

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. 243 of 2020

Dr. Atanu Biswas 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>2</p> <hr/> <p>24.08.2020</p>	<p>For the Applicant : Mr. Shyamal Roy, Advocate</p> <p>For the Respondents : Mr. G.P. Banerjee, Advocate</p> <p>Let affidavit of service filed today be kept on record.</p> <p>In this application, Dr. Atanu Biswas, the applicant, has prayed for certain reliefs, the relevant portion of which is as under:</p> <p style="padding-left: 40px;">“7. a) Issue a mandatory direction to quash / set aside / rescind the Notification being Memo No. DME / SPL / Corresp / 2020 / 185 dated 06.07.2020, as issued by the authority concerned and also Memo No. HFW 23099 / 66 / 2020 / M / 905 dated 08.07.2020 be set aside / quash.</p> <p style="padding-left: 40px;">b) Given a direction upon the respondents, not to cancel the admission of applicant M.D. Radiology at Command Hospital</p>	

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	<p>E.C. Kolkata already admitted as per first round counselling.</p> <p>c) The respondents may kindly be directed to entertained the representation which has pending and passed a special order in respect of notification being Memo No. DME / SPL Corresp/2020 / 185 dated 06.07.2020 and the Memo No. H.F.W. 23099 / 66 / 2020 / M / 905 dated 08.07.2020 not applicable to the petitioner, by a Special Order passed in the light of submitted representation.”</p> <p>It appears that the applicant had joined in the post as RMO cum Clinical Tutor in the Department of Radiology at Midnapore Medical College, Paschim Medinipur on 21st August, 2015. According to the applicant a notification dated 26th February, 2020 was published by the Health and Family Welfare Department, Government of West Bengal that from the academic session 2020 onwards for selection of candidates / admission in post graduate courses weightage would be given to the in-service doctors who are the officers of the West Bengal Health Service and selection would be</p>	

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	<p>determined through National Eligibility cum Entrance Test (NEET). The applicant applied. After the examination results were published, the applicant was placed 69 in the serial number as an in-service candidate. After Round 1 counselling the petitioner obtained a seat and was admitted in the Command Hospital E.C., Kolkata in Radiology on 12th May, 2020. However, as evident from the memo dated 6th July, 2020 issued by the Director of Health Services,, the respondent no.3, the list was cancelled as the applicant along with others “do not qualify for such marks incentives” which is explained as evident from the subsequent memo dated 8th July, 2020, the relevant portion of which is as under:</p> <p style="padding-left: 40px;">“The said incentive marks although initially were given to some service candidates working at BSMC, Bankura and MMC Midnapore, but the same were deducted subsequently and on being detected owing to the fact that the aforesaid two medical colleges do not fall within the jurisdiction of Paschimanchal Unnayan Parshad, in terms of government notification dated 26.02.2020 published in this regards. That was a sheer bonafide mistake and the same was therefore rectified subsequently. Consequently, those seats had to be</p>	

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	<p>cancelled. However, those candidates are at liberty to participate in the second round of counselling without any incentive marks. It is also to be kept in mind that one seat at Calcutta Medical College is kept on hold due to the order of the Hon'ble Court.”</p> <p>Mr. Shyamal Roy, learned advocate appearing on behalf of the applicant submits that as the Medinipur Medical College, where the applicant was employed comes under the Paschimanchal Unnayan Parshad, such cancellation is uncalled for and illegal and accordingly appropriate order, as prayed for, may be passed.</p> <p>Mr. G.P. Banerjee, learned advocate on behalf of the State respondents submits on instruction that since Medinipur Medical College, where the applicant was employed was not within the Paschimanchal Unnayan Parshad and mistakenly the applicant was declared successful, which is evident from the memo dated 8th July, 2020, no order may be passed. That apart as since the applicant has filed a writ application being WP No. 5935 (W) of 2020 along with CAN No. 4078 of 2020, wherein his name appears against serial no.3, on the self-same cause of action which has been suppressed in this Original Application, the application may be dismissed.</p> <p>On a query it is submitted that writ petition</p>	

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SCN.	<p>being W.P. No. 5935 (W) of 2020, along with CAN No. 4078 of 2020, is pending before the High Court.</p> <p>Heard learned advocates for the parties. Perusing the memo dated 6th July, 2020 as well as the memo dated 8th July, 2020 we find cogent reasons have been given for cancellation of the candidature of the applicant. We find that the grant of the incentive marks was due to bonafide mistake which has been adequately explained. The same has not been challenged in the Original Application. Moreover, as the applicant has moved the High Court as evident from the CAN No. 4078 of 2020 on 9th July, 2020 on the self-same cause of action and thereafter has moved this Tribunal on 30th July, 2020 by filing the Original Application and has suppressed about the factum of moving the High Court on the self-same cause of action, we find the application is to be dismissed. Hence, the application is dismissed with cost which is assessed at Rs.5,100/- (Rupees five thousand and one hundred only). Let a copy of the W.P. No. 5935 (W) of 2020 along with CAN No. 4078 of 2020 in W.P. No. 5935 (W) of 2020 be kept on record.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(Soumitra Pal) CHAIRMAN</p>	