

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

The Hon'ble Sayeed Ahmed Baba, Officiating Chairperson & Member (A)

Case No. OA – 585 of 2022 & OA – 756 of 2022

Dr. Sajal Biswas - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order <u>5</u> 21.12.2022	For the Applicant	: Mr. M.N. Roy, Mr. G. Halder, Advocates
	For the Respondents	: Mr. G.P. Banerjee, Advocate

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

On consent of the learned counsels for the contesting parties, the case is taken up for consideration sitting singly.

In today's list, O.A. 585 of 2022 is listed for hearing. However, it has been brought to the notice that O.A. 756 of 2022 relating to the same applicant and analogous may also be heard today. Therefore, both O.A. 585 of 2022 and O.A. 756 of 2022 are taken up for hearing analogously considering in today's list as item 11(a) for O.A. 756 of 2022.

Briefly, the matter relates to the applicant Dr. Sajal Biswas who was earlier show caused for remaining absent from duty from 21.01.2021. He submitted a resignation letter to the Director, Health Services alleging humiliation due to such transfer to a distant place from his place of residence without informing him. On 04.06.2021 as mentioned in an application to the Director, Health Services that after contesting the election and having lost, he now intends to resume his duties as BMOH,

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Alipurduar – II Block. From his submission, his resignation letter submitted earlier on 27.01.2021 was neither accepted nor rejected by the respondents. Finding no response to his representation, the applicant approached the Tribunal in O.A. 492 of 2021 praying for a direction to the respondent to allow him to resume his duties. The Tribunal in his order directed the Secretary to consider his application for withdrawal of resignation and for resumption of his duties. Accordingly, the respondent passed a reasoned order dated 01.12.2021 rejecting his prayer of withdrawal of resignation and also for permission to resume his duty. Again aggrieved by the reasoned order, he moved this Tribunal in O.A. 887 of 2021, in which the Tribunal passed an order directing the Director, Health Services to dispose of the representation filed on 8th June, 2022 after considering the relevant rules governing the field. In compliance, the Director, Health Services passed a reasoned order which was communicated to him on 26.08.2022 in which the fact that he contested an election without seeking prior permission was pointed out and considering other facts, his prayer for resumption of duty was rejected again. In the reasoned order, it was also mentioned that a departmental proceeding has been started against him.

Given the above background, Mr. Roy, the learned counsel for the applicant refers to the relief sought for in this application – for setting aside the reasoned order passed by the respondents on 01.12.2021 and 26.08.2022 with further direction to allow the applicant to resume his duties. In the O.A. 756 of 2022, the applicant has prayed for setting aside the show cause notice issued to him dated 21.10.2022 and setting aside the

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entire departmental proceedings as well.

Mr. Roy submits that the respondent has no legal force behind him to take action against the applicant. In view of the fact that neither his resignation letter was accepted nor rejected and moreover, he has been refused to join duty, the proper legal relationship between the employer and the employee has not been established and the status of the applicant as an employee vis-a-vis the Respondent, as the Employer, remains unclear. Mr. Roy also points out that the fact that although the applicant was allowed to join by the respondent vide order 4406 dated 03.09.2021, surprisingly, the very same day with another communication by Memo 4424, the same respondent cancelled the earlier order without any rhyme or reason. Mr. Roy, therefore, submits that the departmental proceeding initiated against the applicant is bad in law and not supported by any legal force. Therefore, it should be quashed and set aside.

Mr. Banerjee on behalf of State submits that being a doctor in the service of the people, he neglected his duty and for being absent without permission had to be show caused. Again, despite knowledge of the rules, he contested the general election as a candidate without any permission and intimation. He seems to be aggrieved by a transfer order to North Bengal, unmindful of the fact that transfer is a part of his service life and it is the prerogative of the authority of the State Respondent to issue such orders in larger public interest. Therefore, the respondent has taken the right decision in initiating a departmental proceeding against him for his insubordination as per rules. On the question of the applicant's prayer for

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not allowing him to join his duty, Mr. Banerjee submits that as long as the departmental proceedings are ongoing, it is the prerogative of the State Respondent either to allow or not allow the applicant to resume his duties. Mr. Banerjee further submits that the prayers of the applicant in both O.A.s are contradictory in nature. Reply to this, Mr. Roy submits that these are not contradictory rather these are supplementary and co-related to each other.

Summing up his submissions, Mr. Roy strongly prays for a direction to the respondent not to proceed further with the departmental proceeding against the applicant without leave of the court. Mr. Banerjee opposes this prayer on the ground that the charges against the applicant are serious and grave in nature and the Tribunal should not interfere in the departmental proceeding at this juncture.

After hearing the submissions of learned counsels and considering the facts and circumstances of the case, I am of the view that this matter should be heard by a Bench comprising of two Members, one Judicial and the other an Administrative for better adjudication. Liberty is also given to mention this matter on the earlier date when such a Bench is available, with notice to the other side. Fix 24.07.2023 under the heading 'Hearing' before a Bench comprising two Members of one Judicial and one Administrative.

SAYEED AHMED BABA
OFFICIATING CHAIRPERSON & MEMBER(A)

A.K.P