

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 760 OF 2013

Narayan Chandra Koley 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
24 25.02.2019	<p>For the Applicant : Mr. S.N. Ray, Learned Advocate.</p> <p>For the Respondents : Mr. A.L.Basu, Learned Advocate.</p> <p>For A.G. (A & E), W.B. : Mr. B. Mitra, Departmental Representative.</p> <p>The applicant has prayed for quashing of the order dated February 8, 2013 issued by the Finance Department, Government of West Bengal and direction upon the respondents for counting of past service of the applicant for increasing the length of qualifying service for pension.</p> <p>It appears from the materials on record that the applicant was appointed initially as Tahasildar on allowance-cum-commission basis in the year 1978 under Superintending Engineer, DVC, Kanainatshal, Burdwan and thereafter as Tahasildar on allowance-cum-commission basis till his absorption in the regular employment w.e.f. April 1, 1984. The applicant retired from service on December 31, 2009 after rendering almost 25 years of service in the regular establishment. Previously the</p>	

ORDER SHEET

Narayan Chandra Koley

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-760 of 2013**

applicant approached this Tribunal unsuccessfully by filing OA No. 762 of 2010 which was disposed of on February 14, 2012. The applicant challenged the order of the Tribunal before Hon'ble High Court by filing WPST 262 of 2012 which was disposed of on April 9, 2013. The Division Bench of the Hon'ble High Court has categorically observed that the Finance Department, Government of West Bengal has already taken a decision with regard to counting of past service of the applicant by issuing order on February 8, 2013 and by giving liberty to the applicant to challenge the said order of the Finance Department before the appropriate forum. Accordingly, the applicant has challenged the order dated February 8, 2013 issued by the Finance Department, Government of West Bengal as arbitrary and illegal.

On perusal of the impugned order under challenge in the present application, we find that the applicant relied on Memorandum No. 76IRC dated July 22, 1997 issued by the Department of Irrigation and Waterways, Government of West Bengal for the purpose of counting of past service of the applicant. The impugned order indicates that for getting benefit of the said Memo No. 76IRC dated July 22, 1997, the following two criteria must be fulfilled : first, the past service sought to be counted must be continuous and uninterrupted and, secondly, the employee must refund the employer's share of contributory provident fund. Nothing is on record to indicate that the service

ORDER SHEET

Narayan Chandra Koley

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-760 of 2013**

rendered by the applicant from 1978 till the date of absorption in the year 1984 on allowance-cum-commission basis is continuous and uninterrupted. Admittedly, the applicant is not governed by the scheme of contributory provident fund while the applicant rendered service on allowance-cum-commission basis during the period from 1978 till date of absorption in the year 1984. Accordingly, the Finance Department has rightly observed that the applicant cannot get the benefit of counting of past service in terms of Memorandum No. 76IRC dated July 22, 1997.

Mr. S.N. Ray, Learned Counsel for the applicant contends that two other employees of the department to which the applicant belonged got the benefit of counting of past service, whereas the applicant was deprived of the said benefit. The materials have not been placed before us to justify the contention that the applicant is similarly circumstanced with other employees who got the benefit of Memo No. 76IRC dated 22, 1997 for the purpose of counting of past service. Accordingly, we are unable to accept the contention made on behalf of the applicant that he is similarly circumstanced with the employees who got the benefit of past service for the purpose of getting enhanced pension. Relying on unreported judgment of the Division Bench of the Hon'ble High Court in "Dr. Hiranath Mitra V. State of West Bengal and Others" (WPST 448 of 2003 disposed of on September 9, 2004), Mr. Ray submits that the

ORDER SHEET

Narayan Chandra Koley

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA-760 of 2013**

petitioner of the unreported case got the benefit of counting of past service only by adjustment of employer's share of contributory provident fund with the amount of GPF dues of the said petitioner. In the said unreported case, the petitioner served as Medical Officer under private management and was governed by the scheme of contributory provident fund when the said private management was taken over by the State of West Bengal by issuing Notification on June 5, 1973. The said institute was ultimately nationalised in terms of the order of the Government in the year 1974 and the petitioner was deprived of counting his past service. The Division Bench of the Hon'ble High Court directed state respondents to grant pension to the petitioner in accordance with law after adjusting the employer's share of contributory provident fund with the dues of GPF of the said petitioner along with interest. In the present case, the applicant was not governed by the scheme of contributory provident fund and the applicant was working on allowance-cum-commission basis before his absorption in the regular establishment. Naturally, the facts of the present case are clearly distinguishable from the facts of the unreported case cited on behalf of the applicant, and as such the ratio of the said unreported case has no manner of application in the facts of the present case.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we do not find any illegality or arbitrariness in the impugned order under challenge

ORDER SHEET

Narayan Chandra Koley

Form No.

.....

Vs.

The State of West Bengal & Ors.

Case No. **OA-760 of 2013**

Rajib	<p>in the present application.</p> <p>As a result, the original application is dismissed.</p> <p>Let urgent Xerox certified copy of the order be supplied to the parties, if applied for, on priority basis after observance of all necessary formalities.</p> <p>(S.K. DAS) MEMBER(A)</p> <p>(R. K. BAG) MEMBER (J)</p>	
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