

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

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

Case No – OA 334 OF 2017

Mitul Bepari 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
11 17.09.2019	<p>For the Applicant : Mr. R.A. Chowdhury, Learned Advocate.</p> <p>For the Respondents : None.</p> <p>The applicant has prayed for direction upon the respondents for granting him promotion to the post of Upper Division Assistant (in short, UDA) with effect from the date on which respondent no. 5 was granted promotion and to pay salary to the applicant during the period from April 21, 2007 to June 18, 2007 and other ancillary reliefs.</p> <p>The applicant has been working as Lower Division Assistant (in short, LDA) in the establishment of the respondent no. 3, Director of Transportation, Department of Food & Supplies, Government of West Bengal. A criminal case being Thakurpukur PS Case No. 1332 of 2007 under section 498A/406/34 of IPC was started against the applicant. He was arrested in connection with the said criminal case and detained in custody from April 21, 2007 to June 18, 2007 for which he was suspended from service. He was released on bail on June 18, 2007 and resumed duty on June 19, 2007. The applicant was denied annual increment and other financial benefits of service in spite of resuming duty on June 19, 2007. So, the applicant approached this Tribunal by filing OA-48 of 2013 which was disposed of on April 7, 2015 by giving direction to the concerned respondent to grant him annual increment and financial benefits by way of fixation of pay in terms of West Bengal</p>	

ORDER SHEET

Mitul Bepari

Form No.

Vs.

The State of West Bengal & Ors.
.....

Case No. **OA 334 OF 2017**

Services (Revision of Pay & Allowances) Rules, 2009. The contention of the applicant is that he has been receiving annual increment and other financial benefits after resuming duty, but he has not been granted promotion to the post of UDA from the date from which the private respondent no. 5 was granted promotion. The further contention of the applicant is that he has not been granted any salary during the period of his suspension, in spite of the fact that the applicant has already been acquitted of the criminal charge by the competent court of law on March 19, 2016.

Mr. Chowdhury, Learned Counsel for the applicant, contends that the period of absence of the applicant from duty due to his suspension may be regularised by grant of leave. He further submits that the applicant should be considered for grant of promotion to the post of UDA after regularisation of his absence from duty as the applicant has already been acquitted of the criminal charge by the competent court of law.

None appears on behalf of the state respondents. It appears from the reply submitted by the state respondents that period of absence of the applicant from duty due to his suspension from April 21, 2007 to June 18, 2007 has been treated as "dies non".

There is no dispute that the applicant was suspended due to his detention in custody in connection with the criminal case during the period from April 21, 2007 to June 18, 2007. It is also not disputed that the applicant has already been acquitted of the

ORDER SHEET

Mitul Bepari

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 334 OF 2017**

criminal charge by the competent court of law on March 19, 2016 and the said fact has already been communicated to the respondent no. 3. The reply submitted by the state respondents indicates that the period of absence of the applicant from duty due to suspension has been treated as “dies non”, which must be construed as an order under Rule 72B of West Bengal Service Rules, Part-I. On consideration of the fact that the applicant has already been acquitted of the criminal charge by the competent court of law and that the disciplinary authority has not initiated any disciplinary proceeding against the applicant on the ground of misconduct, we are of the view that the period of absence of the applicant due to suspension should have been regularised by grant of leave by invoking the provisions of Note 1 to Rule 74 of West Bengal Service Rules, Part-I. The order of “dies non” issued by the Department of Food & Supplies, Government of West Bengal for the period of suspension of the applicant in spite of acquittal of the applicant of the criminal charge is not justified under the law and as such the said order communicated under letter dated November 13, 2017 is liable to be set aside.

We have already observed that the respondent no. 3 should take into consideration the provisions of Note 1 to Rule 74 of West Bengal Service Rules, Part-I for regularisation of the period of absence of the applicant from duty due to suspension by grant of leave of any kind, if the leave is to the credit of the applicant and by grant of Extra-Ordinary Leave without pay, if no leave is available to the credit of the applicant by taking necessary

ORDER SHEET

Mitul Bepari

Form No.

Vs.

The State of West Bengal & Ors.

Case No. **OA 334 OF 2017**

approval from the higher authority, if required. Once the absence of the applicant from duty is regularised, the respondent no. 3 will consider the entitlement of the applicant for grant of promotion to the post of UDA with effect from the date to which he is entitled, if he is otherwise eligible to get promotion to the post of UDA.

In view of our above findings, the respondent no. 3, Director of Transportation, Department of Food & Supplies, Government of West Bengal is directed to regularise the absence of the applicant from duty due to suspension during the period from April 21, 2007 to June 18, 2007 in terms of the provisions of Note 1 to Rule 74 of the West Bengal Service Rules, Part-I within a period of 12 (twelve) weeks from the date of communication of the order. The order of "dies non" during the period from April 21, 2007 to June 18, 2007 communicated to the Assistant Secretary to the Government of West Bengal, Department of Food & Supplies to the respondent no. 3 on November 13, 2017 is set aside. The respondent no. 3 is further directed to consider for grant of promotion to the applicant to the post of UDA with effect from the date on which he is entitled, after regularisation of his absence from duty in terms of the order passed by us within a period of 16 (sixteen) weeks from the date of communication of the order.

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

Let a plain copy of this order be supplied to the applicant.

Sanjib

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

ORDER SHEET

Mitul Bepari

Form No.

.....

Vs.

The State of West Bengal & Ors.

.....

Case No. **OA 334 OF 2017**