

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

The Hon'ble Justice Soumitra Pal (Chairman)  
& The Hon'ble Mr. Subesh Kumar Das (Administrative Member)

Case No – O.A. 1317 of 2010

**JHARNA DAS GUPTA & ORS.      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>25</p> <hr/> <p>06.08.2019</p>	<p>For the Applicant :      Mr. B.R. Neogi,    Mr. A.K. Neogi,    Advocates</p> <p>For the Respondents :      Mr. S. Ghosh    Advocate</p> <p>In this application, Jharna Das Gupta and Anima Mitra, the applicants, have prayed for a direction upon the respondents to grant pensionary benefits in terms of the order passed by the Tribunal in O.A. 960 of 2002 and implementation of the order dated 4<sup>th</sup> April, 2005, issued by the Joint Secretary to the Government of West Bengal, Health and Family Welfare Department, after setting aside the impugned order dated 29<sup>th</sup> July, 2005, rejecting the prayer of the applicant to grant pensionary benefits. The matter was admitted. Thereafter reply and rejoinder have been filed.</p> <p>It appears that the applicants, being aggrieved by an order dated 28<sup>th</sup> March, 2011 passed by the Tribunal dismissing the instant application, had filed W.P.S.T. No. 18 of 2012 which was allowed by passing an order, the relevant portion of which is as under:</p>	

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	<p style="text-align: center;">“.....Seeking benefit of pension under a Government order dated April 4, 2005 some former employees (including the petitioner) of R.G. Kar Medical College filed an OA No. 157 of 2005 in the Tribunal. By an order dated March 13, 2005 the Tribunal directed the Principal Secretary, Health &amp; Family Welfare Department, Government of West Bengal to treat the OA as a representation and decide the claims.</p> <p style="text-align: center;">By a decision dated July 29, 2005 the Principal Secretary rejected the claims on the grounds that the persons had not applied for conversion from CPF to GPF during the term of their employment. Questioning the decision the petitioner filed the OA.</p> <p style="text-align: center;">The OA was dismissed at the admission stage. It is evident from the impugned order that the Tribunal did not examine whether the petitioner was entitled to the benefit pursuant to para.5 of the Government order dated April 4, 2005. The case stated in para.6(viii) of OA reveals that the</p>	

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	<p>petitioner claimed the benefit on the basis of the Government order.</p> <p>The Tribunal accepted the decision of the Principal Secretary that the petitioner having not applied for conversion during the term of her employment would not be entitled to the benefit of pension.</p> <p>We find force in the submission that in view of the things mentioned in para.5 of the Government order dated April 4, 2005 the petitioner willing to comply with the condition mentioned therein was not required to apply for conversion from CPF to GPF during the term of her employment.</p> <p>It is to be noted that at the date the petitioner claimed the benefit it was not possible for her to apply for conversion; for she had retired from the service as back as August 13, 2000. She claimed the benefit after the Government issued the order dated April 4, 2005.</p> <p>For these reasons, we set aside the impugned order, allow the WPST to this extent and direct the Tribunal to</p>	

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	<p>hear the OA afresh in the light of the Government order dated April 4, 2005.....”</p> <p>Mr. B.R. Neogi, learned advocate for the applicant submits that since in a similar matter, being O.A. 690 of 2002 : Manabendra Nath Mukherjee and Another Vs. The State of West Bengal &amp; Others, the Tribunal by order dated 11<sup>th</sup> July, 2013, had directed the Director of Health Services, West Bengal to consider the case of the applicant therein by implementing the circular dated 4<sup>th</sup> April, 2005, appropriate order may be passed. On a query it is submitted on behalf of the applicant that the applicant has withdrawn provident fund and gratuity along with interest.</p> <p>Mr. S. Ghosh, learned advocate for the respondents, relying on the reply submits that admittedly the applicants have drawn retiring gratuity and have received CPF amount consisting their own contribution and government contribution along with interest accrued thereon. Moreover, there is nothing on record to show that the applicants had applied for conversion from CPF to GPF during their service tenure. According to him the judgement of the Tribunal in Manabendra Nath Mukherjee (supra) is not applicable as it is evident that therein the applicants had applied for conversion in the year 2005</p>	

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SCN.	<p>which the applicants herein have not done.</p> <p>Having heard the learned advocates for the parties and considering the facts and circumstances of this case, the application is disposed of by granting liberty to each of the applicants to file separate representations along with copies of necessary documents before the Director of Health Services, West Bengal, the respondent no.3 within four weeks from the date of obtaining the certified copy of this order. If representations ventilating their grievances, are filed within the time as stipulated, the respondent no.3 shall dispose of the same by passing a reasoned order to be communicated to the parties within twelve weeks after giving an opportunity of hearing, after verifying the records and after going through the circular dated 4<sup>th</sup> April, 2005, ignoring the order dated 29<sup>th</sup> July, 2005 which is under challenge and after dealing with the judgement passed in Manabendra Nath Mukherjee (supra) as to whether the same is applicable to the facts and circumstances of the applicants.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	