

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. OA – 2 of 2023

Gouranga Rabi Das & Another - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No.	For the Applicants	: None
and		
Date of order	For the Respondents	: Mr. S.N. Ray,
<u>7</u>		Advocate
16.05.2024		

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No. 638 – WBAT / 2J-15/2016 dated 23rd November, 2022 issued in exercise of the powers conferred under Section 5(6) of the Administrative Tribunals Act, 1985.

On consent of the learned counsels, the case is taken up for consideration sitting singly.

The applicant, Gouranga Rabi Das and Nilmoni Saha, father of the second applicant, Dipen Kumar Saha had participated in the selection process for the post of Livestock Development Assistant held during 1995 – 1996. Initially, they were not found successful but later in compliance of a direction of this Tribunal in O.A. No. 222 of 1998 both of them were offered pre service training on 27.01.2006. After completion of the training they were appointed to the post, to which they joined on 27.10.2008 and 31.10.2008 respectively and in due course of time, both of them retired in January, 2018 and December, 2017 respectively. However, their service period was less than 10 years, therefore, they did not qualify for receiving pension. Contention of the applicants is that, had their appointment been given along with other candidates in the year 1998, they would have completed the required qualifying service, and thus, eligible for pension.

Having heard submissions of the learned counsels and on examination of records in this application, the Tribunal has observed the following important issues, which are as under:-

The prayer in this application for grant of pension / family pension is intrinsically linked to the issues adjudicated in an earlier application being O.A. No 222 of 1998. In that matter, it was agitated by the applicants that though belonging to the Scheduled Caste category and being within the zone of consideration, the applicants were not selected as successful candidates. Their grievance was that while drawing up

the final list of successful candidates, neither the 100 point roster for reservation nor provisions of the West Bengal S.C. and S.T. (Reservation), 1976 were followed by the respondent authorities. Having examined the matter in totality, the Tribunal having found merit in their prayers had directed the respondent authorities to strictly follow the 100-point roster as well as the West Bengal S.C. and S.T. (Reservation) Act, 1976, and if the applicants were found eligible than they should be selected for the pre service training. In accordance with such direction, the respondent authority after revisiting the panel of successful candidates had found the applicants eligible for the post of Livestock Development Assistant under the S.C. category. Accordingly, the applicants were provisionally selected to officiate in the post of Livestock Development Assistant. In terms of such appointment, the applicant joined their respective posts of Livestock Development Assistant. Having joined the post, the respondents issued a supplementary order requiring the applicants to undergo a “one year pre service training” from 13.02.2006. However, after serving less than 10 years, the applicants superannuated without being eligible for pension.

Another important observation is that the order of the Tribunal in O.A. 222 of 1998 directing the respondents to strictly comply with the Reservation Rules and offer pre service training to the applicants if they qualify was, though passed on 24.02.2003, but such order was complied by offering pre service training to the applicants only on 27.01.2006. Such lapse on part of the respondent authorities also delayed the date of joining by the applicants by 2 years 11 months 3 days. The order of the Tribunal was not challenged by the respondent authorities. It is rather interesting to find that by compliance to such order gives the impression that the Tribunal was right in finding the defects in the panel of successful candidates. It also means that the applicants’ points of argument was correct that the list of successful candidates, particularly, belonging to the S.C. category was defective and the applicants were ignored for such selection despite belonging to the S.C. category. Therefore, it is safe to state that the respondent authorities had made a serious mistake while preparing the list of successful candidates, particularly, the candidates belonging to the S.C. category. Had such mistake been not made, it is also safe to assume that the applicants would have been selected under the S.C. category on the very first round of selection which was finalised some time in

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1997. Had these applicants been appointed in 1997, they would have completed more than 10 years of service and thus qualified for pension. Therefore, having accepted the mistake in not appointing the applicants during the first round itself, now the respondent authority cannot reject the claim of pensionary benefit on the ground that their services fell short of 10 years. The Tribunal finds that the delay of more than 12 years from 04.10.1996 to 22.10.2008 squarely lies on the respondent authorities' side. It was due to their ignorance and lack of application of mind that the appointment of the applicants was delayed by 12 years. It was the laches on part of the respondent authorities and not the applicants that such a long delay had occurred in rectifying the mistake and subsequently correcting the same by appointing the applicants at a later date.

In view of the observations above, the Tribunal finds that the impugned order is not in conformity with the Rules and is not tenable under any Law. Therefore, the reasoned order dated 16.12.2022 being quashable is quashed and set aside. The respondent no. 2, the Director of Animal Husbandry and Veterinary Service is further directed to reconsider the matter and pass a reasoned order in the light of the Tribunal's observations given in the foregoing paragraphs within a period of three months from the date of communication of this order. Such reasoned order after reconsideration be communicated to the applicants within two weeks thereof.

Accordingly, this application is disposed of.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P