

**ORDER SHEET**

**WEST BENGAL ADMINISTRATIVE TRIBUNAL**

**Present-**

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

**Case No – OA 1060 OF 2017**

Dr. Bisweswar Mandal 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
08 08.04.2019	<p>For the Applicant : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Respondents : S. Ghosh, Learned Advocate.</p> <p>The applicant has prayed for direction upon the respondents for regularisation of the absence of the applicant from duty in terms of the representation submitted by the applicant on July 19, 2017 after setting aside the order dated November 16, 2017 issued by the respondent no. 3 (Annexure-F to the original application).</p> <p>The applicant is a Medical Officer of Lalbagh Sub-Divisional Hospital in the district of Murshidabad. He was absent from duty during the period from April 1, 2015 to June 18, 2017. The contention of the applicant is that the applicant was not allowed to resume duty in the month of March 2017 and as such the applicant had to move this Tribunal by filing OA-486 of 2017. On June 14, 2017, this Tribunal disposed of OA-486 of 2017 by directing the Chief Medical Officer of Health, Murshidabad to permit the applicant to resume duty. The Tribunal observed in the order passed in connection with OA-486 of 2017 that the Director of Health Services, West Bengal should consider the reply submitted by the applicant in response to the show cause notice for arrival to its logical conclusion, irrespective of joining of the applicant in the</p>	

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service at Lalbagh Sub-Divisional Hospital. The applicant ultimately resumed duty as Medical Officer of Sub-Divisional Hospital, Lalbagh on June 19, 2017.

The respondent no. 3 issued the impugned letter dated November 16, 2017 to the respondent no. 5 requesting him to withhold salary of the applicant till the final outcome of the disciplinary proceeding against the applicant. By an interim order dated December 7, 2017 passed in the present original application, the Tribunal stayed the operation of the said letter dated November 16, 2017 and consequently the applicant has been drawing salary from the establishment of the Superintendent of Lalbagh Sub-Divisional Hospital, Murshidabad. On our query, Mr. Ghosh, Learned Counsel representing the state respondents, submits that the disciplinary proceeding has not yet been initiated against the applicant by issuance of charge sheet. Since the disciplinary proceeding has not yet been started against the applicant by issuance of charge sheet after lapse of almost one and half year from the date of issuance of order by the respondent no. 3 for withholding the salary of the applicant on the pretext of pendency of disciplinary proceeding against him, we are constrained to hold that the impugned letter dated November 16, 2017 is arbitrary, illegal and liable to be set aside.

In view of our above findings, impugned letter dated November 16, 2017 issued by the respondent no. 3 (Annexure-F to the original application) is set aside.

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We have already observed that the applicant was absent from duty during the period from April 1, 2015 to June 18, 2017. Since no disciplinary proceeding is pending against the applicant till date, the leave sanctioning authority should take steps for regularisation of absence of the applicant from duty by grant of leave to the credit of the applicant and thereafter by grant of Extra Ordinary Leave by invoking the provisions of rules of WBSR, Part-I within stipulated period of time.

Accordingly, the respondent no. 1, Principal Secretary to the Government of West Bengal, Department of Health & Family Welfare is directed to regularise the absence of the applicant from duty during the period from April 1, 2015 to June 18, 2017 by taking into consideration representation submitted by the applicant on July 19, 2017 (Annexure-G to the original application) by granting leave of any kind to the credit of the applicant and by granting EOL in terms of the provisions of WBSR, Part-I within a period of 12 (twelve) weeks from the date of communication of the order and take necessary follow up action within a period of 8 (eight) weeks thereafter.

With the above direction, the original application stands **disposed of.**

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

( S.K. DAS )  
MEMBER(A)

( R. K. BAG )  
MEMBER (J)

Sanjib

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