

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

The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Subesh Kumar Das

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;">05</p> <hr/> <p>11.06.2018</p>	<p>OA-260/2018 : SOUMYA KUNDU & 43 Ors. V The State of West Bengal & Others</p> <p>For the Applicants : Mr. Pratik Dhar, Mr. Kartik Kr. Roy, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Medical Council of India : Mr. S. Bhattacharyya, Learned Advocate.</p> <p>For the WB University of Health Sciences : Mr. S. Roy, Mr. D.N. Maity, Mrs. S. Majumdar Learned Advocates.</p> <p>OA-279/2018 : SWAGATENDRA NARAYAN BASU V The State of West Bengal & Others</p> <p>For the Applicant : Mr. A. Mookherji, Learned Advocate.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Medical Council of India : Mr. S. Bhattacharyya, Learned Advocate.</p> <p>For the WB University of Health Sciences : Mr. S. Roy, Mr. D.N. Maity, Mrs. S. Majumdar Learned Advocates.</p> <p>OA-292/2018 : DR. ARIJIT ROY & 5 Ors. V The State of West Bengal & Others</p> <p>For the Applicants : Mr. S.K. Das, Mr. A. Ahmed, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>For the Medical Council of India : Mr. S. Bhattacharyya, Learned Advocate.</p> <p>For the WB University of Health Sciences : Mr. S. Roy, Mr. D.N. Maity, Mrs. S. Majumdar Learned Advocates.</p> <p>OA-303/2018 : NABANITA BISWAS V The State of West Bengal & Others</p> <p>For the Applicant : Mr. S.K. Das, Mr. A. Ahmed, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Medical Council of India : Mr. S. Bhattacharyya, Learned Advocate.</p> <p>For the WB University of Health Sciences : Mr. S. Roy, Mr. D.N. Maity, Mrs. S. Majumdar Learned Advocates.</p> <p>OA-306/2018 : UTPAL KUMAR PANDA & 50 Ors. V The State of West Bengal & Others</p> <p>For the Applicants : Mr. Pratik Dhar, Mr. Kartik Kr. Roy, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Medical Council of India : Mr. S. Bhattacharyya, Learned Advocate.</p> <p>For the WB University of Health Sciences : Mr. S. Roy, Mr. D.N. Maity, Mrs. S. Majumdar Learned Advocates.</p> <p>OA-307/2018 : MOUMITA DAS SARKAR V The State of West Bengal & Others</p> <p>For the Applicant : Mr. S.K. Das, Mr. A. Ahmed, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee,</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p style="text-align: center;">Learned Advocate.</p> <p>For the Medical Council of India : Mr. S. Bhattacharyya, Learned Advocate.</p> <p>For the WB University of Health Sciences : Mr. S. Roy, Mr. D.N. Maity, Learned Advocates.</p> <p>OA-323/2018 : MOSIUR RAHAMAN V The State of West Bengal & Others</p> <p>For the Applicant : Mr. Pratik Dhar, Mr. Kartik Kr. Roy, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Medical Council of India : Mr. S. Bhattacharyya, Learned Advocate.</p> <p>For the WB University of Health Sciences : Mr. S. Roy, Mr. D.N. Maity, Mrs. S. Majumdar Learned Advocates.</p> <p>OA-329/2018 : DR. ASIS KUMAR GHOSH & 4 Ors. V The State of West Bengal & Others</p> <p>For the Applicants : Mr. Pratik Dhar, Mr. Kartik Kr. Roy, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Medical Council of India : Mr. S. Bhattacharyya, Learned Advocate.</p> <p>For the WB University of Health Sciences : Mr. S. Roy, Mr. D.N. Maity, Mrs. S. Majumdar Learned Advocates.</p> <p>OA-338/2018 : DR. AMIT KUMAR MONDAL V The State of West Bengal & Others</p> <p>For the Applicant : Mr. S.K. Das, Mr. A. Ahmed, Learned Advocates.</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Medical Council of India : Mr. S. Bhattacharyya, Learned Advocate.</p> <p>For the WB University of Health Sciences : Mr. S. Roy, Mr. D.N. Maity, Mrs. S. Majumdar Learned Advocates.</p> <p>OA-361/2018 : DURGA PADA GHOSH V The State of West Bengal & Others</p> <p>For the Applicant : Mr. Pratik Dhar, Mr. Kartik Kr. Roy, Learned Advocates.</p> <p>For the Respondents : Mr. G.P. Banerjee, Learned Advocate.</p> <p>For the Medical Council of India : Mr. S. Bhattacharyya, Learned Advocate.</p> <p>For the WB University of Health Sciences : Mr. S. Roy, Mr. D.N. Maity, Mrs. S. Majumdar Learned Advocates.</p> <p>Additional reply filed by the State respondents today is kept on record.</p> <p>The applicants are Medical Officers under West Bengal Health Service and/or West Bengal Health-cum-Administrative Service. The applicants completed three years of service under the Department of Health and Family Welfare, Government of West Bengal and were eligible to appear in NEETPG 2018. The applicants claim to have qualified in NEETPG 2018 and obtained No Objection Certificate (in short NOC) from Director of Health Services, West Bengal for participating in the counselling for admission to PG Course as Trainee Reserve.</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>There are 38 Medical Officers as applicants in OA No. 260 of 2018, 1 Medical Officer as applicant in OA No. 279 of 2018, 6 Medical Officers as applicants in OA No. 292 of 2018, 1 Medical Officer as applicant in OA No. 303 of 2018, 50 Medical Officers as applicants in OA No. 306 of 2018, 1 Medical Officer as applicant in OA No. 307 of 2018, 1 Medical Officer as applicant in OA No. 323 of 2018, 5 Medical Officers as applicants in OA No. 329 of 2018, 1 Medical Officer as applicant in OA No. 338 of 2018 and 1 Medical Officer as applicant in OA No. 361 of 2018. All the above 105 applicants were granted NOC by the respondent no. 3 for participating in the counselling for admission to PG Courses, but Sponsorship Certificate was not issued to them for their placement on Trainee Reserve. While temporary NOC was issued to 364 Medical Officers for participating in the counselling for admission to PG Course, the respondent no. 3 restricted the number of Trainee Reserve to 180 for the academic session 2018 by issuing Memo No. HPT/23T-16-18/A1539 dated April 12, 2018 (hereinafter referred to as order dated April 12, 2018). The said order was subsequently modified by the respondent no. 3 by issuing Memo No. HAD/10M-07-18/Pt.-II/M-151 dated April 20, 2018 (hereinafter referred to as order dated April 20, 2018) whereby the number of Trainee Reserve was increased from 180 to 194. Subsequently, the number of</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>Trainee Reserve was again increased from 194 to 196 by the respondent no. 3 by issuing Memo No. HAD/10M-07-18/Pt.-II/M-152 dated April 21. 2018 (hereinafter referred to as order dated April 21, 2018). The applicants have prayed for quashing the said order dated April 12. 2018, order dated April 20, 2018 and order dated April 21, 2018 issued by the respondent no. 3 and other ancillary reliefs by filing several original applications and by filing supplementary affidavit on the ground that the number of Trainee Reserve was fixed in an arbitrary and whimsical manner without following the provisions of the rules and administrative orders issued in this regard from time to time by the State respondents.</p> <p>Mr. Pratik Dhar, Learned Senior Counsel appearing on behalf of some of the applicants contends that all the applicants have fulfilled eligibility criteria for placement on Trainee Reserve as Government sponsored candidates. He has made two fold submissions for challenging the orders of fixing the number of Trainee Reserve by the respondent no. 3 : first, admission of the applicants in PG Course of the University without obtaining sponsorship certificate was done by the applicants under compulsion and the provisions of the rules in this regard should be treated as directory in nature and secondly, the number of Trainee Reserve must be increased from 196 to 348 by way of mathematical calculation of the existing strength</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>of the service. Mr. Dhar has accepted the number of existing strength of service disclosed by the State respondents in the reply as 6746 as on December 31, 2017. By referring to Notification dated March 6, 2018 issued by respondent no. 1, he has categorically pointed out that 10% of the existing strength of the service as on December 31, 2017 will be 674. The specific submission on behalf of the applicants is that the numbers of the Medical Officers who joined in 2015, 2016 and 2017 cannot be excluded from the existing strength of the service, particularly when 133 Medical Officers who joined in the service in the year 2015, have already been allowed for provisional admission in PG course as Government sponsored candidates. By deducting the number of Medical Officers placed on Trainee Reserve in the previous year (326), the number of Trainee Reserve for the year of 2018 should be 348. Mr. Dhar has urged us to consider that all the present applicants should come within the ambit of the strength of Trainee Reserve as per merit list even after accommodating 196 candidates who were allowed for admission in PG course as government sponsored candidates. Other Learned Counsels representing other applicants have adopted argument of Mr. Dhar.</p> <p>Mr. G.P. Banerjee, Learned Counsel representing</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>the State respondents has referred to the contention made in paragraph 2 of Reply and submitted that the Medical Officers who have joined in the service in 2015, 2016 and 2017 have not completed 3 years of service as yet and as such the posts held by those Medical Officers must be excluded from the existing strength of 6746. He further submits that by excluding the posts held by Medical Officers who have not yet been confirmed in service, the number of existing strength of Medical Officers will be 5061 (6746-1685). According to Mr. Banerjee, 10% of the above existing strength will be 506 and by deducting the number of Medical Officers placed on Trainee Reserve in the previous years (326), the number of Trainee Reserve for the year 2018 will be 180 (506-326). The specific contention of Mr. Banerjee is that the Medical Officers who have not completed three years of service are not eligible to be placed on Trainee Reserve as government sponsored candidates as per provisions of Rule 3(a) (i) of the West Bengal Medical Education Service, the West Bengal Health Service and the West Bengal Public Health-cum-Administrative Service (Placement on Trainee Reserve) Rules, 2015 (hereinafter referred to as "The Trainee Reserve Rules of 2015)" and as such the Medical Officers who are not eligible to qualify for placement on Trainee Reserve are to be excluded from the existing strength of service.</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>The issue to be decided by the Tribunal is whether 105 applicants will be placed on Trainee Reserve as per provisions of the Trainee Reserve Rules, 2015 and the orders issued from time to time in this regard by the State respondents. Admittedly, all the applicants are Medical Officers either under West Bengal Health Service or under West Bengal Public Health-cum-Administrative Service and they have completed 3 years of service. The further admitted position is that the respondent no. 3 issued NOC to all the applicants for participating in the counselling after they were qualified in NEETPG, 2018 conducted by National Board of Examination (NBE). The applicants enrolled themselves for participation in counselling as in-service candidates after receiving NOC from the respondent No. 3. The applicants, thus, fulfilled eligibility criteria for placement on Trainee Reserve as Government sponsored candidates in accordance with the provisions of Rule 3 of the Trainee Reserve Rules of 2015.</p> <p>Now, the question which calls for determination is whether the applicants are coming within the ambit of number of Trainee Reserves to be fixed by the State respondents. The provisions of Rule 9 of the Trainee Reserve Rules of 2015 has clearly laid down that the placement of any Medical Officer on Trainee Reserve as a Government sponsored candidate is entirely under the discretion of the Department of Health and Family</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>Welfare, Government of West Bengal. It is well-settled that whenever any discretion is to be exercised by the State, the said discretion must be exercised fairly, reasonably, judiciously and in accordance with well-settled principles of law and not by resorting to the procedure which is arbitrary and illegal. Naturally, we have to consider whether the State respondents have exercised the discretion in fixing the number of Trainee Reserve for the year 2018 fairly, reasonably and in accordance with notifications and orders issued in this regard from time to time.</p> <p>Both parties have relied on Notification bearing no. HF/O/MA/216/4P-01/17/Pt.I dated March 6, 2018 issued by the respondent no. 1 for the purpose of fixing annual strength of Trainee Reserve. It is relevant to quote the said Notification dated March 6, 2018, which is as follows:</p> <p style="text-align: center;">“ <u>NOTIFICATION</u> Memo No. HF/O/MA/216/4P-01/17/Pt.I Dated, Kolkata the 06 th March 6, 2018</p> <p>The matter of fixation of annual Trainee Reserve strength in the Department of Health and Family Welfare for WBHS, WBPHAS, WBMES, Dental Service and Dental Education Service was under consideration of the Government for some time past.</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>2. In view of the above, after careful consideration, the Governor is pleased to pass an order for fixation of permissible limit of Post Graduate T.R. every year/academic session for the officers of above mentioned services, in supersession of all previous order/s in this regard.</p> <p>3. Henceforth, strength of Trainee Reserve will be fixed as 10% of existing strength (not sanctioned strength) as on as on 31st December of previous year. Therefore, for any session/year T.R. will be allowed in order of merit, to 10% of existing strength as on 31st December of previous year.</p> <p>4. Sponsorship certificate for appearing at PG counselling will be issued to specific number of candidates in order of merit. Initially, only temporary NOC will be issued to the NEET qualified candidates to appear for counselling. Such temporary NOC shall in no way be an assurance to the candidate or the admitting College/University that they are being placed as Trainee Reserve. After completion of counselling and offer of discipline, the candidates may be issued departmental sponsorship for such disciplines to be finally considered as Trainee Reserve. It is reiterated that Trainee Reserve may be denied due to administrative reasons in the interest</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>of public service.</p> <p>5. Any candidate applying for T.R./Study Leave/Extra Ordinary Leave/for second time, availed of such T.R./Study Leave/EOL previously, shall have to mandatorily obtain no objection, even while applying to appear in the qualifying examination through proper channel and appear for such examination only after having permission from appropriate authority.</p> <p>6. Admissibility of Extra Ordinary Leave for study purpose shall be dealt as individual cases as per administrative requirement under the guiding provisions of WBSR but not as trainee reserve.</p> <p>7. This has approval of Finance Department vide their UO No. Group P2/2017-2018/0927 dated 11/01/2018.</p> <p style="text-align: center;">By order of the Governor Sd/- Sri Anil Verma, IAS Principal Secretary to the Government of West Bengal “</p> <p>On perusal of the above Notification, it appears that the strength of Trainee Reserve for any academic session</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>will be fixed on the basis of 10% of existing strength (not sanctioned strength) of service as on 31st December of the previous year. The above Notification further indicates that sponsorship certificate will be issued to specific number of candidates in order of merit after completion of counselling and offer of discipline for admission in PG Course. However, temporary NOC will be issued to the candidates who qualified in NEETPG for participating in the counselling. The moot point for determination is what will be the number of Trainee Reserves for the year 2018 on the basis of 10% of existing strength of service. The State respondents have disclosed in the reply that the number of existing strength of service is 6746 as on December 31, 2017. By issuing addendum on April 02, 2018 to the earlier notification issued by the Respondent No.1 on March 6, 2018, the Respondent No.1 has clarified that the total strength of Trainee Reserve for an academic session will be determined by calculating 10% of “<u>permanent duty post</u>” of the existing strength (i.e. men in position) as on 31st December of the previous year. While the previous notification dated March 6, 2018 was issued by the Respondent No.1 by order of the Governor, the addendum was issued for clarification without obtaining any order of the Governor.</p> <p>Mr. Banerjee, Learned Counsel for the State Respondents has put forward the argument that the</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>Medical Officers who joined in the service in the year 2015, 2016 and 2017 cannot be treated as Medical Officers holding permanent post as they have not been confirmed in the service and they have not fulfilled eligibility criteria for placement on Trainee Reserve and as such 582 Medical Officers who joined in the year 2015, 716 Medical Officers who joined in the year 2016 and 387 Medical Officers who joined in the year 2017 will be excluded from the existing strength of service. According to Mr. Banerjee, the existing strength of service will be $(6746-1685) = 5061$. On the other hand, Mr. Dhar has contended that permanent post of service will be taken into consideration for counting the existing strength of service, irrespective of whether the said post is held by any Medical Officer on temporary or permanent or contractual basis. The gist of submission of Mr. Dhar is that the permanent posts held by the Medical Officers before their confirmation in service will come within the ambit of the existing strength of service.</p> <p>By Notification dated March 6, 2018, the Respondent No.1 has specifically mentioned that the strength of the Trainee Reserve will be fixed on the basis of 10% of existing strength of service and not sanctioned strength of service. The sanctioned strength of any service is full cadre strength of the service notified by the concerned department of the Government. The existing</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>strength of service indicates total number of persons working in different posts within the sanctioned strength of service. Naturally, the existing strength of service will be less than the sanctioned strength in any particular year. The existing strength of the Medical Officers is disclosed as 6746 as on December 31, 2017. The Medical Officers who joined in the service temporarily in substantive post/permanent post can never be excluded from the existing strength of service on the ground that those Medical officers have not been confirmed in the service for not completing three years of service. Consequently, Medical Officers who have been appointed temporarily in the permanent post or substantive post of the service can never be excluded from the existing strength of the service as contended on behalf of the respondents. The concept of calculation of the existing strength of service on the basis of "permanent duty post" mentioned in addendum dated April 2, 2018 issued by the Respondent No.1 is misnomer, as nature of duty discharged by Medical Officer has nothing to do with the post held by him. Moreover, the Addendum dated April 2, 2018 was issued by the respondent No. 1 without any order of the Governor, and thereby the said addendum cannot supplant the Notification dated March 6, 2018, which was issued by order of the Governor. We do not find any rational or logic in deducting 1685 posts held by Medical Officers who joined in the service in 2015, 2016 and 2017 from the</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>existing strength of service only on the grounds that they have not been confirmed in the service.</p> <p>The applicants have brought on record by way of supplementary affidavit and by filing rejoinder that 133 Medical Officers who joined in the service in the year 2015 have not only qualified in NEETPG 2018 and participated in the counselling, but got admission in PG courses as Government sponsored candidates for coming within the ambit of total 196 candidates as per merit list and they would be placed on Trainee Reserve vide order dated April 21, 2018 issued by the Respondent No. 3. The State respondents have admitted the fact that some Medical Officers who joined the service in the year 2015 have qualified in NEET PG 2018 and participated in the counselling and obtained approval for admission in PG course as Government sponsored candidates, though the figure is admitted as 124 and not 133 as contended by the applicants. The State respondents cannot be permitted to blow hot and cold simultaneously. The State respondents cannot be allowed to take the stand on the one hand that the posts held by the Medical Officers in 2015 will be deducted from the existing strength of service and on the other hand to take the contradictory stand that Medical Officers, who joined in the service in 2015, have become eligible for admission to PG courses as Government sponsored candidates and would be placed on Trainee</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>Reserve for the academic session 2018. We do not accept the stand of the State respondents for deducting 1685 posts of Medical Officers from the existing strength of service, as the same is arbitrary and not justified under the law. Accordingly, we would like to consider the existing strength of service as 6746 on December 31, 2017 for the purpose of calculation of the strength of Trainee Reserve for the academic session 2018. 10% of the existing strength of service will be at least 674 (i.e. 10% of the 6746). The State respondents have disclosed in the reply that 326 Medical Officers have already been released on Trainee Reserve in the previous years and they are still undergoing PG courses. Therefore, the strength of Trainee Reserve for the academic session 2018 will be “674 – 326” i.e. 348. The State respondents have already issued orders by declaring the strength of Trainee Reserve as 196. Owing to illegal and arbitrary calculation of the strength of Trainee Reserve the State respondents have deprived 152 Medical Officers of their legitimate right to get admission in PG course as Government sponsored candidates for the academic session 2018.</p> <p>Now, we would like to decide whether the admission of the applicants in different PG Courses under the University is vitiated for not obtaining Sponsorship Certificate. It is relevant to quote provisions of Rule 5 of the Trainee Reserve Rules of 2015, which is as follows:</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>“5. Procedure for application and placement on trainee reserve – The Officers of the West Bengal Health Service, the West Bengal Medical Education Service and the West Bengal Public Health –cum- Administrative Service only when eligible under these rules can directly apply to any University or Institution for appearing in the post-graduate Entrance Examination and after being selected or being invited for counselling before admission, shall apply to the Director of Health Services or to the Director of Medical Education for sponsorship certificates. In cases wherever the concerned University or Institution requires a sponsorship certificate, for appearing in the post-graduate Entrance Examination or otherwise only the eligible candidates can directly apply to the Director of Health Service or Director of Medical Education, who shall be the competent authority for such matter. After such process is</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>over, placement orders for trainee reserve will be issued by the Department of Health and Family Welfare and thereafter such officers will proceed on trainee reserve and execute bonds as specified in rule (4) of these rules.”</p> <p>The provisions of above Rule indicate that the applicants shall apply to the Director of Health Services or Director of Medical Education Service for sponsorship certificates after being qualified in NEET PG 2018 and after being invited for counselling, but before admission in the course. However, the sponsorship certificate may be obtained even beforehand if the same is demanded by the University for appearing in the Examination. In the instant case, the applicants obtained temporary N.O.C. from the concerned authority for participating in the counselling after being qualified in NEET PG, 2018. The respondent university issued one notice on April 21, 2018 directing some applicants to surrender the seats, who were allotted the seats in the first round of counselling and prevented other applicants from participating in the second round of counselling or last round of counselling. The said notice dated April 21, 2018 issued by the respondent university was challenged as arbitrary and illegal by the applicants before the Tribunal and by an</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>interim order dated April 24, 2018 this Tribunal granted stay of operation of the said notice till the disposal of the original applications. The said interim order of the Tribunal was challenged by the State respondents before the Hon'ble High Court by preferring WPST No. 25 of 2018. The Division Bench of the Hon'ble High Court did not interfere with the interim order passed by the Tribunal while disposing of WPST No. 25 of 2018 (State of West Bengal & Ors. V. Soumya Kundu & Ors.) on May 14, 2018.</p> <p>By virtue of the interim order passed by the Tribunal and approved by the Hon'ble High Court, the applicants participated in the second round of counselling and last round of counselling and took admission in PG Courses without obtaining sponsorship certificates. By referring to a flow-chart enclosed with the supplementary affidavit filed by the applicants, Mr. Dhar has pointed out the paucity of time at the disposal of the applicants for getting admission after obtaining sponsorship certificates, particularly when the respondents did not approve issuance of the sponsorship certificates beyond 196 Medical Officers who got admission in PG courses as Government sponsored candidates. On perusal of the said flow-chart we find that the applicants had to register for counselling after being qualified in NEET PG 2018 during a period of five days from March 14 to March 18, 2018.</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>The NOC was issued in favour of the applicants during the period of two days i.e. on March 28, 2018 and on March 29, 2018. The first round of counselling started on March 30, 2018, seats were allotted on April 5, 2018 and admission was closed on April 12, 2018. During second round of counselling seat matrix was declared on May 8, 2018, seats were allotted on May 9, 2018 and admission date was fixed on May 10, 2018. During mop up counselling seat matrix was declared on May 11, 2018, seats were allotted on May 15, 2018 and dates of admission were closed on May 16, 2018. Since the period of admission after allotment of seats in PG courses was extremely short, and since there was no possibility of obtaining sponsorship certificates from the State respondents without the intervention of the Tribunal / court, the applicants were compelled to take the decision to get admission in PG courses without obtaining sponsorship certificates.</p> <p>Mr. Bhattacharya, Learned Counsel representing the Medical Counsel of India argues that the seats in which the applicants were admitted will remain vacant for the academic session 2018, if the admission of the applicants in PG courses is cancelled. He further submits that the schedule for conducting NEET PG Examination, counselling of the candidates, allotment of seats and admission in PG courses was fixed by the order of the</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>Hon'ble Supreme Court of India and thereby the said schedule can never be modified or disrupted by anyone. Mrs. S. Majumdar, Learned Counsel representing the respondent University has adopted the argument of Mr. Bhattacharya and Mr. Banerjee.</p> <p>Since the applicant got admission in PG courses after participating in the counselling and allotment of seats as Government sponsored candidates, they cannot continue higher education in PG courses without obtaining sponsorship certificate from the concerned respondents. On consideration of the circumstances under which the applicants got admission in PG courses and on perusal of flexibility of the procedure for issuing sponsorship certificates either before admission in PG course under the university or before appearing in the entrance examination conducted by the university as laid down in Rule 5 of Trainee Reserve Rules of 2015, we would like to interpret the words "before admission" appearing in Rule 5 of Trainee Reserve Rules as directory in nature. Had the said provisions been mandatory, the Rules must have prescribed provision for cancellation of the admission of the government sponsored candidates, who got admission without sponsorship certificates. In view of our above findings we would like to come to the logical conclusion that the admission of the applicants in PG courses without obtaining sponsorship certificates cannot vitiate the</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>admission of the said applicants.</p> <p>It will not be out of place to mention that the applicants who are working under different hospitals/health centres under Department of Health and Family Welfare, Government of West Bengal will discharge their duty again in some other hospitals where they will undergo PG courses. The State respondents will get the benefit of service from the applicants in the hospitals where they will be attached for their PG courses, and they will be bound to execute the bond for working for the Government for a maximum period of three years or two years depending on the duration of PG course, after completion of the said course, in default of which they will have to refund to the Government huge amount of Rs. 10 lakh (Rupees ten lakh only) to Rs. 20 lakh (Rupees twenty lakh only) depending on the duration of the course. The State respondents should not deny the applicants opportunity to continue the PG course as Government sponsored candidates, particularly when they are within the ambit of the number of Trainee Reserve.</p> <p>In view of the foregoing reasons, we are constrained to hold that order dated April 12, 2018, order dated April 20, 2018 and order dated April 21, 2018 issued by the respondent No. 3, Director of Health Services, West Bengal are quashed. Similarly, the notice</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
	<p>dated April 21, 2018 issued by the Controller of Examinations, West Bengal University of Health Sciences also stands quashed. The memo dated March 19, 2018 issued by the Joint Secretary to the Government of West Bengal, Department of Health and Family Welfare, Medical Administration Branch and Addendum dated April 2, 2018 issued by the respondent No. 1, Principal Secretary to the Government of West Bengal, Department of Health and Family Welfare are also quashed. The respondent No. 3, Director of Health Services, West Bengal is directed to issue sponsorship certificate in favour of all the applicants along with 196 candidates who have already been allowed to get admission in PG courses as Government sponsored candidates within a period of two weeks from the date of communication of the order. The respondent No. 1, Principal Secretary to the Government of West Bengal, Department of Health and Family Welfare is directed to issue placement order for trainee reserve in favour of all the applicants along with 196 candidates referred to above for continuation of their PG courses under the university within a period of two weeks from the date of communication of the order.</p> <p style="text-align: center;">With the above directions all original applications are disposed of.</p> <p style="text-align: center;">The urgent xerox certified copy of the order, if</p>	

ORDER SHEET

Serial No. and Date of order. 1	Order of the Tribunal with signature	Office action with date and dated signature of parties when necessary 3
SCN.	<p>applied for, be supplied to the parties on priority basis on compliance of all necessary formalities.</p> <p>(S.K. Das) MEMBER (A)</p> <p>(R.K. Bag) MEMBER (J)</p>	