

ORDER SHEET

WEST BENGAL ADMINISTRATIVE TRIBUNAL

Present-

The Hon'ble Justice Ranjit Kumar Bag
& The Hon'ble Dr. Subesh Kumar Das

Case No – **CCP 203 of 2015 [OA 977 OF 2013]**

Subrata Datta Vs Dr. R.K. Sukla, Pr. Secy., Health & Family Welfare, Govt. of W.B. & Ors.

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
23 24.07.2019	<p>For the Applicant : Dr. Subrata Datta, In person.</p> <p>For the Contemnor OP : Mr. S. Ghosh, Learned Advocate.</p> <p>The applicant Dr. Subrata Datta has submitted an application praying for cancellation of his Vakalatnama and permission to appear in person. Since the applicant is willing to cancel engagement of his Learned Counsel, his prayer is allowed. Dr. Datta is permitted to appear in person in this case.</p> <p>The applicant has prayed for issuance of the contempt rule against the contemnor on the ground of wilful violation of the judgement and order passed by this Tribunal on December 15, 2014 in OA 977 of 2013. It appears from the said judgment that the Tribunal has given specific direction to the contemnor in paragraph 24, which is as follows :</p> <p style="text-align: center;">“Having regard to our findings and conclusions in the preceding paragraphs, we dispose of the instant Original Application being OA 977 of 2013 along with the Miscellaneous Application being MA 39 of 2014 with the following directions : (1) The respondent authorities, in particular, respondent no. 1 i.e. the Principal Secretary, Department of Health and Family Welfare shall modify the notification dated 12.11.2012 read with corrigendum dated 09.07.2013 and treat the period from 31.05.1992</p>	

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to 26.04.1993 as a period spent on duty. The remaining period of absence shall be regularised by grant of EL, HPL and EOL as due and admissible in terms of the leave rules applicable to the petitioner. If even after sanctioning of EL, HPL and EOL, any period of absence remains uncovered, then it shall be treated as dies non for all purposes. (2) The respondents shall issue a fresh order granting the CAS benefits to the petitioner after regularisation of the period of absence in the manner stated above. The petitioner's pay shall be fixed accordingly and he shall be paid all arrears of pay and allowances as due and admissible to him within a period of 4 (four) months from the date of communication of this judgment. His pension papers shall also be sent to the Accountant General (A&E), West Bengal within the same period. (3) The petitioner is given liberty to apply in the prescribed form to the appropriate authority for enrolment under WBHS, 2008 within a period of 4 (four) weeks from the date of delivery of this judgment along with a declaration that he will forgo the medical allowance payable with pension with effect from the date of enrolment under WBHS, 2008. The appropriate authority shall, on verification of relevant particulars, issue entitlement-cum-identity card to the petitioner within a period of 6 (six) weeks thereafter."

Mr. S. Ghosh, Learned Counsel representing the contemnor has referred to the compliance report submitted on July 4, 2017 and submitted that all the directions given by the Tribunal in the original application have been complied with by the contemnor.

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Per Contra, the applicant Dr. Datta submits that the period of his absence treated as dies non has been wrongly calculated and thereby prejudice is caused to him. He further submits that his fixation of pay after resuming duty has been wrongly done. On our query, Dr. Datta has failed to recollect what should have been his scale of pay and basic pay on the date of resuming duty. The applicant who is unable to recollect his basic pay and scale of pay on resuming duty after long period of absence from May 30, 1997 to July 21, 2005 cannot challenge the order of pay fixation and grant of scale of pay on his resuming duty as wrong and not justified under the law.

Having heard both sides and on consideration of the report of compliance, we find that the contemnor has granted EL, HPL and EOL from April 22, 1993 to April 26, 1998 after treating his further period of absence from duty for 331 days from May 31, 1992 to April 26, 1993 as the period spent on duty. The period of absence of the applicant after grant of all kinds of leave including EOL was treated as dies non and the said period is from April 27, 1998 to July 26, 2005. So, the first direction of the Tribunal has been fully complied with by the contemnor.

With regard to direction for fixation of pay of the applicant after resuming duty, we find the pay of the applicant is fixed after resuming duty in the scale of pay of Rs.10,000-15,525/- with

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grade pay of Rs.6600/-. On checking the order issued by the Deputy Director of Health Services (Admn.) on March 7, 2017, we find that the pay of the applicant has been fixed after resuming duty and annual increments have been given in due course till the date of retirement after giving the benefit of CAS for completion of 16 years of service and as such the second direction of the Tribunal has also been complied with.

No objection is raised with regard to third direction of the Tribunal.

We do not find any merit in the submission of the applicant that the order of the Tribunal has not been complied with by the contemnor. If the period of dies non of the applicant has been wrongly calculated or if the fixation of pay of the applicant has been wrongly done after his resuming duty, the applicant is at liberty to challenge the order dated March 7, 2017 issued by the Deputy Director of Health Services (Admn.), Government of West Bengal, subject to the law of limitation.

In view of our above findings, the contempt application stands **disposed of**.

Let a plain copy of this order be supplied to both parties.

(S.K. DAS)
MEMBER(A)

(R. K. BAG)
MEMBER (J)

Sanjib