

S/L 11
31.03.2026
Court No.04
B.K.N

W.P.S.T. 253 of 2025

Gopal Chakraborty

Vs.

The State of West Bengal & Ors.

*Mr. Anjan Bhattacharya,
Ms. Anita Shaw
Ms. Seema Thakur*

...for the Petitioner.

*Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Pinaki Dhole,*

...for the State Respondents.

1. Heard the learned advocate for the writ petitioner as well as the learned AGP.
2. The admitted fact emerging from the record is a 12 days deficiency in qualifying service of 10 years, requisite for the purposes of grant of minimum pension under the Death-cum-Retirement Benefit Rules, 1971 (hereinafter referred to as DCRB Rules). Seeking condonation of such deficiency the petitioner approached the authorities pursuant to an order passed in the earlier O.A. No. 271 of 2025 filed by the writ petitioner.
3. The petitioner's claim for such condonation in deficiency is rejected by a reasoned order dated 10.10.2025 issued under the Signature of the Additional Chief Secretary to the Government of West Bengal in the Irrigation and Waterways Department of the State Government. The order dated 10.10.2025 was put to challenge by the writ petitioner again before the West Bengal Administrative Tribunal (for short Tribunal) in O.A. No. 604 of 2025
4. On account the Tribunal being non-functional for want of any member, the petitioner having filed the Original

Application approached this Court alleging that he is left remedy less in the circumstance. He has placed reliance on decision of the Hon'ble Apex Court in the case of ***Roger Mathew –Vs.- South Indian Bank Limited represented by its Chief Manager and Others*** reported in **(2020) 6 SCC 1**. In the above noted facts and circumstances, we proceeded to consider the claim.

5. The reasoned order dated 10.10.2025 is founded on a consideration by the Additional Chief Secretary that there is some bar in Rule 36 of the DCRB Rules in granting such relaxation to the writ petitioner and since interpretation of the Rule is reserved for the Government, he has rejected the representation filed by the writ petitioner. An issue of law, therefore, emerges whether Rule 36 provides any scope for relaxation or condonation in the requisite qualifying service for grant of minimum superannuation pension under the DCRB Rules. Since the fact and the number of days of deficiency is not in dispute, the parties have advanced submissions with reference to the Rule 36.
6. The learned advocate for the writ petitioner in course of his submissions has also relied upon a decision of a coordinate Bench rendered in ***W.P.S.T. 20 of 2024*** on 02.12.2024. The judgment was delivered in the case of ***Tapan Kumar Mondal –Vs.- The State of West Bengal & Ors.*** He submits that the judgment was assailed by the State in SLP(Civil) Diary No. 12085 of 2025. The Hon'ble Apex Court was not inclined to

interfere with the judgment and the SLP was dismissed by an order dated 09.04.2025. He submits that the judgment in the case of ***Tapan Kumar Mondal (supra)*** has considered the very same issue whether a relaxation/condonation is permissible under Rule 36 of the DCRB Rules insofar as superannuation pension is concerned.

7. The learned AGP has opposed the submissions advanced by the learned advocate for the writ petitioner. However, he is not in a position to deny the submission regarding judgment in the case of ***Tapan Kumar Mondal (supra)***.
8. On consideration of the rival submissions we find that in the case of ***Tapan Kumar Mondal (supra)*** there was a shortfall of three months and ten days in the requisite qualifying service for grant of minimum superannuation pension. Whether Rule 36 provides or leaves any scope for such condonation was considered by the coordinate Bench. Similar arguments were considered which we consider it apposite to reproduce in the present order:

“2. The learned Counsel for the petitioner submits that the Tribunal has misdirected itself by relying upon the order passed by the Chief Engineer in consultation with the Finance Department. The power of the Government to condone deficiency in service is specified in Rule 36 of the DCRB Rules. Since the petitioner has placed reliance on this Rule we propose to reproduce the same herein, which reads as follows:

“36. Power of Government to condone deficiency in service – Upon any condition which it may think fit to impose, Government may condone a deficiency of six months in the qualifying service of a Government servant.

Note – The deficiency should not be condoned with a view to make up the minimum prescribed qualifying service for the purpose of death gratuity or family pension. In other cases power should be restricted to Government servant drawing pay not exceeding Rs.425/- per month at the time of retirement on invalid or compensation pension.”

3. Referring to the provision, it is submitted that the Rule contemplates condoning the deficiency in qualifying service of a Government servant up to six months. The exceptions are contained in the note below the Rule. The petitioner’s case does not come within any of the exceptions curbed out in the note below of the Rule 36 of DCRB Rules and therefore, the decision of the Chief Engineer, as affirmed by the Tribunal is unsustainable.

4. The petitioner’s case is neither a claim for compensation pension, nor invalid pension. It is a claim for a pension simpliciter and therefore the note appended below Rule 36 will have no application in the case of the petitioner. It is submitted that rejection of a claim under similar circumstance of one **Uday Kumar Pore** was considered by this Court in the writ proceeding arising out of **W.P.S.T. 125 of 2022**. The coordinate Bench of this Court has set aside such consideration leading to rejection of his claim. The learned Counsel for the petitioner has also relied on the case of one **Asoke Bhakat**. It is submitted that the said **Asoke Bhakat** had moved this Court under similar circumstances by filing a Writ Petition bearing **W.P.S.T. No. 37 of 2022**. The deficiency in his case was condoned by a direction of a coordinate Bench of this Court in his favour. The Court has directed that the petitioner shall be treated as having completed the qualifying service under the scheme and be paid all admissible consequential benefits. It is submitted that the petitioner’s claim is also fit to be allowed in terms of the said Judgment.”

9. In such factual background and upon such consideration of the submissions, the coordinate Bench held:

“6. We have heard the learned Counsel for the parties. Considered the two rules being relied upon as well as the two decisions of the coordinate Bench, taken note of above. A bare perusal of Rule 36, extracted above, makes it clear that the discretion to condone a deficiency of six months in qualifying service of a Government servant for grant of pension is limited by the note below the Rule, if the deficiency arises in the qualifying service for the purposes of death gratuity or family pension. In other cases of retirement on invalid or

compensation pension also there is a limit specified by the note below Rule 36. The note below Rule 36, therefore has no application in the case of the petitioner who is seeking relaxation/condonation in the qualifying service for the purposes of grant of superannuation pension or pension simpliciter. The relaxation being sought for is well within the six months' limitation as specified in Rule 36, as he has a deficiency of only three months and ten days. The note below Rule 36 therefore does not come in the way of condonation of deficiency in service in the case of the petitioner.

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9. In our considered opinion Rule 36 of the DCRB Rules covers the claim of the petitioner. The power of condonation having been granted under the Rule 36 and since petitioner's claim is for condoning the short-fall in the superannuation pension only we do not find any limitation being specified by the note below Rule 36 for grant of condonation to the petitioner.

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11. We, therefore, set aside the order of the Tribunal as well as the Chief Engineer (Head Quarter), insofar as it has rejected the claim of the writ petitioner, we find that the power under Rule 36 to condone the deficiency or relax the requirement of qualifying service for superannuation pension is with a rider that the same may be upon any condition which the Government may think fit to impose. What condition the Government will think fit to impose for grant of such relaxation/condonation, therefore lies in the discretion of the State Government.

12. Reserving the discretion of the competent authority to take a decision only with respect to the conditions to be imposed for purposes of granting the condonation, we dispose of the matter. The competent authority however would be under a legal obligation to take a decision on the conditions to be imposed in terms of Rule 36 and to grant extension subject to such conditions, positively within three months from the date of receipt of the copy of this order and Judgment.

13. The writ petition stands allowed.

14. There shall be, however, no order as to costs."

10. The only difference between the case of ***Tapan Kumar Mondal*** (*supra*) and the present writ petitioner is that whereas Tapan Kumar Mondal required condonation of

a shortfall of three months and ten days, the present writ petitioner requires a condonation of only twelve days so as to achieve the requisite qualifying service of ten years for grant of minimum pension. In view thereof we find that the petitioner's case is covered by the decision, extract of which we have quoted above. The petitioner, therefore, is entitled to the relief in the same terms. We, therefore, set aside the order of the Additional Chief Secretary dated 10.10.2025.

11. The competent authority is directed to take a decision with respect to the conditions to be imposed for the purpose of granting condonation. The competent authority would be under a legal obligation to take a decision in terms of Rule 36 and to grant condonation subject to such conditions, positively within three months from the date of receipt/production of a copy of this order.
12. After the order was dictated the learned AGP rightly pointed out that the petitioner, before availing the benefit of pension would be required to refund/return any benefits which he has also availed, and which are beyond the scope of superannuation pension in terms of the DCRB Rules.
13. Mr. Bhattacharya submits that there can be no dispute to such a proposition. In view thereof, we leave it to the authority to work out the adjustment/refund in accordance with law, but within the time frame specified above.

14. The writ petition is disposed of.

15. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Madhuresh Prasad, J.)

(Prasenjit Biswas, J.)