

ORDER SHEET
West Bengal Administrative Tribunal

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

Case No. OA 1249 of 2015

Mihir Kumar Basak

Versus

The State of West Bengal & Ors.

Serial No. and
date of order

Order of the Tribunal
with signature

Office action with date
and dated signature of
parties when necessary.

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23/07/2019

For the Applicant

: Mr. G.P. Banerjee,
Mr. A. Hait,
Ld. Advocates.

For the State Respondent :

Mr. R.A. Chowdhury,
Ld. Advocate.

Liberty is given to the applicant to implead Additional Chief Secretary to the Government of West Bengal, Department of Health & Family Welfare as respondent no. 7 by way of amendment of cause-title of the original application in course of this day. Since Mr. Chowdhury is representing the state respondents the service of notice on the added respondent no. 7 is dispensed with.

The applicant has prayed for direction upon the respondents to regularise the absence of the applicant from duty during the period from June 14, 2008 to March 29, 2009 and payment of arrears of salary to the applicant.

The applicant joined as Homeopathic Medical Officer on October 26, 1994 in the establishment of Chief Medical Officer of Health, Dakshin Dinajpur at Balurghat. One criminal case being Gangarampur P.S. Case No. 118 of 2008 dated June 13, 2008 u/s 498A/306 of Indian Penal Code was started against the

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	<p>applicant after the applicant was transferred to the office of Chief Medical Officer of Health, Malda on the allegation of inflicting torture on his wife and abetting commission of suicide of his wife. We are informed that the said criminal case is still pending for adjudication before the competent Court of Law.</p> <p>It appears from the materials on record that the applicant absconded without attending office due to pendency of the criminal case against him during the period from June 14, 2008 to July 18, 2008. Ultimately, the applicant surrendered before the Court of Learned Additional Chief Judicial Magistrate on July 19, 2008 and remained in Judicial custody till September 19, 2008. Thereafter, the applicant could not join in the office during the period from September 20, 2008 to March 29, 2009 and thereby he remained absent from duty during the aforesaid period of time. The applicant submitted representation for regularisation of his absence from duty during the entire period from June 14, 2008 to March 29, 2009, but the said representation has not been considered as yet.</p> <p>With the above factual matrix, Mr. G.P. Banerjee, Learned Counsel for the applicant contends that the applicant joined duty on March 30, 2009 and has been performing duty till date, but no yearly increment has</p>	

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	<p>been given to the applicant and thereby he is deprived of financial benefits in terms West Bengal Services (Revision of Pay and Allowances) Rules, 2009 (in short, ROPA Rules, 2009). Mr. Chowdhury, Learned Counsel appearing on behalf of the state respondents, submits that the period of absence of the applicant cannot be regularised unless and until the criminal case pending against the applicant is decided by the competent Court of Law.</p> <p>The applicant is found to be absent from duty before detention in custody from June 14, 2008 to July 18, 2008 and after detention in custody from September 20, 2008 to March 29, 2009. Admittedly, the applicant was detained in custody in connection with investigation of the criminal case pending against him during the period from July 19, 2008 to September 19, 2008. The applicant is deemed to be suspended during the aforesaid period of time in terms of Rule 7 (2) of West Bengal Services (Classification, Control and Appeal) Rules, 1971. The order of deemed suspension is again deemed to have been withdrawn on March 30, 2009 when the applicant was permitted to resume duty. Unfortunately, the disciplinary authority has not passed any specific order either in connection with deemed suspension or in connection with withdrawal of the said suspension by granting permission to the applicant to</p>	

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	<p>resume duty.</p> <p>In view of the pendency of the criminal case against the applicant till date, the final order about regularisation of absence of the applicant from duty during the period of his detention in custody and payment of annual increment in terms of the revised pay scale during subsequent period cannot be passed by the appropriate authority. However, since the applicant has been performing duty as Homeopathic Medical Officer from March 30, 2009 till date, he should be given the annual increment to which he is entitled in the existing pay-scale, subject to final decision of the disciplinary authority after disposal of the criminal case pending against him.</p> <p>In view of our above findings, the respondent no. 7, Additional Chief Secretary to the Government of West Bengal, Department of Health & Family Welfare is directed to pass a specific order about the deemed suspension of the applicant w.e.f. July 19, 2008 and order of withdrawal of deemed suspension of the applicant w.e.f. March 30, 2009, when the applicant was permitted to resume duty. The respondent no. 1 is further directed to consider grant of annual increment to the applicant in the existing pay-scale to which the applicant is entitled from the date of his resuming duty</p>	

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Csm	<p>on March 30, 2009 till date, subject to review, modification and cancellation of the said order depending on final outcome of the criminal case pending against him. The respondent no. 1 is also directed to consider grant of Earned Leave or any other kind of leave to the credit of the applicant during the period of his absence from duty from June 14, 2008 to July 18, 2008 or to grant Extra-ordinary Leave without pay for the aforesaid period, if no leave is found to be in the credit of the applicant at the relevant point of time for regularisation of the absence of the applicant from duty during the aforesaid period of time. The entire above exercise is to be done by the respondent no. 1 within a period of 12 (twelve) weeks from the date of communication of the order.</p> <p>With the above direction, the original application stands disposed of.</p> <p>Let a Plain Copy of the order be supplied to both parties.</p> <p>S. K. DAS MEMBER(A)</p> <p>R. K. BAG MEMBER(J)</p>	