

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

**Hon'ble Justice Soumitra Pal, Hon'ble Chairman.**  
**& Hon'ble Dr. Subesh Kumar Das, Administrative Member.**

Case No. OA 1268 of 2015.  
 RAJIB SANYAL – VS- STATE 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
<p>10  <hr/>           3.12.2018.</p>	<p>For the Applicant : Mr. M.K. Sanyal,            Advocate.</p> <p>For the State Respondent : Mr. A.L. Basu,            Mr. S.N. Ray,            Advocates.</p> <p>In this application the applicant, who is working now as a Medical Officer of Health at Karnasubarna Block Primary Health Centre , Murshidabad has challenged the reasoned order dated 29<sup>th</sup> October, 2015 issued by the Director of Health Services and Ex-officio Secretary, Department of Health &amp; Family Welfare, which was passed pursuant to the order dated 24<sup>th</sup> July, 2015 passed in OA 99 of 2015 Dr. Rajib Sanyal –Vs- the State of West Bengal and others. It appears from the statements made herein that the applicant had rendered military service on and from 1<sup>st</sup> March, 2001 to 10<sup>th</sup> June,2006 before joining in West Bengal Health Service. The applicant had joined in West Bengal Health Service on and from 11<sup>th</sup> May, 2011 as General Duty Medical Officer and after giving option had joined in the W.B.P.H. &amp; A.S. on 5<sup>th</sup> March 2013. Since then he has been working as Block Medical Officer of Health at Karnasubarna B.P.H.C., Murshidabad.</p>	

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	<p>The applicant has stated that the period on and from 11<sup>th</sup> June, 2006 to 10<sup>th</sup> May, 2011 may be regularised as pensionable service.</p> <p>It is submitted by Mr. Sanyal, learned advocate appearing on behalf of the applicant that in view of the notification dated 14<sup>th</sup> June, 1978, particularly paragraph 5 and the note thereof, and in view of the intimation dated 8<sup>th</sup> December, 2014 issued by the OSD and Ex-officio Joint Secretary to the Government of West Bengal – being annexure J to the original application, wherein past service of similarly situated applicant was counted and in view of the judgement of the High Court of Delhi passed in WP (C) 13444 of 2005 Randhir Singh – Vs- N.C.T. of Delhi , the applicant is entitled to the reliefs as prayed for.</p> <p>Mr. A.L. Basu, learned advocate, appearing along with Mr. S.N. Ray, learned advocate, submits that the impugned order dated 29<sup>th</sup> October, 2015 is just and proper. Submission is that the initial service of the petitioner from 1<sup>st</sup> March 2001 to 10<sup>th</sup> June, 2006 is of short service commissioned officer which was a contractual service. Moreover the intimation dated 8<sup>th</sup></p>	

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	<p>December 2014 does not reflect that whether the applicant therein was in a temporary service or permanent service. So far the judgement of the Delhi High Court is concerned it is not applicable on facts as therein, it was held that the applicants recruited during the Chinese aggression constituted a class by themselves. Further the period between 11<sup>th</sup> June 2006 to 10<sup>th</sup> May 2011 cannot be taken into consideration for counting the pensionary service as during that time he was neither in the military service nor in the state service. However, the Deputy Director of Health Services and Ex-officio Secretary, Department of Health and Family Welfare in a letter dated 5<sup>th</sup> April, 2014 to Mr. S.N. Ray, learned advocate, has intimated that the case of the instant applicant is pending before the Finance Department for consideration. Let a copy of the said letter filed be kept on record.</p> <p style="text-align: center;">Heard learned advocates for the parties.</p> <p>There is no dispute that the applicant was a short service commissioned officer, which is a contractual service. The notification dated 14<sup>th</sup> June, 1978, particularly paragraph 5 and the note thereof are not applicable as it is</p>	

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Skg.	<p>applicable to persons who <i>“had rendered regular military service”</i>. The applicant herein did not render regular military service. That apart, the intimation dated 8<sup>th</sup> December, 2014 annexure “J” to the Original Application does not reflect that the applicant therein was in short term military service. Rather it speaks of short service Commission of a person who had opted out of military service. The judgement in Randhir Singh (supra) is not applicable to the facts of this case as therein the applicants recruited during the Chinese aggression constituted a class by themselves.</p> <p>In view of the above, no order is passed on this application. The application is disposed of. However this order will not prevent the Finance Department to pass necessary orders in the case of the petitioner pending before the said department, as noted hereinbefore, without being influenced by any of the observations made in this order.</p> <p>(Subesh Kumar Das) Member(A).</p>	<p>(Soumitra Pal) Chairman.</p>

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