

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 834 of 2015**

Amit Mallick 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
03 09.04.2019	<p>For the Applicant : Mr. D.K. Mukherjee, Learned Advocate.</p> <p>For the Respondent : Mr. M.N.Roy, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents for grant of salary of his deceased father during the period from December 30, 1998 to October 4, 2005 and other ancillary reliefs.</p> <p>It appears from the materials on record that one Ashok Kumar Mallick, Ex-Fire Operator, Grade I was absent from duty due to prolonged illness from February 1, 1994. He was found to be medically fit for resuming duty on May 29, 1998. On May 29, 1998 when the deceased employee was proceeding towards his office for resuming duty he met with an accident on the way to the office and was shifted to NRS Medical College and Hospital for treatment. He was again found to be medically fit for resuming duty in the year 2004. It is alleged that the deceased employee was not allowed to resume duty and as such the said employee approached the Tribunal by filing OA 318 of 2004. On</p>	

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May 17, 2005 the Tribunal disposed of OA 318 of 2004 by directing the concerned authority to consider the representation submitted by the said deceased employee on consideration of the provisions of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1985 by passing a reasoned order within stipulated period of time. The said reasoned order on the basis of which the deceased employee resumed duty on October 5, 2005 is not forthcoming before the Tribunal. Subsequently, the concerned employee retired from service and died on August 1, 2013. The present applicant has prayed for arrears of salary of his father by filing the present application.

Mr. Mukherjee, Learned Counsel for the applicant contends that the father of the applicant was not allowed to perform duty and as such the father of the applicant was entitled to get salary during the period from December 30, 1998 to October 4, 2005. Admittedly, the deceased employee approached the Tribunal previously on two occasions by filing OA 1340 of 2013 and by filing OA 318 of 2004, but the deceased employee did not make this prayer for arrears of salary during the period from December 30, 1998 to October 4, 2005. Mr. Roy, Learned Counsel representing the State respondents submits that the prolonged period of absence of the applicant was regularised by grant of Extra Ordinary Leave as reflected from the letter dated March 14, 2007 (Annexure K to the original application) and as such

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the deceased employee is not entitled to get any salary during the period for which Extra Ordinary Leave was granted. He further submits that the applicant cannot approach the Tribunal in 2015 for challenging the order of non-payment of salary which was communicated in the year 2007, as the delay of 8 years for approaching the Tribunal is clearly barred under Section 21 of the Administrative Tribunals Act, 1985.

Having heard Learned Counsel representing both parties and on consideration of the materials on record, we find that the deceased employee Ashok Kumar Mallick was absent from duty for about 11 years i.e. from February 1, 1994 to October 5, 2005. This prolonged period of absence of the deceased employee was regularised on sympathetic ground by relaxation of Rule 34 read with Rule 175 of WBSR Pt. I by the Department of Fire and Emergency Services, Government of West Bengal as communicated under letter dated March 14, 2007 (Annexure K to the original application). Since the period for which the applicant has prayed for arrears of salary of his father was the period of absence of the deceased employee, which was regularised by grant of Extra Ordinary Leave and since nothing is on record to indicate that any leave was to the credit of the deceased employee which was not granted by the authority concerned at the time of regularisation of his absence from duty, we do not find any merit in the submission made on behalf of the applicant that the applicant is entitled to get arrears of salary of

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his father during the period from December 30, 1998 to October 4, 2005. In our view, the present application is misconceived and liable to be dismissed. As a result, the original application is dismissed.

Let a plain copy of the order be supplied to both the parties.

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

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

Rajib