the post of Patrolman in the office of the Senior Joint Commissioner, Commercial Taxes, West Bengal Barrackpore Range, Barrackpore. Subsequently on 13<sup>th</sup> June, 2013 the service of the applicant was confirmed. The applicant superannuated on 31<sup>st</sup> August, 2016. The pension paper of the applicant was forwarded to the office of the Accountant General (A&amp;E), West Bengal. In this application, as noted hereinbefore, the applicant has prayed to disburse pension and all retiral benefits notionally with effect from 1990 or at least 1999 when he had approached the</p>	

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	<p>Tribunal.</p> <p>Mr. B. Nandy, learned advocate for the applicant submits as the name of the applicant was empanelled in the year 1990 and the same was arbitrarily cancelled in the year 1999, he is entitled to pensionary benefits. In this regard our attention has been drawn to the order passed by this Tribunal in OA-619 of 2010 (Md. Abdul Khaleque Khansama-Vs-State of West Bengal &amp; Ors.) dated 10<sup>th</sup> October, 2012, wherein the Tribunal after hearing the parties had passed an order, the relevant portion of which is as under :</p> <p><i>“On hearing both the sides and after considering all the materials, we are of the view that it is accepted position of law that even if a man for some reason or other was prevented from discharging his normal duty, he cannot expect to have wages and benefit for that period.</i></p> <p><i>We, at the same time hold that when the petitioner was prevented from joining not for his own fault as clarified by this Tribunal, we cannot deprive the petitioner from getting at least the benefit of counting that period for the purpose of pension, when he was legally entitled to join the service, but, could not due to no latches on his part.</i></p> <p><i>Accordingly, on hearing both the sides, we dispose of this application that petitioner shall get the benefit of</i></p>	

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	<p><i>counting the period from 01.01.1991 to his actual date of appointment as qualifying service only for the purpose of pension and other terminal benefits on superannuation, but, he shall not get any other service benefit for that period as otherwise, it would create unnecessary complication and might jeopardize the interest of others, who are not parties to this application.</i></p> <p><i>The application is accordingly disposed of."</i></p> <p>Mr. S. N. Ray, learned advocate for the state respondents submits that evidently the applicant was appointed on 4<sup>th</sup> August, 2009 and he retired on 31<sup>st</sup> August, 2016. The applicant after joining the post and during his entire tenure he did not raise the issue now raised. Referring to the judgement passed in Md. Abdul Khaleque Khansama (supra), it is submitted that the applicant was never prevented from doing his duties. As the applicant was well aware that he had only 7 years of service left at the time of joining the post and as this issue was neither raised before the Tribunal nor before the High Court, the applicant is now estopped from raising the same. It is further submitted as the applicant was not entitled to pension he has been paid a higher gratuity.</p> <p>Heard learned advocates for the parties. We have</p>	

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Sourav	<p>seen the orders passed in OA-1937 of 1999 and OA-1468 of 2002 as well as the order passed in the WPST No. 755 of 2008. It is evident from the orders passed that neither before the Tribunal nor before the High Court the applicant did raise the issue to give retirement benefits fixing the date of appointment notionally either in the year 1990 or in 1999. The judgment passed in Md. Abdul Khaleque Khansama (supra) is distinguishable on facts as in that case the applicant was prevented from discharging his normal duties which is not the issue in the instant case. Moreover, as the applicant is not entitled to pension he was given enhanced gratuity and thus he is stopped from raising the issues now raised. Hence, for the reasons aforesaid, there is no merit in the application. The application is disposed of.</p> <p>(DR. SUBESH KUMAR DAS) MEMBER (A)</p> <p>(SOUMITRA PAL) CHAIRMAN</p>	