

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Bikash Bhavan, Salt Lake, Kolkata – 700 091.

Present-

HON'BLE JUSTICE SOUMITRA PAL, HON'BLE CHAIRMAN.

Case No. - OA 1028 of 2019.

DR. DEBESH NATH - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. and Date of order	For the Applicant	: Mr. G.P. Banerjee, Learned Advocate.
<u>05</u> 01.03.2021	For the State Respondents	: Mr. S. Ghosh, Learned Advocate.

The matter is taken up by the single Bench pursuant to the Notification No. 949-WBAT/2J-15/2016 dated 24th December, 2020 issued in exercise of the powers conferred under sub section (6) of section 5 of the Administrative Tribunals Act, 1985.

Though the matter has appeared in the list under the heading “Reply/Rejoinder and Objection”, it is submitted by Mr. G.P. Banerjee, learned advocate for the applicant that the matter may be taken up for hearing, which Mr. S. Ghosh, learned advocate for the State respondents, in his usual fairness, does not oppose.

In view of the submission made by the learned advocates for the parties, the matter is taken up for hearing.

In this application Dr. Debesh Nath, the applicant has prayed for several reliefs, the relevant portion of which is as under :-

“ a) *A direction do issue upon the concerned respondent authorities, particularly upon the Principal Secretary, Department of Health and Family Welfare, Government of West Bengal, the respondent No. 1 herein, to forthwith grant confirmation of services of the applicant with retrospective effect from 23.09.2009 having he completed two years of successful service on 23.09.2011 as well as to grant all benefits attached thereto after setting aside the reasoned order dated 13.05.2019 so issued by him in empty compliance of the solemn Order dated 11.01.2019 of this Hon'ble Tribunal passed in OA No. 998 of 2018, being Annexure- 'C' and 'D' herein and to command them to act strictly*

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in accordance with law:.....”.

It appears that the applicant had joined as Block Medical Officer of Health at Kaliganj Rural Hospital, Nadia on 23rd September, 2009 and is presently attached to Tapan Rural Hospital, Tapan, Dakshin Dinajpur as Block Medical Officer of Health. It is submitted that though the applicant was appointed on 23rd September, 2009 and had completed two years of successful service on 23rd September, 2011, he is yet to be confirmed. Praying for confirmation of service, the applicant had moved an application being OA 998 of 2018, which was disposed of on 11th January, 2019 by passing an order, the relevant portion of which is as under :-

“....Having heard Mr. Banerjee and Mr. Ghosh, learned advocates for the parties and considering the facts and circumstances of the case, this application is disposed of by directing the Principal Secretary, now designated as Additional Chief Secretary, Department of Health and Family Welfare Department, Government of West Bengal – the respondent no. 1 to dispose of the representations appearing at pages 24 to 27 regarding confirmation of service of the applicant, by passing a reasoned order to be communicated to the parties within ten weeks from the date of communication of this order, after giving an opportunity of hearing and after verifying the records....”.

Pursuant to the said order, the Additional Chief Secretary, Department of Health & Family Welfare, Government of West Bengal had considered the matter and had passed the order, the relevant portion of which is as under :-

“....And, whereas, it appears that, before his services were confirmed, there was an allegation regarding misappropriation of government money and unauthorised use of official vehicle, for which a

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departmental proceeding was initiated against him and the said proceeding is still pending as a result of which his services could not be confirmed even though he had submitted several representations in this regard;

***And, whereas,** being aggrieved the incumbent filed OA No. 998 of 2018, (Dr. Debesh Nath-Vs- The State of West Bengal & Ors.) before the Hon'ble WBAT wherein the Hon'ble Tribunal was pleased to direct the Additional Chief Secretary, Dept. of Health & Family Welfare, West Bengal to pass a reasoned order for disposing of the representations appearing at pages 24 to 27 of the petition, in connection with confirmation of his service after giving an opportunity of hearing and after verifying the records;*

***And, whereas,** in compliance with the said solemn order of the Hon'ble Tribunal, the applicant was called for hearing vide no. 1D-272-2018/A1245 dated 06.03.2019. The applicant attended the personal hearing on 08.03.2019 at 11:45 a.m. and was heard extensively and his records were also verified;*

***Now, therefore,** after careful consideration of the entire facts and circumstances of the case and on verification of records, it is ordered that, pending conclusion of the Departmental proceeding against the present incumbent pertaining to misappropriation of government money and unauthorized use of official vehicle, his representations dated 10.07.2017, 30.08.2017, 05.01.2018 and 27.01.2018 appearing in page numbers 24 to 27 of the O.A. petition relating to confirmation of his services in West Bengal Public and Administrative Service cannot be considered at this stage and thus the same is rejected... ”.*

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Relying on the application, particularly paragraph “f” thereof, it is submitted by Mr. Banerjee since till date the applicant has not been informed about the departmental proceeding initiated against him on the charges as stated in the reasoned order dated 13th May, 2019 and as it is well settled proposition of law that without initiating proceedings the service benefits of an employee cannot be withheld on the basis of mere allegation against him, the service of the applicant may be directed to be confirmed. Submission is though on the one hand it is submitted that the departmental proceedings are pending, however, he is getting the incremental benefits as stated in paragraph “g” of the application. Referring to the impugned order dated 13th May, 2019 it is submitted that though it has been mentioned that there was an allegation of misappropriation of government money and unauthorised use of official vehicle, no factual details have been given. Moreover, as no reply has been filed and hence the statements made in the application are deemed to be correct, appropriate order may be passed.

Mr. S. Ghosh, learned advocate submits on instruction that though the impugned order dated 13th May, 2019 does not mention about the factual details regarding the allegations made and no chargesheet has been issued, however, there is an allegation of corruption against the applicant.

It appears that the matter was admitted on 7th February, 2020. Though the State respondents were directed to file reply as no reply has been filed, hence, the statements made in the application, particularly in paragraphs 6(f) and (g), are deemed to be correct.

Perusing the impugned order dated 19th May, 2019 it is evident that though a mention has been made regarding the allegation of misappropriation of government money and unauthorised use of official

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vehicle for which departmental proceedings were initiated against him, it is strange that incremental benefits have been given regularly. Though charges mentioned in the reasoned order are serious, it does not at all contain factual details. As it appears from the submission on behalf of the State respondents that no chargesheet has been submitted, and in the absence of reply the statements made in the application, particularly in paragraphs 6 (f) and 6(g) thereof, have not been controverted and therefore are deemed to be admitted, hence, the impugned order dated 19th May, 2019, appearing at page 29 of the application, is set aside and quashed. The application is allowed. Accordingly, the Principal Secretary, Department of Health and Family Welfare, Government of West Bengal, - the respondent no. 1, is directed to confirm the service of the applicant with retrospective effect from 23rd September, 2009 and grant all benefits attached thereto by passing an order within fifteen weeks from the date of presentation of a copy of this order downloaded from the internet/website.

(SOUMITRA PAL)
CHAIRMAN

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