

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Urmita Datta (Sen) Member (J) &

CCP-55 of 2017(OA-316/2017)

The Hon'ble Mr. P. Ramesh Kumar, Member (A).

Dr. Arunangshu Bhattacharya,

Vs.

Mr. Rajeeva Sinha, A.C.S., H & F W Deptt.

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
<p style="text-align: center;"><u>07</u> 19.03.2019</p>	<p>For the petitioner : Mr. M.N. Roy, Learned Advocate.</p> <p>For the contemnor/respondent : Mr. Sankha Ghosh, Learned Advocate.</p> <p style="text-align: center;">Today, the counsel for the contemnor/respondent has filed another compliance report dated 19.03.2019 enclosing one order dated nil alongwith reasoned order passed by the Additional Chief Secretary, Health & Family Welfare Department, Govt. of West Bengal whereby the prayer of the applicant for voluntary retirement has been rejected on the following grounds :-</p> <ol style="list-style-type: none"> 1. "And, Whereas, Rule 75 (aaa) of WBSR Part-I clearly mandates that not less than three months clear notice in writing has to be given to the appointing authority for the purpose of consideration of his prayer for voluntary retirement ; 2. And, Whereas, note 1 of Rule 75 (aaa) of WBSR, Part-I stipulates that :”In computing the three months notice period referred to in sub-rule (aa) & (aaa) the date of service of notice and the date 	

ORDER SHEET

Form No.

Dr. Arunangshu Bhattacharya,

Vs.

Mr. Rajeeva Sinha, A.C.S., H & F W Deptt. .

Case No. CCP-55 of 2017(OA-316/2017)

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
<p style="text-align: center;">07 19.03.2019</p> <p>Page /2</p>	<p>of expiry shall be excluded”.</p> <p>3. And, Whereas, the present applicant having served such notice on 11.01.2017 with a prayer for voluntary retirement with effect from 09.04.2017 (forenoon) and while computing the period of such notice (excluding the service of notice and the date of expiry of ninety days), it appears that he did not fulfil the above statutory mandate since there is clear shortfall of four days required notice period.”</p> <p>However, counsel for the applicant has vehemently objected upon the contention of the respondents. As per the applicant, he has no instruction that his client has received any reasoned order so far as there is no mentioning of date when the order was passed. Further he has drawn our attention to the earlier reasoned order dated 04.10.2018, wherein the prayer of the applicant was rejected on the following grounds :</p> <p style="text-align: center;">1. “And, Whereas, it appears that by</p>	

ORDER SHEET

Form No.

Dr. Arunangshu Bhattacharya,

Vs.

Mr. Rajeeva Sinha, A.C.S., H & F W Deptt. .

Case No. CCP-55 of 2017(OA-316/2017)

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
<p>07 19.03.2019</p> <p>Page /3</p>	<p>notification no. 695-F(P) dated 07.02.2014, issued by the Finance Department, Audit Branch, Govt. Of West Bengal, the Governor was pleased to cause and amendment in WBSR Part-I amending the provision of Rule 75, sub-rule (aaaa) which inter alia reads “.....Notwithstanding anything contained in this rule, the provisions contained in sub-rule (aa)and (aaa) of Rule 75, shall not be admissible to holder of the West Bengal Health Services, The West Bengal Medical Education Services, the West Bengal Public Health-cum-Administrative Services, The West Bengal Dental Services and the West Bengal Dental Education Services...”</p> <p>2. Now, therefore, after careful</p>	

ORDER SHEET

Form No.

Dr. Arunangshu Bhattacharya,

Vs.

Mr. Rajeeva Sinha, A.C.S., H & F W Deptt. .

Case No. CCP-55 of 2017(OA-316/2017)

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
<p style="text-align: center;">07 ----- 19.03.2019</p> <p style="text-align: left;">P/4</p>	<p style="text-align: center;">consideration of the entire gamut of the situation of this given case it is ordered that, the prayer of the voluntary retirement in respect of Dr. Bhattacharya from Govt. service is rejected in light of the said notification no. 695-F(P) dated 07.02.2014.</p> <p>However, as per the prayer of the applicant on the basis of the medical report submitted by him, considering it from the humanitarian ground and on continuous pleading of Dr. Bhattacharya, he is advised to prefer a fresh prayer of voluntary retirement with all supportive documents of his ailments before the Joint Secretary (MA), Department of Health & Family Welfare, West Bengal who may then process the same for the consideration of the Government as a very special case on medical ground.</p> <p>The hearing is thus disposed of. Let the copies of the Reasoned Order be communicated to all concerned accordingly.”</p>	

ORDER SHEET

Form No.

Dr. Arunangshu Bhattacharya,

Vs.

Mr. Rajeeva Sinha, A.C.S., H & F W Deptt. .

Case No. CCP-55 of 2017(OA-316/2017)

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
<p>07 19.03.2019</p> <p>P/5</p>	<p>Therefore, as per the counsel for the applicant and from the perusal of both the orders, it would transpire that the total contradiction while rejecting the prayer of the applicant. However, as per the counsel for the respondent as the earlier reasoned order dated 04.10.2018 was not accepted by this Tribunal, it is not relevant to the present reasoned order.</p> <p>Heard both the parties and perused the records. It is noted that this Tribunal vide order dated 18.05.2017 had passed the following order :-</p> <p>1. "After having heard Shri Roy for the applicant and Shri Ghosh for the Health Department, as it is found the issue is settled, the application has accordingly to be disposed of. As such, the Principal Secretary to the Govt. of West Bengal, Deptt. of Health & Family Welfare is kindly requested to take a decision in respect of the pending prayer of the applicant within a period of three weeks from the date of receipt of this order</p>	

ORDER SHEET

Form No.

Dr. Arunangshu Bhattacharya,

Vs.

Mr. Rajeeva Sinha, A.C.S., H & F W Deptt. .

Case No. CCP-55 of 2017(OA-316/2017)

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
<p style="text-align: center;">07</p> <hr/> <p>19.03.2019</p> <p style="text-align: center;">P/6</p>	<p style="text-align: center;">after ensuring the necessary criteria for this purpose is fulfilled.”</p> <p>In the present reasoned order though the respondents has rejected the prayer of the applicant on the ground of non fulfilment of Rule 75 (aaa) WBSR, Part-I as there was a direction to the authority with regard to the voluntary retirement of the applicant and they have rightly or wrongly had passed an order on a given ground, therefore, in our considered view, substantial compliance of the order has been made. However, apart from the above, we constraint to observe that the authority had taken two different stands on different dates on the same issue and in this regard, we have to make clear that the earlier order was not accepted as the respondent authority had asked the applicant to make an application for voluntary retirement afresh instead of considering his earlier application for voluntary retirement which has no relation with the two different findings of the contemnor/respondents with regard to Rule 75 (aaa). Accordingly, CCPA is dropped with the above observation with no order as to costs. Notices are discharged.</p>	

ORDER SHEET

Form No.

Dr. Arunangshu Bhattacharya,

Vs.

Mr. Rajeeva Sinha, A.C.S., H & F W Deptt. .

Case No. CCP-55 of 2017(OA-316/2017)

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
<p style="text-align: center;">07</p> <hr/> <p>19.03.2019</p> <p style="text-align: center;">sc</p>	<p>However, if the applicant is still aggrieved, he is at liberty to take appropriate steps.</p> <p style="text-align: center;">P. RAMESH KUMAR URMITA DATTA (SEN) MEMBER (A) MEMBER (J)</p>	

ORDER SHEET

Form No.

Dr. Arunangshu Bhattacharya,

Vs.

Mr. Rajeeva Sinha, A.C.S., H & F W Deptt. .

Case No. CCP-55 of 2017(OA-316/2017)

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