

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 112 OF 2023

DR. KAMALESH BHATTACHARYYA - VERSUS - THE STATE OF WEST BENGAL & ORS.

Serial No. For the Applicant : Mr. Sankha Ghosh,
and Mr. M.N. Roy,
Date of order Advocates

For the State Respondents : Mr. G.P. Banerjee,
Advocate

6
09.01.2024

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.

On consent of the learned counsels for the parties, both O.A. 112 of 2023 and M.A. 48 of 2023 are taken up for consideration sitting singly.

The prayer in this application is for a direction to the respondent authorities to regularise salary, arrear salary including interest since 20.06.1995 as well as pay and allowances under ROPA Rules 1998, 2009 and 2019.

It appears from record that Dr. Kamalesh Bhattacharya, Medical Officer, Balarambati P.H.C., Hooghly was placed under suspension on 20.06.1995 in terms of Rule 7 of the West Bengal Services (Classification, Control & Appeal) Rules, 1971. Since the departmental proceeding was not concluded within time, on 21.09.2020, the applicant filed O.A. 335 of 2020 which was disposed of by the Tribunal on 24.02.2021 with the following directions:

“.....Respondent No.2 is directed to conclude the disciplinary proceeding within a period of six months The Respondent No.2 is further directed to review the case of the suspension of the applicant, making payment of subsistence allowance....”.

The respondent authorities, complying the order of the Tribunal, dropped the proceedings on 29.03.2022. After dropping of the departmental proceeding, the applicant filed O.A. No.112 of 2023, praying for arrear dues after proper fixation of pay and allowances. During pendency of the O.A., the respondent authority passed an order dated 17.05.2023, wherein after revocation of the suspension order, the applicant was reinstated and allowed to join with effect from 11.11.2022. However, the period of suspension from 20.06.1995 to 11.11.2022 was treated as the period “*spent on suspension*”.

On 12.06.2023, during pendency of the O.A., the applicant filed M.A. 48 of 2023

ORDER SHEET

Form No.

DR. KAMALESH BHATTACHARYYA

Vs.

Case No. - OA 112 OF 2023

THE STATE OF WEST BENGAL & ORS.

incorporating subsequent events and challenging the order dated 17.05.2023, issued by the Joint Secretary, Department of Health and Family Welfare. The relevant portion of the prayer in MA 48 of 2023 is as follows:

“(a) An order do issue thereby setting aside / quashing the order No. HF/O/Vig/446/9A-54/2021/DP dated 17.05.2023

(b)to pay the proper re-fixed arrear pay and allowances and other arrear service benefits for the period from 20.06.1995 to 11.11.2022 treating the aforesaid period as period “Spent on duty””

It also appears from the letter of CMOH addressed to DHS that due to his service book not being traceable, it has not been possible to fix his pay and allowances.

Having heard the learned counsels for the parties and after perusal of the records, the Director of Health Services, Department of Health & Family Welfare, the respondent No.2 is directed to take necessary steps as per letter of CMOH seeking guidance regarding fixation of pay and for disbursement of regular salary of the applicant. As required by the CMOH, efforts must be made to find the service book and if despite such effort service book is not traceable, steps must be taken to reconstruct the service book. The respondent authority is also directed to file a reply on the above by the next date. Matter to appear on 04.07.2024 under the heading “Hearing”.

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

SCN.