

**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 583 of 2022**

**Dr. Nilanjan Datta. - Versus - The State of West Bengal & Others.**

Serial No. and Date of order	For the Applicant	: Mr. S. Samanta, Advocate.
<u>07</u> 03.05.2023.	For the State 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 (Pt. II) dated 23<sup>rd</sup> 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.

The prayer in this application is for setting aside the impugned reasoned order passed by the Secretary, Department of Health and Family Welfare on 12.08.2022 relating to the applicant's prayer for resignation. The applicant was working as a Medical Officer in Dinhata Sub-Divisional Hospital, Dinhata, Cooch Behar.

In brief, the matter relates to the applicant submitting his first resignation letter from service on 09.06.2017. The date of his joining the service being 29.08.2016 in the Department of Health and Family Welfare. The resignation was submitted on personal ground after a service of around two years. This application for resignation was not accepted by the authority and the same was communicated to the applicant by the C.M.O.H., Cooch Behar on 13.07.2017. Since the respondent authority did not accept his resignation, the applicant approached this Tribunal through an application (O.A.-350 of 2022) on 06<sup>th</sup> September, 2022. A Bench comprising the Chairman and the Administrative Member passed an order on 20.06.2022 directing the respondent authority to dispose of the letter of resignation by passing a reasoned order. Thereafter, the Secretary of the department passed a

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reasoned order which was also communicated to the applicant on 12.08.2022. His rejection was based on Rule 34A of W.B.S.R. Part-I, the relevant portion is as under :-

“Provided that the provision under this sub-rule shall not be applicable in respect of the officers in the cadres of the West Bengal Health Service, the West Bengal Medical Educational Service, the West Bengal Public Health cum Administrative Service, the West Bengal Dental Service and the West Bengal Dental Education Service, prior to completion of a period of at least five years of continuous service with effect from the date of joining, in any of such cadres or in different cadres taken together, as the case may be.”

It also appears from the records that the applicant had joined another organization – Steel Authority of India Limited (SAIL) – IISCO at Burnpur, Asansol without intimating his employer nor applying for the No Objection Certificate (NOC) from the Department. The appointment letter issued to the applicant by his new employer, SAIL – IISCO is in the record.

On 17.01.2023, this Tribunal had listed this matter for “Admission Hearing”. **Since none had appeared on behalf of the applicant, the next date was given on 18.08.2023.** Aggrieved by such delayed date, the applicant preferred WPST 27 of 2023 in which the Hon’ble High Court requested the Tribunal to prepone the date if such request is made by either of the parties.

During today’s hearing, the counsel for the applicant, Mr. S. Samanta has made the following points as his submissions :-

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- (i) Since the respondent authority did not act upon his resignation letter which was submitted on 18.01.2019, the applicant had no option but to join the new organization to continue his livelihood.
- (ii) Mr. Samanta relies on WPST 124 of 2022 - Dr. Debasis Mukherjee –Vs.-The State of West Bengal and Others in which the Hon’ble High Court has passed an order, the relevant portion is as under:-

*“We, therefore, feel that justice would be sub-served if the said letter of resignation is considered in the light of the relevant provisions prevalent as on this date and should not be dismissed on technicalities, more particularly, applying the embargo created in the provision by virtue of Notification dated August 26, 2016.”*

Submission of Mr. Samanta is that the present application is also similar to the WPST 124 of 2022 and similar order be given by the Tribunal.

- (iii) Mr. Samanta, refers to one of the prayers in the application – “about a direction to the respondent to consider acceptance to his resignation in relaxation of Rule 3A of W.B.S.R. Part-I.” Such power to relax the requirement of the Rule was ignored by the respondent.
- (iv) Finally, Mr. Samanta submits that since now the mandatory five years waiting period has already passed, mainly sticking to the technicalities of the rule is not relevant, therefore, the applicant’s prayer for resignation submitted more than four years ago be considered and

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accepted.

In response to the above submission of Mr. Samanta, Mr. G. P. Banerjee, learned counsel appearing on behalf of the respondent authority has the following submissions :-

- (i) The applicant had submitted a resignation letter to the Superintendent of Dinhata Sub-Divisional Hospital, Dinhata, Cooch Behar on 09.06.2017 which was considered by the Chief Medical Officer of Health (CMOH), Cooch Behar and rejected citing the Rule of giving one month notice was not adhered to.
- (ii) Again on 18.01.2019, the applicant persisted and submitted his second resignation letter to the Superintendent of Dinhata Sub-Divisional Hospital, Dinhata, Cooch Behar on personal ground and due to illness of his father.
- (iii) Without waiting for the respondent to consider his application, the applicant took his own decision and joined another organization. If the applicant had wanted, he could have sought a remedy in the Tribunal for a direction to the respondents.

After hearing the submissions of the learned counsels and perusing the records in this application, the Tribunal has observed the followings :-

It was abundantly clear to the applicant that his resignation letter dated 09.06.2017 was considered and rejected. However, he persisted and submitted one more such resignation letter. In between, being

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frustrated, he also absented from his duties.

Sub-Rule (1) of Rule 34A of W.B.S.R. Part-I Proviso is very clear about consideration of such resignation letters by medical personnel, in which five years of continuous service is required for acceptance of such resignation. Since the applicant had not completed his continuous service of five years, the respondent found it as a good reason to reject the application. The applicant, being a Government employee cannot take independent decisions with compete disregard to his service Rules. Since the Rule makes it very clear that without Government permission one cannot leave the organization, in this case it is clear that the applicant took his own decision without any concern about the service Rules and joined another organization without intimation and NOC. The decision of the respondent was in conformity with the Rules. Allowing such a Government employee to break the service rules will set a bad precedence. Therefore, it is the opinion of the Tribunal that the reasoned order passed by the respondent authority was on merit and based on laid down Rules. Therefore, this impugned order is upheld and no order is passed.

Accordingly, the application is disposed of.

(SAYEED AHMED BABA)  
Officiating Chairperson and Member (A)

S.M./H.S.