

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

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

Case No –OA 336 OF 2017

Nandan Kumar Jha 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>9 23.08.2018</p>	<p>For the Applicant : Mr. P. Dhole, Learned Advocate.</p> <p>For the State Respondents : Mr. S. Bhattacharyya, Departmental Representative.</p> <p>Rejoinder filed on behalf of the applicant today is kept on record.</p> <p>The applicant has prayed for a direction upon the respondents to give him pension by treating his initial appointment in Group D post w.e.f. December 27, 2000.</p> <p>The applicant joined in the Group D post of Night Guard on the basis of order dated June 12, 2007 issued by the District Land and Land Reforms Officer, Malda. The applicant retired from the Group D post on December 30, 2016. The contention of the applicant is that the applicant was found suitable for absorption in the post of Night Guard / Office Peon on December 9, 1999. The further contention of the applicant is that there was inordinate delay in completion of formalities for appointment of the applicant in Group D post. The applicant had to approach the Hon'ble High Court by filing CO No. 16533(W) of 1988 for ventilating his grievances and the Hon'ble High Court directed District Land and Land Reforms Officer, Malda to consider the case of the applicant.</p>	

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	<p>However, ultimately prayer of the applicant for appointment in Group D post was rejected. Ultimately, the applicant approached the Tribunal by filing OA No. 997 of 2003 whereby this Tribunal gave direction to the District Land and Land Reforms Officer, Malda for passing a reasoned order in connection with appointment of the applicant in Group D post.</p> <p>With the above background of appointment of the applicant in Group D post, Learned Counsel for the applicant contends that the applicant would have served in Group D for more than 10 years had he been appointed in due time in Group D post. Learned Counsel has relied on the judgment of the Division Bench of the Hon'ble High Court in the unreported case of "State of West Bengal V. Aparesh Chandra Datta" (MAT 1607 of 2015 decided on March 8, 2016) in support of his contention that the applicant will get the benefit of inordinate delay on the part of the state respondents in making appointment in Group D post and thereby the applicant will get the benefit of pension for completion of more than 10 years of service. On the other hand, the Departmental Representative of the State respondents contends that the applicant has rendered the service for 8 years 10 months and 18 days and as such he is not entitled to get pension as per provisions of Rule 67 of West Bengal Services (Death-cum-Retirement Benefits) Rules, 1971 (in short, DCRB Rules of 1971). The Departmental Representative has relied on the unreported Judgment of the Hon'ble High Court at Calcutta in the case of "Krishna Das Gupta V. State of West Bengal" (WPST No. 11 of 2011</p>	

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	<p>decided on March 3, 2011) in support of his contention that the effect of appointment can never be given in retrospective manner.</p> <p>There is no dispute that the applicant was appointment in Group D post on June 12, 2007 and he retired on April 30, 2016 and thereby the applicant rendered service as Government employee for 8 years 10 months and 18 days. The applicant is entitled to get pension only on completion of 10 years of service as per provisions of Rule-67 of the DCRB Rules of 1971. The short fall in qualifying service for pension can be condoned by Government of West Bengal upto 6 months as laid down in Rule 36 of the DCRB Rules of 1971. In the instant case short fall in qualifying service for pension is more than one year. The contention of the applicant is that the applicant should have got the appointment in the year 2000 had the respondent authorities considered his case for appointment in due time. In State of West Bengal V. Aparesh Chandra Datta" (supra), the Division Bench of the Hon'ble High Court dealt with the issue of giving pension to the teacher of a primary school. In the said unreported case, Learned Single Judge of the Hon'ble High Court gave direction to the State respondents to give appointment to the petitioner as teacher of the primary school against the available vacancies within a period of 3 months from the date of the order which was passed on March 13, 1991. Since the State respondents did not comply with the direction passed by the Learned Single Judge, the Division Bench of the Hon'ble High Court held that the petitioner would have served as teacher of the primary school from the year 1991, though he was actually</p>	

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	<p>appointed only in the year 1999 and thereby the delay in giving appointment was taken into consideration for giving the said teacher of the primary school the benefit of pension. In the instant case, there was no specific direction from the Hon'ble High Court for giving appointment to the applicant in Group D post. The only direction given by the Hon'ble High Court in CO No. 16533(W) of 1988 was to consider the case of the applicant within stipulated period of time and the concerned respondent rejected the prayer of the applicant for giving appointment to Group D post. So, the facts of the present case are clearly distinguishable from the facts of unreported case of "State of West Bengal V. Aparesh Chandra Datta" (supra) and as such the ratio of the said unreported case has no application in the facts of the present case.</p> <p>In "Krishna Das Gupta V. State of West Bengal (supra), the Division Bench of the Hon'ble High Court has clearly laid down that the appointment in a post or in a cadre can never be given with retrospective effect. Since the applicant has prayed for giving the effect of his appointment in Group D post from December 27, 2000 inspite of his actual appointment in group 'D' post on June 12, 2007, we are constrained to hold that the retrospective effect of appointment can never be given in view of proposition of law laid down in the case of "Krishna Das Gupta V. State of West Bengal" (supra).</p> <p>On consideration of the facts of the entire case, we cannot persuade ourselves to treat the appointment of the applicant with</p>	

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Rajib	<p>retrospective effect from December 27, 2000 as prayed for. Nor can we persuade ourselves to condone short fall in computation of qualifying service of the applicant for pension under Rule 36 of the DCRB Rules of 1971 as the short fall is more than 6 months.</p> <p>In view of our above findings, the original application is dismissed.</p> <p>The urgent Xerox certified copy of the order, if applied for, may be supplied to the parties on priority basis on fulfilment of all necessary formalities.</p> <p>(Dr. S.K. Das) Member (A)</p> <p>(R.K. Bag) Member (J)</p>	

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