

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson and Administrative Member

Case No. - OA 183 OF 2018

DR. TUSHAR KANTI SAHA - VERSUS - THE STATE OF WEST BENGAL & ORS.

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|---------------------------------------|---------------------------|---|--------------------------------|
| Serial No. and Date of order | For the Applicants | : | Mrs. Sonali Mitra, Advocate |
| | For the State Respondents | : | Mr. Sankha Ghosh, Advocate |
| <u>24</u> 12.12.2024 | | | |

The matter is taken up by the Single Bench pursuant to the order contained in the Notification No.638-WBAT/2J-15/2016 (Pt.-II) dated 23rd November, 2022 issued in exercise of the powers conferred under section 5(6) of the Administrative Tribunals Act, 1985.

Mrs. Mitra, learned counsel for the applicant requests that since no such Bench is available, this matter be heard by the Single Bench, instead of a Bench comprising two Members, which is not opposed by Mr. Ghosh.

The prayer in this application is for a direction to the respondent authorities to act in terms of the memo being No.HF/O/MERT/1096/Admn/ME/MISC-04-12, dated 14.09.2012, issued by the Special Secretary, Department of Health and Family Welfare, to regularize all the arrear payments and all other consequential reliefs. The Special Secretary in the cited memo and in compliance to the order of the Hon'ble High Court, has paid the emoluments to the applicant as entitled under the TR scheme. It also treated the period of his status from 02.07.1997 to 28.04.2000 as deemed to be placed on training reserve for prosecuting the MD Paediatric Medicine course. Further, the memo also advised the Principal of Dr. B.C. Roy Post Graduate Institute of Paediatric Sciences to move a proposal for awarding CAS benefit in favour of the applicant as a result of regularization of the period of absence from 02.07.1997 to 28.04.2000. Argument of Mrs. Mitra is that despite such a clear and specific direction, such proposal has not been moved by the Principal of the Institute and, therefore, the applicant has been deprived of getting CAS benefit.

Mr. Ghosh, learned counsel draws attention of the Tribunal to a copy of a letter dated 22.03.2013 written by the applicant to the Special Secretary, in which he had expressed that if he would get a promotional benefit with retrospective effect, then he

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would not claim CAS benefit. Submission of Mr. Ghosh is that since he has already got the benefit from such a promotion, which was given to him on 21.05.2014, therefore, his claim, as he has himself admitted, is not admissible and he is not entitled for such benefit. By citing the relevant notification dated 27.12.2010, published in the Kolkata Gazette, it is submitted that promotion of the applicant was adjudicated by a duly constituted Departmental Promotion Committee as per appointment on the basis of Merit-cum-Seniority, which is governed by the provisions of Rule 2(2) to Rule 2(4) of the West Bengal State Health Service Act, 1990. The selection stands on the basis of merit-cum-seniority and as per vacancy. Though Dr. Saha has completed MD, Paediatric Medicine in the year 2000, he could not come into the purview of Merit-cum-seniority and vacancy list at the material point of time. There is no such rule of promotion that after completion of MD one can be promoted immediately. There is no anomaly or any financial deprivation or any other irregularities in giving promotion to the applicant, therefore, he is not entitled to get any consequential benefits or any arrear pay and allowances.

Mrs. Mitra responded to the rival submissions of Mr. Ghosh and submitted that had the applicant been promoted as Assistant Professor in May, 2000, he would have positively received his promotion to the Post of Associate Professor in 2004 and to the post of Professor in 2007.

Having heard the learned counsels and upon perusal of the documents available on records, it is the opinion of the Tribunal that as per direction of the Hon'ble High Court at Calcutta in W.P. No. 8552(W) of 1997, the respondent authorities had allowed the benefits to the applicant as per rules. It has become clear to the Tribunal that the applicant, having availed the benefit of T.R. facility, joined the course of MD in Paediatrics and received all the benefits in due course. Promotion is not a matter of right. The promotion of the applicant is not automatic. The respondent authority was correct in taking such decision and it was very well within the rules. From this observation, the prayer in this application has no merit and therefore, it is disposed of without any orders.

SCN.

(SAYEED AHMED BABA)
OFFICIATING CHAIRPERSON
and MEMBER (A)